THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

LARMAG HOLDING B.V.

Claimant

and

(1) FIRST ABU DHABI BANK PJSC
(2) FAB SECURITIES LLC
(3) MR ABDULLA SAEED BAKHEET OBAID ALJABERI
(4) MR ALI MOHAMED
(5) ELITE HOLDING GROUP LIMITED

Defendants

JUDGMENT OF JUSTICE SIR RICHARD FIELD FOLLOWING TRIAL OF THE ACTION

Introduction

1. This is the judgment following the trial of the action brought by the Claimant (**Larmag**) against the Third Defendant (**"Mr Aljaberi"**) in which it is alleged that Mr Aljaberi fraudulently induced Larmag: (a) to transfer 70,000 EUR 70 million Reditum SA corporate bonds (the **"Claimed Bonds"**) belonging to Larmag into an account held by Mr Aljaberi with the Second Defendant (**"FABS'**) on terms that Larmag would first receive a EUR 20 million pre-payment; and (b) to agree that a coupon payment of EUR 2,187,500 would be made by the issuer of the bonds, Reditum SA (**"Reditum"**), in respect of the transferred bonds into an account held by Mr Aljaberi with the First Defendant (**"FAB"**) in reliance, inter alia, on Mr Aljaberi's promise that the money would then be repaid to Larmag. It is also alleged that Mr Aljaberi unlawfully disposed 5,000 of the Claimed Bonds (with a nominal value of EUR 5 million) and dissipated both the proceeds therefrom and the EUR 2,187,500 coupon payment.

2. It is not disputed that on about 3 July 2018 the Claimed Bonds were transferred into Mr Aljaberi's Account 47502 held with FABS. FABS is a wholly owned subsidiary of the First Defendant (**"FAB"**). Both FAB and FABS were incorporated and have their Head Quarters in Abu Dhabi.

3. Put briefly, Larmag's case is that it was fraudulently induced by Mr Aljaberi, acting alone, or using third parties as part of a joint enterprise, including the Fourth Defendant, Mr Ali Mohamed, and the Fifth Defendant, (**"Elite Holding"**), a business entity controlled by Mr Aljaberi, to transfer the Claimed Bonds into Mr Aljaberi's account with FABS in reliance on: (a) an agreement between Larmag and Elite Holding; and (b) false representations, apparently from Noor Bank, in the form of statements and a letter that confirmed that an agreed pre-payment of EUR 20 million for the Claimed Bonds had been transferred to Larmag's account held with ING Bank in the Netherlands, when in fact no such transfer had been made. Larmag's case in respect of the coupon payment is that it was fraudulently induced to agree to Reditum making this payment in reliance on false statements made by Mr Aljaberi and Mr Mohamed that: (a) loan monies secured by a pledge over the bonds to finance the bond transaction would only be released if the coupon due on the bonds were paid to the registered owner, Mr Aljaberi; and (b) the payment would be paid back to Larmag.

4. Larmag has attempted to serve its claim on Mr Mohamed and Elite Holding but has received no response to its several attempts to contact these parties. It was anticipated that only Mr Aljaberi would play a role in the trial and this proved to be the case. Mr Mohamed and Elite Holding did not appear and were not represented. Against the possibility that the Fourth and Fifth Defendants actually exist as legal persons, Larmag seeks judgment against them, as well as against Mr Aljaberi.

5. As will be related below, Mr Aljaberi's case and his evidence at the trial was that he had never heard of Larmag until these proceedings came to his notice and he was not involved in any of the acts and dealings which Larmag alleges induced it to transfer the Claimed Bonds into his account with FABS. According to Mr Aljaberi, he understood that the Claimed Bonds were transferred to him by an Australian businessman, John Varoujan, in partial settlement of a claim of many millions of Euros under three investment agreements made between Mr Aljaberi, through his company, Ain Abu Dhabi Investment, and Mr Varoujan, through his company Gold Standard Corporation.

6. Following the discovery that the statements and letter purportedly from Noor Bank were all forgeries, and in the knowledge that the Claimed Bonds had been transferred by Larmag into an account maintained by FABS, Larmag obtained a freezing order against Mr Aljaberi and proprietary injunctions and disclosure orders against FAB and FABS. To the extent that FAB and FABS have provided the information sought by the disclosure orders, this was done through affidavits and witness statements provided by Dr Nimer Basbous, General Counsel to the FAB Group.

The causes of action relied on by Larmag

7. In its Re-Re-Amended Particulars of Claim (**"RAPOC"**), Larmag pleaded causes of action against, on the one hand, Mr Aljaberi and Elite Holding and, on the other hand, against Mr Mohamed, under DIFC Law and, in the alternative, UAE Law. This was against the possibility that it would be held that DIFC was the governing law under Article 8 of DIFC Law No.3 (2004) and in the alternative that, if UAE Law were held to be the governing law, the English "double actionability" rule would apply, whereby the victim of a wrong committed outside the jurisdiction which

would be an actionable wrong if committed within the jurisdiction, can sue in England on the equivalent English cause of action.

8. Included in the pleaded DIFC causes of action against Mr Aljaberi and Elite Holding were claims that: (a) by reason of Larmag having been induced by the false statements pleaded in its Derry v Peak claim, Larmag was entitled to avoid any contract between Larmag and Elite Holding and/or Mr Aljaberi pursuant to Article 40 of the DIFC Law of Contract (2004); and (b) for breach of contract for failing to pay the EUR 20 million pre-payment entitling Larmag to terminate those agreements and recover damages.

9. At trial, Larmag confirmed that it was abandoning the causes action identified in paragraph 8 above. It was also common ground that, subject to the application of the double actionability rule, it was UAE Law that should determine whether Larmag's pleaded factual case gives rise to actionable causes of action on the ground that, pursuant to Article 8.2 (d) of DIFC Law No. 3, it was UAE Law which most closely related to the facts and/or persons concerned.

10. Larmag argued that the double actionability rule applied and that, accordingly, DIFC Law was the applicable law. This argument I reject. In my judgment, the choice of law rule in issue here is not a rule of procedure that can be governed by the application of common law principles[1] , but is substantive in nature and therefore the wording of Article 8.2 precludes application of this common law rule. I have no regrets in reaching this conclusion. In my view, the double actionability rule has become a rather embarrassing anachronism that is difficult to justify in these less chauvinistic times.

11. In setting out its case in UAE law, Larmag pleads in RAPOC: (1) Article 399 of the UAE Penal Code and Article 282 of the UAE Civil Code under the heading "Fraud and Act Causing Harm"; (2) Articles 318 and 319 of the UAE Civil Code, under the heading "Unjust Enrichment"; and (3) Articles 320 and/or 324 under the heading "Unjustified Expropriation". These Articles provide in relevant part:

> **Article 399, Penal Code**
>
> Whoever captures for himself or for others transferable money or documents or signing such document or cancelling, damaging or amending it through trickery or using a false name or personality for the purpose of tricking the victim and forcing him to deliver such shall be punished with a jail or a fine.
>
> The same penalty shall be applied to whoever disposes of a building or a movable that he knows he does not own or that he has no right to dispose of such or who disposes of anything of the same kind with the knowledge that another person has disposed of such or contracted on and hence he shall harm the other.

12. This Article was pleaded only for the context of Article 282 and was not relied on as constituting, or being part of, a cause of action under UAE law.

> **Article 282, Civil Code**
>
> Any harm done to another renders that actor even though not a person of discretion liable to make good the harm.

13. This Article appears directly under the heading: "Part 3. Acts causing harm. Section 1. General Provisions". The authoritative commentary on Article 282 by the UAE Ministry of Justice ("the **Commentary"**) set out in the well-known work by James Whelan, includes the following:

> This article demonstrates succinctly and clearly the rule of liability for a harmful act in its three elements. Liability to make compensation will arise out of any harm done, and the harm can pertain to an act or a failure to act, and it must have arisen out of the damage, and there must therefore be both the act (either positive or negative) and the harm, and then the causal relationship between them. The use of the word "harm" in this context makes it unnecessary to use the various other kinds of words that have been used in this context, such as "unlawful act", or "act contrary to the law", or "act prohibited by law" etc. It is self-evident that if the provisions of the legislation were to enumerate the acts out of which harm in this sense might be caused, that would be no more than to give examples, and it could not result in the creation of a comprehensive and exhaustive statement. The determination of what amounts to harm is left of the discretion of the judge, who will be guided therein by the general guiding elements to be deduced from the nature of the prohibition in the law against causing harm.
>
> . A harmful act has to be an unlawful act, based on the saying of the Prophet "no harm must be done no harm done in return", and for that reason the legislature has made it a cause giving rise to liability for any loss or damage resulting.
>
> **Article 318, Civil Code**
>
> No person may take the property of another without lawful cause, and if he takes it he must return it.

14. This Article appears directly under the heading:

> "Part 4. Acts conferring a benefit. Section 1. Unjust enrichment."
>
> **Article 319, Civil Code** (which appears in Part 4, Section 1, Unjust enrichment)
>
> Any person who acquired the property of another without any disposition entitling him so to do must return it if the property still exists, or similar property of the value thereof if it no longer exists, unless the law otherwise provides.
>
> **Article 320**
>
> Whoever hand over a thing believing that he has a duty to do, and it then becomes apparent that he had no such duty, may recover it from the person who took it if it still exists, or similar property or the value thereof if it does not still exist.
>
> **Article 324**

Whoever takes a thing without a claim of right must return it to its owner together with any profits or yield it has produced, and the judge may compensate the owner of the right for any shortfall in the return of the yield on the part of the person who had taken the goods.

15. In his closing submissions, Mr Black QC for Larmag also relied on the following additional Articles in the UAE Civil Code:

Article 283 (Part 3, Section 1)

(1) Harm may be direct or by causation.

(2) If the harm is direct, it must unconditionally be made good, and if it is consequential there must be a wrong doing or a deliberate act or the act must have led to harm.

Article 285 (Part 3, Section 1)

If a person deceives another he shall be liable to make good the harm resulting from that deception.

16. The Commentary on Article 285 includes the following.

..The Code has preferred to state the general rule without giving examples..

Historical reference given from the hadith.

The word "ghurur" as to the subject matter is used by the jurists in the meaning of making somebody accept what is no good by lying and misleading means, inducing him to proceed, in a circumstance where if he had known the truth he would not have proceeded.

Thus, there is no "ghurur" or save where it is exercised in respect of the subject matter, and is used as a means of inducement by the deceiver by false and lying means designed to make facts appear otherwise than as they are, practised deliberately by the deceiver, and in bad faith.

Article 292 (Part 3, Section 1)

In all cases the indemnity shall be assessed according to the amount of the harm suffered by the victim, together with the loss of profit, provided that that is a natural result of the harmful act.

Article 293

(1) The right to have damage made good shall include moral damage, and an infringement of the liberty, dignity, honour, reputation, social standing or financial condition of another shall be regarded as being moral damage.

(2) It shall be permissible for an order to be made by way of compensation for moral damage caused to a spouse or relatives of the family by reason of the death of the victim.

(3) The right to receive compensation for moral damage may not be transferred to a third party unless the amount of it has been fixed by agreement or by a final judicial order.

17. The Commentary on this Article reads:

Comparative note.

Egyptian law specifies the degree of closeness of the relatives entitled to compensation: the UAE code leaves this to the discretion of the judge. The rule that compensation for moral damage that has not been adjudged or assessed by agreement does not pass to the heirs is by contrast to the rule that the right to claim for material damage does pass to the heirs not withstanding that it may not yet be of an ascertained amount, whether by judgement or agreement or otherwise. This article permits a judge to order compensation for distress to spouses and family, caused by the death of the injured party. The rule relating to transferability of the right applies also to compensation payable to a spouse or relative. Such compensation shall pass only if it has become of ascertained amount by judgement or agreement. Grief, disgrace and disfigurement all qualify as moral damage

Article 295 (Part 3, Section 1)

The indemnity shall be assessed in money, but provided that the judge may, according to the circumstances and upon the application of the victim, order restoration of the previously existing state of affairs, and he may also order that a specific act connected with the harmful act be performed by way of making good.

18. In his closing submissions, Mr Thompson QC for Mr Aljaberi referred me to the Commentary on Article 282 and observed that Article 282 is a generic tort with the subsequent Articles in Section 1 of Part 3 dealing with specific elements and remedies. He also correctly noted that, although damages are claimable for wrongs done covered by Part 3 of Section 1 of the UAE Civil Code, these provisions do not confer a restitutionary remedy. He further pointed out that whilst Articles 283, 285, 262, 293, and 295 had been relied on in Larmag's written opening, none of these provisions had been pleaded in the RAPOC. He submitted that this failure disentitled Larmag from relying on them, contending that it was incumbent on Larmag to plead these Articles so that the opposing party and his legal advisers, who were not familiar with UAE law, knew the case that had to be met and it would be unfair if Larmag were to be allowed to advance this un-pleaded case.

19. I do not accept Mr Thompson's submission in respect of Articles 283, 285, 262 and 295. Article 283 is concerned with causation. As those advising Mr Aljaberi must have been fully aware, Larmag's case was that Mr Aljaberi, Elite Holding and Mr Ali Mohamed deliberately and in bad faith set about defrauding Larmag of the Claimed Bonds and persuading Larmag to agree to the coupon payment made by Reditum. Larmag's

reliance on Article 283 ought therefore not to have come as any surprise to them. And even if they had not considered the impact of Article 283 on Larmag's pleaded UAE law case before receipt of Larmag's written opening on 27 February 2021, it would not or should not have taken them at all long to see the potential applicability of Article 283 and to formulate their answer (if any) to the assertion that the harm suffered by Larmag was direct harm.

20. Turning to Articles 292 and 295, in my judgment it was not strictly necessary for these provisions to be pleaded because they do not define a cause of action but are concerned with the remedy of indemnity, spelling out the relevant elements in play when deciding how the indemnity due to the victim is to be arrived at. Practitioners acting in cases involving UAE law must make it their business to be acquainted with the remedies provided for in the Civil Code for the cause or causes in contention. Articles 292 and 295 are very clearly expressed in Mr Whelan's translation of the provisions. In my view, it would, or should, have been clear to those advising Mr Aljaberi from the Particulars of Loss of Damage pleaded in paragraph 105A -105D in the RAPOC that Articles 292 and 295 would be part of the justification for the losses and damage therein pleaded.

21. Turning to Article 285, this is in cause of action language. It serves to provide for a subsidiary cause of action by way of an example of what is encompassed by Article 282, the generic tort. It is couched in very clear terms creating a liability very closely similar, if not identical to, *Derry v Peak* fraud in English common law. In my judgment, it ought to have been plain to Mr Aljaberi's legal team that deceit was at the heart of Larmag's case, whether in DIFC law or in UAE law, so that the reference to Article 285 in Larmag's written opening was very much to be expected.

22. In the result, therefore, whilst it would, I think, have been preferable for Larmag to have pleaded Articles 283, 285, 292 and 295, I do not think it unfair for Larmag to rely on them without having pleaded the same.

23. Article 293 is in a different category. I think that the submission made by Mr Black on the back of this provision in his written opening would have come more or less out of the blue and there is a good arguable case that it should have been pleaded in the RAPOC so that Mr Aljaberi and his legal team could be well prepared to answer the submission at trial. The submission in question was made in the context of Larmag's case that the remedies for the breaches of UAE law were matters of procedure and therefore, in accordance with established English common law, the applicable remedies were those available in DIFC law, including multiple damages under Article 40 (2) of the DIFC Damages and Remedies Law (the **"DIFC Remedies Law"**). In *Harding v Wealands* [2007] UKHL 32, Lord Hoffmann observed that in applying the distinction between the cause of action and the remedy in actions in tort, the courts had distinguished between the kind of damage which constitutes actionable injury and the assessment of compensation (i.e damages) for the injury which has been held to be actionable. The identification of actionable damage is an integral part of the rules which determine liability.

24. Mr Black appreciated that this approach might lead to the conclusion that Article 40 (2) is a matter of substance and not procedure or that the causes of action under the UAE Civil Code Larmag were contending for were causes of action in respect of the harm that gave the right to the victim to be compensated by indemnification. Mr Black therefore considered how the position should be analysed if it were held that multiple damages such as are provided for under Article 40 (2) were a "head of damage" that was not a matter of procedure but a matter of substance. He submitted that in this scenario quantification and assessment of the head of damages provided for under Article 40 (2) would be a matter of procedure that could be undertaken under that head of damage if Article 40 (2) was sufficiently analogous to a head of damage under UAE law, the lex causae. And on that latter point, in the instant case the entitlement to moral damages under 293 was such an analogous head of damage.

25. In my judgment, those advising Mr Aljaberi could not be expected to have anticipated Mr Black's contention that moral damages as provided for in Article 293 included exemplary or punitive damages such as are contemplated in Article 40 (2) of the Damages and Remedies Law. There is therefore in my view a good arguable case that Larmag should have pleaded Article 293, together with the contention based on it that Mr Black advanced in his written opening.

26. In his speaking notes that accompanied his oral closing submissions, Mr Black observed: "3D accepts `in principle' the treble damages provision is available". Perhaps it was on the basis of this assumption that he did not develop in his oral submissions the argument based on Article 293 that is made in his written opening. However, Mr Thompson in his oral closing submissions clearly argued that Article 293 was among the unpleaded Articles that Larmag should be debarred from relying on.

27. The manifest purpose of Article 293 is to compensate a victim who has suffered non-material harm in consequence of wrongful tortious conduct committed by the putative defendant. In my view, it is also readily apparent from the overall wording of the Article and the Commentary thereon that the principal type of non-material harm the provision is aimed at is emotional upset and distress.

28. As it turns out, it is unnecessary to come to a final view on Mr Thompson's good arguable case that Larmag should have pleaded Article 293 and should not now be permitted to rely on it. I say this because, for reasons that I give later in this judgment, I dismiss Mr Black's argument founded on Article 293 on the ground that he has not satisfied the Court that this Article contemplates the award of non-compensatory damages in the nature of the exemplary, punitive damages available under Article 40 (2).

Determination of the issue whether Larmag has established its pleaded liability case against Mr Aljaberi

29. I proceed to consider Larmag's liability case against Mr Aljaberi, leaving over for the moment the remedies Larmag seeks on the basis that it has succeeded on liability.

The Claimant's witnesses

(1) Mr Lars Erik Magnusson

30. Mr Magnusson is Larmag's Chief Executive Officer and sole shareholder. His evidence was given under oath. In his first affidavit, when referring to an Annex to a Joint Venture Agreement (the **"JVA"**) he sought to have executed by Larmag and Elite Holding, Mr Magnusson stated that the Annex was based on an agreement Larmag had used on a previous deal and the "loan" referred to therein was from the previous document. However, in his seventh witness statement, signed on 4 March 2021, just three days prior to the start of the trial, Mr Magnusson said that his statement in his first affidavit that the Annex was based on a previous deal was mistaken. Instead, he should have said that the Annex was

based on a draft provided by a Mr Kareem Alqasabi of Elite Holding by an email dated 30 June 2018. Since the Annex was intended to relate to the JV Agreement, he was not focused on whether the document provided to him contained inaccurate references to a "loan" and "loan contract" and he did not think to correct it.

31. Understandably, Mr Magnusson was cross-examined closely on his seventh witness statement. In my judgment, Mr Magnusson was an honest witness and I accept his evidence about the mistake he made in his first affidavit. The correction having been made, I accept Mr Magnusson's evidence as a reliable account of all the matters he relates in those of his affidavits and witness statements relied on by Larmag as his evidence in chief and which he related in cross-examination and re-examination.

(2) Mr Joseph Tsai

32. Mr Joseph Tsai is the Senior Partner for Business Development & Special Projects at Oswego Consulting Partners, a consulting firm based in Victoria, British Columbia. It was Mr Tsai who passed on the name of Mr Aljaberi to Mr Magnusson as a possible investor in the Bonds.

33. Mr Tsai was an honest and reliable witness. I accept his evidence which he affirmed to be true.

(3) Mr Maximillian Sandberg.

34. Mr Sandberg is Vice President at Larmag. His role and responsibilities are focused on the structuring and execution of investments within the Larmag Group of companies, including raising finance from third parties. Mr Sandberg's evidence was given under oath. It covered: the issuance and sale of the 2015 Reditum Bonds (of which the Claimed Bonds were part); the sale by Larmag in August 2018 of EUR 99 million Reditum Bonds to a German pension fund and the further acquisition by this fund of EUR 24 million Reditum Bonds, making EUR 123 million in total, of which EUR 4 million bonds originated from the EUR 5 million bonds transferred by Mr Aljaberi to an entity in Switzerland; the purchase of six commercial properties using the proceeds from the sales of the Reditum Bonds; the JVA with Elite Holding; the coupon payment made to Mr Aljaberi; a trip to Dubai in October 2018 to investigate what was going on in respect of the Claimed Bonds; and the loss of management time and the damage to Larmag's reputation resulting from the alleged fraud.

35. Mr Sandberg was an honest and reliable witness whose evidence I accept as truthful and reliable.

The factual background to Larmag's claim

36. I shall deal with Mr Aljaberi's evidence later in this judgment. At this point, I set out my findings of fact as to the events leading up to the transfer of the Claimed Bonds into the account in Mr Aljaberi's name held at FABS, based on the evidence adduced by Larmag which was not substantively challenged by Mr Aljaberi, although, as recorded above, it is important to note that Mr Aljaberi denied that he had any dealings with Mr Magnusson or any other third parties acting for Larmag prior to the issue of proceedings against him. It is also the case, as Larmag accepts, that Mr Magnusson never met Mr Aljaberi face to face. Accordingly, when relating the evidence of the Larmag witnesses when they spoke of Mr Aljaberi, I have put Mr Aljaberi's name in inverted commas. Later in this judgment, I set out my finding as to whether it was indeed Mr Aljaberi with whom these witnesses were dealing.

37. The Larmag group of companies with Larmag at the head of the group was established by Mr Magnusson in 1985. The group carries on the business of investing in real estate.

38. Having identified a number of properties in the Netherlands it wished to purchase as investments, Larmag decided to finance these purchases by using a special purpose vehicle to issue corporate bonds. The special purpose vehicle used was Reditum, a wholly owned subsidiary of Larmag incorporated in Luxembourg. On 8 July 2015, Reditum issued 200,000 corporate bonds each with a nominal value of EUR 1,000 and a coupon of 6.25% p.a. payable on 15 January and 15 July each year (the Reditum Bonds). The Reditum Bonds were subject to a mandatory redemption date of 15 July 2020. They were given a B rating on Bloomberg on 2 December 2015. The intention was to use the money raised through the sale of the Reditum Bonds to purchase a portfolio of commercial properties and to refinance the portfolio prior to redeeming the bonds.

39. Under the listing particulars for the 2015 Reditum Bonds, Reditum committed to lend any proceeds from the sale of the bonds to Larmag Real Estate 2 B.V. (**"LRE2"**) under a loan agreement between Reditum and LRE2. LRE2 is 100% owned by Larmag Realty Group B.V. (**"Larmag Realty"**), which is in turn 100% owned by Larmag. The contemplated loan agreement was entered into on 30 September 2016 between LRE2, Reditum and Larmag Realty. Under it, Reditum (the lender) agreed to make available to LRE2 (the borrower) a loan in the amount up to EUR 200 million for the funding of real estate investments in and around major cities in the Netherlands and other European cities. The loan agreement stipulated: (i) an interest rate of 6.3% per annum, with interest payments made on 10 January and 10 July each year; (ii) a repayment date of 10 July 2020; and (iii) no capitalisation or compounding of interest.

40. After approximately, 12 months, EUR 20 million of the Reditum Bonds had been placed with a handful of institutional investors.

41. A custodian agreement was entered into on 24 January 2018 between Larmag, Reditum and LRE2 in respect of EUR 170 million of the Reditum Bonds, including the Claimed Bonds. Under this custodian agreement, Larmag was the custodian of and had ownership of these bonds until it had sold and transferred them in whole or in part to any investors. The proceeds of sale of the Bonds would then be transferred to LRE2 to invest in accordance with the loan agreement dated 30 September 2016.

42. In November and December 2018, the Larmag Group purchased six commercial properties for a total of EUR 57,919,860 (including acquisition costs).

43. Sometime prior to the middle of May 2018, Mr Magnusson asked Mr Tsai of Oswego Consulting Partners to help find potential purchasers of the Reditum Bonds. Mr Tsai enquired of a contact of his, Mr Patrick Laurent N'dom (**"Patrick N'dom"**), who was then on an assignment in Dubai, whether he knew of any potential purchasers. Patrick N'dom responded with the name of Abdullah Aljaberi and his company, Elite Holding. Mr Tsai then had prepared and sent a letter on Oswego Consulting Partners letterhead dated 14 May 2018 which enclosed a proposed Engagement Package Agreement addressed to Elite Holding Group, c/o P.L.D SOLUFIN FZE (Patrick N'dom's company) inviting Elite Holding

to agree to enter into an agreement with Oswego Consulting Partners in respect of a purchase of at least EUR 65 million of the Reditum Bonds. The document[2] described the "Applicant" as "Elite Holding Group (Abu Dhabi), ICAD1, Factory, Land 126, Abu Dhabi, Dubai, Standard Chartered Building Emma & Squire (Downtown)". This information was provided by Patrick N'dom who told Mr Tsai that he had been involved with Mr Aljaberi in respect of a prior bond transaction that did not go anywhere and he had met Mr Aljaberi in his office and in his house. Mr Tsai was also given information about Mr Aljaberi by Mr Kevin Yang, an associate of Patrick N'dom, who was a fund manager and had introduced Patrick N'dom to Mr Aljaberi. A scanned copy of the proposed Engagement Package Agreement was sent back to Mr Tsai by Patrick N'dom bearing a handwritten signature, above which appeared the words, "Authorising Signature, Name: Mr Abdullah S Aljabr" together with a stamp bearing the words "Elite Holding Group, PO Box 42662, Abu Dhabi UAE".

44. Patrick N'dom also provided an email address for Mr Aljaberi - pa@elitehold.com - which Mr Tsai used to send an email dated 6 June 2018[3] complaining about difficulties Mr Aljaberi was making in providing Know Your Client ("KYC") details. In this email, Mr Tsai stated that he had been introduced to Ms Dina Mohamed, whom Mr Aljaberi accepted worked in customer services for FAB and FABS. Mr Tsai received a reply[4] to his email from the address to which he had sent his email, pa@elitehold.com. In this reply, complaint was made of his "personal attack" and it was stated that KYC details would only be provided to the bank or the government. Mr Tsai responded to this reply by an email[5] addressed to Elite Holding Group pa@elitehold.com, stating that he was available to speak regarding the events of the transaction and gave the number of his direct line. He copied this email in to elitehold@yahoo.com, an email address Mr Aljaberi accepts he used.

45. At the invitation of Mr Tsai, a business associate of his, Mr Adam Al Mulhanna of Cetus Capital Partners, also became involved in seeking to achieve a sale of EUR 65 -70 million of the Reditum Bonds.

46. In late May 2018, or early June 2018, Mr Magnusson put a proposal on the telephone to the gentleman Mr Magnusson understood to be Mr Aljaberi (hereinafter until further notice referred to as "Mr Aljaberi") under which "Mr Aljaberi's" company, Elite Holding, would purchase 70 million of the Reditum Bonds for 90% of their face value. The price of EUR 63 million would be paid in cash by Elite Holding by way of a delivery versus payment (**"DVP"**) settlement. "Mr Aljaberi" stated that he would obtain a loan from FAB to fund the purchase price.

47. After these initial discussions, Mr Magnusson repeatedly chased Elite Holding to proceed with the transaction on the terms that had been discussed. Eventually, in or around mid-June 2018, "Mr Aljaberi" called Mr Magnusson and said that he could not proceed with the deal because FAB would only lend him 60% of the face value of the Bonds and this would block too much equity in the transaction for Elite Holding.

48. In late June 2018, "Mr Aljaberi" suggested to Mr Magnusson that Larmag and Elite Holding should enter into a joint venture agreement under which Elite Holding would purchase 70 million of the Reditum Bonds at 90% of their nominal value to be held in its account with FABS and pledged to FAB to secure a loan from FAB for 60% of the value of the bonds (EUR 42 million), with the Bonds being jointly owned by Larmag and Elite Holding in one third (1/3rd) and two thirds (2/3rd) shares respectively. The loan monies received from FAB would be transferred to Larmag in settlement of two thirds (2/3rd) of the purchase price of EUR 63 million and the coupon paid on the bonds would be used first to pay the interest on the loan from FAB with the balance split between the parties one third (1/3rd) and two thirds (2/3rd).

49. Mr Magnusson was not happy about a transaction that did not call for DVP settlement and he insisted that Elite Holding must pay at least EUR 20 million upfront before Larmag would transfer the bonds into Elite Holding's account held with FABS. "Mr Aljaberi" agreed to this condition.

50. Mr Magnusson then prepared the JVA to reflect the proposed one third (1/3rd) and two thirds (2/3rd) agreed terms using an agreement that Larmag had employed for previous transactions. Under the JVA, Larmag agreed that Elite Holding would receive 100% of the Nominal Value of the EUR 70 million bonds which it would be entitled to pledge to its bank as security for a loan of 60% of the Nominal Value (EUR 42 million) of the bonds. Once the loan had been received, Elite Holding would pay the EUR 42 million to Larmag and, until redemption, coupon payments would be split two thirds (2/3rd) to Elite Holding and one third (1/3rd) to Larmag. On redemption, Elite Holding was first to receive reimbursement of EUR 42 million and the balance of the redemption proceeds were then to be paid to Larmag in respect of the balance of the purchase price. The JVA was expressed to be governed by the law of the Netherlands.

51. As recorded above, the Annex to the JVA was based on a proposal received by email from someone using the name Kareem Alqasabi and the email address legal@elitehold.com. Mr Magnusson signed the JVA and it was then scanned by email to "Mr Ali Mohamed", apparently of Elite Holding, and copied to Mr Mulhanna and "Mr Aljaberi". Mr Magnusson also signed the Annex and scanned it to "Mr Kareem Alqasabi" of Elite Holding and copied it to "Mr Mohamed", Mr Mulhanna and "Mr Aljaberi".

52. Although Mr Magnusson chased Elite Holding to sign the JVA, they never did so. The Annex was purportedly signed on behalf of Elite Holding by a "Mr Mohammad Razzouk". The countersigned copy of the Annex was sent by legal@elitehold.com ("Mr Alqasabi") to Mr Magnusson and copied to pa@elitehold.com ("Mr Aljaberi") and account@elitehold.com ("Mr Mohamed").

53. Mr Magnusson repeatedly chased Elite Holding to proceed with the transaction and to make the pre-payment of EUR 20 million into Larmag's bank account.

54. On 2 July 2018, an email was sent to Mr Magnusson apparently from "Mr Mohamed" which enclosed a Noor Bank statement (the **"First Noor Bank Statement"**) which purported to confirm that AED 85.4 million (EUR 20 million) had been transferred to Larmag's account held with ING Bank in the Netherlands.

55. As a result of the First Noor Bank Statement, on 2 July 2018, Mr Magnusson gave instructions to Larmag's settlement agent in London, Swiss Invest, to transfer the Claimed Bonds by free delivery to Elite Holding's account held with FAB.

56. On 3 July 2018 (at 12:55), FABS received the following email[6].

> **From**: ENG LLC elitehold@yahoo.com.
> **Sent**: 03 July 12:55
> **To**: FABS Finance; Dina Mohamed

CC. FABS OPERATIONS; Shaikh@bankfab.com; Shweta Jha
Subject: Fwd. Larmag Holding transfer of Euro 70 million nominal Reditum bonds.

"Dear All,
In regards of receiving 70M euro Bond to my account:
47502
Under my: Abdulla Saeed Aljaberi

From Larmag Holding
Trade: Swiss invest
Please confirm this order and update me with your confirmation

received slip that bond it (sic) been under my name
Best Regards,

Abdulla Saeed Aljaberi"

57. FAB and Swiss Invest then arranged the finalisation of the transaction which was confirmed as settled, and the Claimed Bonds were received by FABS on 3 July 2018.

58. The email address elitehold@yahoo.com (which Mr Aljaberi admits to using) was copied into much of the correspondence between FAB and Swiss Invest leading up to the transfer of the Claimed Bonds. This correspondence referred throughout to a transfer of the Claimed Bonds from Larmag. Mr Magnusson's email address (with the display name "Lars Erik Magnusson") was also copied into many of the same emails.

59. On 9 July 2018, account@elitehold.com ("Mr Mohamed") sent an email to Mr Magnusson which stated that the funds had been released on 9 July 2018 and that he had been informed that the funds should be in Larmag's account within 3 to 7 working days. "Mr Mohamed" enclosed with this email a further purported statement from Noor Bank (the **"Second Noor Bank Statement"**) dated 8 July 2018, which showed that a payment to Larmag's account of AED 85.4 million had been released.

60. However, Larmag still did not receive the AED 85.4 million and, as a result, Mr Magnusson requested an explanation from both "Mr Mohamed" and "Mr Aljaberi" for the non-arrival of the funds. Mr Magnusson also chased "Mr Aljaberi" by text message.

61. On 25 July 2018, account@elitehold.com ("Mr Mohamed") sent an email to Mr Magnusson which enclosed a purported letter from Omer Rahman, General Counsel at Noor Bank (the **"Noor Bank Letter"**), dated 24 July 2018, which stated that AED 85.4 million had been released on 16 July 2018, but the UAE Central Bank had frozen the funds in question.

62. "Mr Aljaberi" then called Mr Magnusson on several occasions between 25 July 2018 and 31 July 2018 to explain that the transfer was out of his hands because the money had been frozen by the UAE Central Bank.

63. On 8 August and 9 August 2018, Mr Magnusson wrote by email to Mr Aldrin Earl of Noor Bank to enquire about the AED 85.4 million payment. Mr Magnusson asked Mr Earl if the First and Second Noor Bank Statements and the Noor Bank Letter were issued by Noor Bank, but he never received a reply from Mr Earl.

64. In the second week of August 2018, "Mr Aljaberi" called Mr Magnusson to inform him that the financing of the Claimed Bonds had been approved by FAB subject to a condition that interest on the Bonds would be paid. "Mr Aljaberi" also said that he only wanted the interest to be paid into Elite Holding's account so that FAB would have evidence that it had been paid and not because he wanted Elite Holding's alleged share of the interest to be paid out to him or Elite Holding.

65. In anticipation of Reditum making an interest payment due on the Reditum Bonds in August 2018, including a payment of EUR 2,187,500 in respect of the Claimed Bonds, Mr Magnusson informed "Mr Aljaberi" and "Mr Mohamed" by email dated 12 August 2018 that the coupon would have to be repaid to Larmag as soon as it was received into the account at FABS, since Larmag remained the owner of the Claimed Bonds until they had been paid for by Elite Holding. This email was forwarded by Mr Al Mulhanna to the elitehold@yahoo.com email address which Mr Aljaberi admits he used to send the email set out in paragraph 56 above.

66. In an email dated 13 August 2018, addressed to Elite Holding Group, "Kareem Alqasabi" and Mr Mulhanna, Mr Magnusson repeated his request that the coupon be transferred to Larmag's account and provided the account details for the transfer. Mr Magnusson was assured by "Mr Aljaberi" that the coupon would indeed be paid to Larmag.

67. With the agreement of Larmag, Reditum paid the coupon. The money in question came into Mr Aljaberi's account 1451003933561015 at FAB (the **"Coupon Account"**) on about 27 August 2018.

68. Both "Mr Mohamed" and "Mr Aljaberi" accepted that the coupon was to be paid to Larmag but maintained that they were subject to a restriction that this could only be done by payments of AED 100,000 per week. In fact, at this time, payments in excess of AED 100,000 were made from the relevant account to Zarmineh Rab on 29 August 2018 (AED 1. 7 million and AED 900,000 to Ali Al Marzooqi on 16 September 2018).

69. In the event, Larmag only received four nominal payments totalling EUR 76,770 by way of repayment of the EUR 2,187,500 coupon.

70. Between July 2018 and November 2018, Mr Magnusson repeatedly chased for payment of the AED 85.4 million and the coupon payment of EUR 2,187,500. In response, he was told variously that "Mr Aljaberi" was not available; steps were being taken to follow up with Noor Bank and/or the UAE Central Bank; FAB required further information; or the non-payment was due to bank restrictions.

71. During October 2018, Mr Magnusson had several calls with "Mr Aljaberi" who claimed he was in Peru negotiating a large oil concession transaction and he was not sure when he would be back in the UAE.

72. On 27 October 2018, "Mr Mohamed" emailed Mr Magnusson stating that Elite Holding *"would like to inform we will cancel our bond deal"*, that *"our Chairman will call you soon to arrange all the required with (sic) 10 days"* and that *"Eliteholding has no legalization or any liability"*.

73. On the same day, Mr Magnusson replied to say that they would need to meet to arrange the transfer back of all the Bonds and the coupon. "Mr Mohamed" was also warned that if Elite Holding did not cooperate, Larmag would have no choice but to take legal action and to contact FAB and FABS.

74. On 28 October 2018, Mr Sandberg and Mr Magnusson travelled to Dubai to meet "Mr Mohamed" in an attempt to resolve matters. Mr Al Mulhanna had also agreed to come to Dubai to assist in sorting out the problems between Elite Holding and Larmag.

75. In the afternoon of 29 October 2018, Mr Sandberg and Mr Magnusson had a meeting with a woman called Visie Raca, whom they understood to be an employee of Masterheat Gulf Industrial Co LLC, a group company of Elite Holding in Sharjah. Ms Raca said that "Mr Mohamed" was busy and was unable to come to the meeting. She assured Mr Sandberg and Mr Magnusson that everything would be settled by "Mr Mohamed" and "Mr Aljaberi". In relation to the coupon, she said that "Mr Mohamed" would arrange for the full amount of the coupon payment to be paid by cheque that would be couriered to "Mr Aljaberi" for signing and then sent on by courier to Larmag's Amsterdam office. The cheque never arrived.

76. On Wednesday 31 October 2018, Mr Magnusson told Ms Raca that he and Mr Sandberg insisted that "Mr Mohamed" meet them in the Elite Holding office in Dubai. Ms Raca said that "Mr Mohamed" was unavailable but that she would meet them in the MasterHeat office in Sharjah, which turned out to be a small workshop in a run-down industrial part of Sharjah.

77. On 1 November 2018, Mr Magnusson contacted his then lawyers in Dubai, Baker & Mckenzie Habib Al Mulla (**"Baker Mckenzie"**), to advise Larmag on its legal remedies.

78. At Larmag's request, Baker Mckenzie wrote to Noor Bank to ask whether the First Noor Bank Statement, the Second Noor Bank Statement and the Noor Bank Letter, all purportedly issued by Noor Bank, were genuine.

79. On 6 November 2018, Baker & Mckenzie received an email from Mr Omar Rahman, General Counsel of Noor Bank, stating that the First Noor Bank Statement, the Second Noor Bank Statement and the Noor Bank Letter (dated 24 July 2018) had been fabricated and were not genuine.

80. On 9 October 2019, Mr Magnusson received an unexpected telephone call from "Mr Aljaberi". This call was not made on without prejudice terms. "Mr Aljaberi" said he wanted to discuss elements of the dispute.

81. Mr Magnusson received a second call from "Mr Aljaberi" on 12 October 2019 and a third call from him on or around 16 October 2019.

Mr Aljaberi's pleaded case and evidence in chief.

The Amended Defence

82. Mr Aljaberi's Defence is dated 5 February 2020. His Amended Defence dated 5 November 2020, with a few irrelevant exceptions, has the same paragraph numbering as his Defence and adds nothing of substantial relevance to his earlier pleading. In paragraph 3, Mr Aljaberi avers that prior to the commencement of these proceedings he had never heard of and had no knowledge of, or about, Mr Magnusson or Larmag. He also denies any knowledge of the persons Larmag alleges in its Particulars of Claim (the **"POC"**) had been involved in negotiations and communications leading to the transfer of the Claimed Bonds into an account held with FABS, which transfer he does not admit. In paragraph 21, Mr Aljaberi also specifically denies Larmag's plea in paragraph 31 of the POC that he had given written instructions to FAB that the Bonds should be transferred into his account number 47502.

83. In paragraph 42 of his Defence, Mr Aljaberi admits that: (i) FABS held 65,000 of the Claimed Bonds in an account in his name, with a total nominal value of EUR 65 million and that on or about 4 July 2018 he acquired those bonds *"from a previous bond holder (who has since died) in consideration for the release by Mr Aljaberi of a debt due to him by that same person"*; (ii) a coupon payment of EUR 2,181,506.81 was made to an account of his with FAB and that there was a balance of AED 2,481.68 in that account.

84. In the same paragraph 42, Mr Aljaberi denies that he transferred 5,000 of the Bonds to a third party having only received 65,000 of the Bonds.

The Responses to Requests for Further Information

(1) The Response dated 18 March 2020 to Larmag's First Request for Further Information dated 12 February 2020.

85. Asked to clarify whether he had ever used the email addresses pa@elitehold.com and elitehold@yahoo.com, Mr Aljaberi stated he has never used the former address but has used the latter.

86. Asked to explain why an email from FABS dated 3 July 2018 enclosed "attached instructions from Mr Abdulla" in the form of the email set out in paragraph 56 above, Mr Aljaberi replied:

> "The Third Defendant does not understand the relevance of this request. The contents of this email do not contradict the contents of paragraphs 6 and 7 of the Defence. Moreover, the Third Defendant is not affiliated to FABS other than as a customer and is therefore unable to provide any explanation of the actions taken by FABS".

87. Asked in request 8.1 to provide details about the "previous bondholder" referred to in paragraph 42 of his Defence, including the name and nationality, and in requests 8.3 and 8.4, to provide details of the alleged debt due to Mr Aljaberi from the "previous bondholder" and of the alleged agreement whereby the alleged debt would be released in return for the transfer of the Bonds to the Third Defendant, Mr Aljaberi replied:

> "Given that the Claimant is the parent company of the entity which issued the Bonds, Reditum S.A., it should be within its gift to ascertain who has owned the Bonds. Request 8.1 is therefore a question that the Claimant can answer itself and is therefore not required in order for the Claimant to plead its case.
>
> The responses to requests 8.2 to 8.4 are irrelevant to the dispute between the Claimant and the Third Defendant, and the Third Defendant does not see any reason why he should have to disclose personal business deals with third parties. Provided the Claimant can establish the previous ownership of the Bonds by reference to its own subsidiary, the circumstances in which the Third Defendant transacted to receive the Bonds is not pertinent to this case".

(2) The Further Response dated 8 May 2020 to Larmag's First Request for Information dated 20 February 2020.

88. Responding to the same requests 8.1 to 8.4 that had been made in the First Request for Information, Mr Aljaberi now pleaded that the previous bondholder was named "John BH" who was believed to hold an Australian passport and who operated a Singapore company called Gold Standard Corporation with an address at 96 Robinson Road. Mr Aljaberi met John BH at an event at the Rotana Beach Hotel in Abu Dhabi in 2003. The debt John BH owed Mr Aljaberi was Euros 150 million and had been incurred in the period 2003 to 2013. The debt arose under three agreements with John BH's company, Gold Standard Corporation, under which Mr Aljaberi invested approximately Euros 80 million and in return for which in the period 2011 to 2013 he was due to receive profits together with capital in the total amount of Euros 150 million. The loss suffered in consequence of John BH's breach of these agreements was approximately Euros 150 million. John BH agreed that over time he would transfer to Mr Aljaberi any assets of value until he had paid the debt. This agreement was not in writing.

(3) The Response dated 19 May 2020 to Larmag's Further Request for Further Information dated 13 May 2020 in respect of the Second Response dated 8 May 2020.

89. Asked to clarify whether "BH" were the initials of the individual named John BH and why he was unable to provide the full name of the individual, Mr Aljaberi replied that he believed the letters "BH" were neither middle name nor surname initials and the individual's full name was John Varoujan.

(4) Mr Aljaberi's evidence in chief

90. Mr Aljaberi gave his evidence under an oath sworn on the Qu'ran. His evidence in chief consisted of his First Affidavit dated 12 December 2019, his first witness statement dated August 2020, his second witness statement dated 30 August 2020 and his Third Affidavit dated 10 March 2021.

91. In his first affidavit, Mr Aljaberi set out those of his assets that each had a value in excess of USD 10,000. In his third affidavit he provides information as to reported negative balances on various accounts he has with FAB. I shall return to these affidavits later in this judgment.

(5) Mr Aljaberi's first witness statement dated August 2020

92. This statement is expressed to be made in support of Mr Aljaberi's Defence dated 5 February 2020. I relate what is said in this statement in relation to Larmag's case that Mr Aljaberi masterminded the transfer of the Claimed Bonds into his account held with FAB.

93. Mr Aljaberi says in paragraph 5 that he was a pilot for the UAE Air Force from 1988 to 2003. (In1988, he was twelve years' old).

94. He goes on to say that "the Bonds" (i.e the Claimed Bonds) were in part payment of a considerable debt owed to him following a failed business venture with an individual called John Varoujan whom he believed was dead, although had no direct evidence of this. He first met Mr Varoujan in 2002 at a social event in Abu Dhabi. A few days after this first meeting he saw Mr Varoujan again who said that he acquired gold mines and used refineries in Dubai and was looking to establish an online gold futures trading platform. Mr Aljaberi was interested in Mr Varoujan's investments and the concept of a gold futures trading platform and considered investing in one of his projects. He carried out some background checks into Mr Varoujan through contacts he had with the Abu Dhabi police. These showed Mr Varoujan had no legal issues in the UAE and indicated that he had approximately US $5 million in an HSBC bank account.

95. Mr Aljaberi proceeded to invest in John Varoujan's company, Gold Standard Corporation. He expected this to result in a return of 200% together with the invested capital. Around September 2003, using a company he operated called Ain Abu Dhabi Investment, he entered into three separate written agreements with Mr Varoujan and Gold Standard Corporation. He has only been able to find two of these three agreements. Each of the three agreements required him to invest EUR 35 million which provided funding for the development of the trading platform, including salaries for the staff. The money was paid to Gold Standard Corporation in three electronic transfers; he has been able to find only the documents relating to one of the transfers. Over a year or so following these investments, Mr Aljaberi spoke to Mr Varoujan occasionally and found investors in Malaysia, Singapore and London. After six months he began to receive payments from Mr Varoujan which ranged between USD 150,000 to USD 170,000 per month.

96. In 2008, Mr Aljaberi stopped hearing from Mr Varoujan and stopped receiving any money and was unable to contact him. He was told in 2010 by some acquaintances that they had met John Varoujan and his wife in Australia and at this meeting Mr Varoujan had agreed to repay the investment but required time to do so. He agreed initially to pay USD 50,000 per month and he made eight cash payments in that sum, but the attempted ninth transaction was rejected by the bank due to lack of relevant paperwork. Mr Aljaberi continued to press Mr Varoujan for payment but it was not until 2016 that he and Mr Varoujan reached a formal agreement which resulted in Mr Varoujan transferring a bond which he owned into a custody account in Mr Aljaberi's name held with FAB.

97. Mr Aljaberi first became aware that the bond transaction was going ahead when he was contacted by his bank by email on 3 July 2018 and

asked whether he accepted receipt of the bonds. The bonds were being transferred "free delivery". Mr Aljaberi confirmed his acceptance of the bonds. He was expecting it from Mr Varoujan. He received the bonds on 4 July 2018.

98. Mr Aljaberi did not recall ever having heard of or met Mr Tsai or Mr Al Mulhanna or having any knowledge of Consulting Partners or Cetus Capital Partners prior to the commencement of these proceedings. He had never spoken with Mr Magnusson. The email address pa@elitehold.com is not an email address under his control. He did not know the company MasterHeat Gulf Industrial Co Ltd. However, he was the local sponsor for a company called MasterHeat Commercial Brokers.

99. In paragraph 39 of his statement, he says that it would not have been impossible for an imposter to fake the screenshots of websites and Twitter and LinkedIn pages where his name is included with "Elite Holding" which are relied on by Larmag. As for a newspaper extract appearing to show him with a caption calling him "Chairman of Elite Holding", he can only assume that the newspaper had made an error. At the time of the tournament he was attending he was working for members of the UAE Government and had been asked to attend a press briefing and that was all he did.

(6) Mr Aljaberi's second witness statement dated 30 August 2020

100. This statement, too, is expressed to be made by Mr Aljaberi in support of his Defence dated 5 February 2020. In it, Mr Aljaberi is chiefly concerned to comment on the statements made by Mr Al Mulhanna (who did not give evidence at the trial), Mr Tsai, Mr Sandberg and Mr Magnusson. It is only his evidence as to facts that he adduces to fortify his previous response to Larmag's allegations and his denials of allegations he has not previously deposed to that require to be related at this stage of this judgment.

101. In paragraphs 10 and 11 of the statement, Mr Aljaberi states that he has searched his telephone records in line with his disclosure obligations and has not found any record of calls with Mr Al Mulhanna. He goes on to say he obtained a letter from Etisalat dated 24 August 2020 which confirmed the telephone numbers he had with that company. The letter shows that he did not have the number 0508883476.

102. In paragraph 32 of the statement, Mr Aljaberi notes that a number of documents were disclosed by Larmag on 16 August 2020 and states that he has searched and is continuing to search for relevant documents, in line with his continuing disclosure obligations and reiterates that his search process has been hampered by all sorts of difficulties, including the destruction of numerous documents by a spouse.

103. In paragraph 34 he refers to Mr Magnusson's allegation that he (Mr Magnusson) exchanged text messages with him on the number +971 50 888 3476 which is stated to be his number in a previously undisclosed document since made available by FAB. Mr Aljaberi states that he cannot account for how or why it appears in FAB's records and goes on to refer to the letter he has obtained from Etisalat confirming the fact this number is not associated with him.

Significant topics on which Mr Aljaberi was cross-examined

(1) Mr Aljaberi's date of birth and ID Number as shown on a copy of his driving licence and passport.

104. Mr Aljaberi was shown the copies of his UAE Identity Card, passport and driving licence[7] that are held in the records of FAB. He agreed that as shown by these documents, his year of birth is 1976.

(2) **The transfer of the Claimed Bonds into Mr Aljaberi's account with FAB**

105. When asked why his return under the three investment agreements he made with Gold Standard Corporation and Mr Varoujan that began to be paid after 6 months was paid in US dollars, when the currency of the agreements was Euros, Mr Aljaberi replied that this was the deal he had made and the only currency Mr Varoujan could pay at the time.

106. Mr Aljaberi agreed that he knew Mr Varoujan's name at the time he made enquiries of contacts with the Abu Dhabi police and when he read the Gold Standard Corporation prospectus before concluding the investment agreements. He was then taken to the signature page of one of the investment agreements with Gold Standard Corporation (E/7) where there is a signature said to be of "JOHN BH" and he testified that he was not concerned by the fact the name of the signatory on behalf of Gold Standard Corporation was not Mr Varoujan's name but was JOHN BH.

107. When asked what happened to his company, Ain Abu Dhabi Investment, Mr Aljaberi replied that the company had closed down but he could not remember when.

108. He went on to say that when a settlement was negotiated through a third party with Mr Varoujan, Mr Varoujan owed him more than EUR 200 million, although Mr Varoujan had been paying him in US dollars because he did not have Euros. In 2016, Mr Varoujan agreed to transfer to him as part payment of the debt a bond denominated in Euros.

109. The ensuing questions and answers recorded in the transcript for Day 2 were put and answered as follows:

10 Q. I see. And then you say in 2016 he agreed to transfer
11 a bond that he owned to you, is that right?
12 A. A part of the payment of his debt, yes.
13 Q. Yes and was that bond denominated in euros or in
14 dollars?
15 A. In euros.
16 Q. I see. And did he tell you who was the issuer of that
17 bond?
18 A. No.
19 Q. Okay. And how much was the bond worth?
20 A. He did not say it in the beginning until one week before

21 the transaction happened.
22 Q. Which transaction?
23 A. It was 70 million.
24 Q. Which transaction, I'm sorry?
25 A. No, the transfer of the bond to my account
1.Q. So you are now telling us that John Varoujan told you
2 that he was going to transfer a 70 million euro bond to
3 your account?
4 A. Yes.
5 Q. And that he told you that in 2018, just before the
6 transfer took place of the Larmag bond into your
7 account, is that right?
8 A. No, no, I did not say that.
9 Q. Okay, well, then you had better tell us what you are
10 saying.
11 A. I said to you it was a negotiation. Since we found him
12 like in 2015, 2016 he signed the agreement of the
13 bond -- I'm sorry, the debts. Then in 2018 he
14 transferred part of his payment due.
15 Q. Let's take that a stage at a time. So you have
16 a written agreement with Mr Varoujan that he is going to
17 assign a bond to you, is that right?
18 A. No. He -- the debt agreement, not the bond. The debt
19 agreement.
20 Q. Okay. And where do we see that document?
21 A. Which document?
22 Q. The debt agreement?
23 A. Do you need to see it?
24 Q. Well, you haven't produced it.
25 A. I was not aware to have to produce it.
1 Q. I suggest to you that it doesn't exist and that you are
2 making this up.
3 A. I'm not making anything up.
4 Q. Okay.
5 And you say that he then told you that the bond was
6 coming to you a week before you received the bonds in
7 your account, is that right?
8 A. That's right.
9 Q. And when you say you received the bonds in your account,
10 you're talking about the Larmag bonds, aren't you?
11 A. I did not know about them.
12 Q. Well, I don't think that's an answer to the question.
13 You received -- we will come to it, but you received the
14 Larmag bonds into your account in July of 2018, so are
15 you telling us that Mr Varoujan called you a week before
16 you received those bonds to tell you that he was
17 transferring them to you?
18 A. He transferred 70 million euros for the bond; that's
19 what we received.
20 Q. Yes, and those are the Larmag bonds, aren't they?
21 A. I did not know at that time that was the Larmag --
22 Q. That wasn't an answer to the question. Would you please
23 answer the question. The bonds you are talking about
24 are the Larmag bonds, aren't they?
25 A. Okay, can you please rephrase the question to know is it
1 that time or as of today?
2 Q. I will happily rephrase the question. You said that
3 Mr Varoujan telephoned you a week before you received
4 "the bonds".
5 A. Yes.
6 Q. Which bonds?
7 A. 70 million?
8 Q. Yes? And who was the issuer of those bonds?
9 A. We didn't ever ask.
10 Q. I'm sorry, you have to know who the issuer of the bonds
11 is, don't you?
12 A. No.
13 Q. So are you saying then that you had no idea what was
14 being transferred to you in supposed satisfaction of

15 this debt?
16 A. It's a bank-to-bank deal.
17 Q. I don't know what this means?
18 A. I don't have to be involved. My custodian, they will be
19 involved in the transaction to verify the amount and
20 they verify everything, all the KYC, nothing to do with
21 me.
22 Q. So first of all you're telling us that you actually
23 received a telephone call from Mr Varoujan and that
24 would have been in 2018, yes?
25 A. Mm-hm, yes.
1 Q. Yes, okay. Why haven't you told us about that before?
2 A. I said that in my statement.
3 Q. No you didn't. You have not mentioned in your statement
4 that you received a telephone call from Mr Varoujan.
5 A. So how did I receive -- it is mentioned in my statement
6 about how did I deal with him and the deal between me
7 and him.
8 Q. Yes. Let's have a look at your statement. Because you
9 don't seem to remember what you have said. It is at
10 paragraph -- it is at page 93 of bundle D.
11 A. Mr Michael, I remember exactly what I said.
12 (Overspeaking) clarification. Thank you very much for
13 your clarification.
14 Q. Let's have a look at what you have written. At
15 paragraph 25 and 26 of your written statement, at page
16 D/93, you say that you:
17 "... continued to press John for payment. It wasn't
18 until 2016 that we reached a formal agreement which
19 resulted in John transferring a bond which he owned into
20 a custodian account in my name held with the first
21 defendant."
22 A. Okay.
23 Q. "I first became aware that the bond transaction was
24 going ahead when I was contacted by my bank by email on
25 3 July ..."
1 A. To confirm the transaction.
2 Q. Let me finish please.
3 So in fact your story until a few minutes ago was
4 that you had no idea that this transaction was going
5 ahead until your bank told you, but now you're telling
6 us that Mr Varoujan called you a week before. Which is
7 true please?
8 A. It is by the way same story, by the way. There is no
9 difference by the way. If you read my statement as
10 clearly I said "We reach to are an agreement 2016" then
11 on 3 July bank confirmed the transaction was happening,
12 so it's the same thing by the way.
13 JUDGE: Well, Mr Aljaberi, I have to tell you that it is not
14 the same thing. What you have said in your witness
15 statement is that a formal agreement was reached in 2016
16 and then about two years later you first became aware
17 that the bond transaction was going ahead when you were
18 contacted by your bank.
19 Now, a few minutes ago you have told me that
20 Mr Varoujan rang you and telephoned you about a week
21 before the bonds were transferred. You don't say
22 anything about a telephone call with Mr Varoujan in
23 paragraph 26 of your witness statement, do you?
24 A. Correct, your Honour, but what I meant in this, okay, my
25 own language when I said that I said like it was
1 confirmed, because we were looking -- you know, we need
2 to get this payment from him, so that's why like -- we
3 never believed what he said to us until we received the
4 email confirmation from our bank. So he said that.
5 That's what -- I did not think to have to say in details
6 one week before that, but that's exactly what I meant.

110. Mr Aljaberi was also asked to agree that he knew Mr Varoujan's name when he signed the statement of truth verifying his Defence in which

he did not name Mr Varoujan but stated he had received the Claimed Bonds from "a previous bondholder". Mr Aljaberi replied that he did not know whether the bonds had come from Mr Varoujan or his company. Upon it being pointed out from the Bench that on his case he plainly knew the bonds came Mr Varoujan, Mr Aljaberi maintained that, in his language, Mr Varoujan by name was the same as "a previous bondholder".

111. It was then put to Mr Aljaberi that, in any event, he knew at the time his Defence was signed that the bonds had not come from Mr Varoujan but from Larmag, to which Mr Aljaberi's answer was that on 4 July 2018 he did not know this.

112. Mr Aljaberi was then cross-examined on the email set out in paragraph 56, which for convenience is set out here again[8] :

> **From**: ENG LLC elitehold@yahoo.com.
> **Sent**: 03 July 12:55
> **To**: FABS Finance; Dina Mohamed
> **CC**. FABS OPERATIONS; Shaikh@bankfab.com; Shweta Jha
> **Subject**: Fwd. Larmag Holding transfer of Euro 70 million nominal Reditum bonds.
>
> "Dear All,
>
> In regards of receiving 70M euro Bond to my account: 47502
> Under my: Abdulla Saeed Aljaberi
> From Larmag Holding
> Trade:Swiss invest
>
> Please confirm this order and update me with your confirmation received slip that bond it (sic) been under my name
>
> Best Regards,
> **Abdulla Saeed Aljaberi"**

113. Mr Aljaberi confirmed that he sent this email using the email address elitehold@yahoo.com. He said that the Dina Mohamed to whom the email was addressed was not his relationship manager but was just part of customer service.

114. He accepted that he knew the bonds in question were Reditum Bonds but insisted that at the time he sent the email he did not know that the bonds were being transferred from Larmag. It was then pointed that the heading says "Larmag Holding transfer" and it says in the body of the email "From Larmag" and it was put to him that accordingly he knew it was Larmag Holding who were going to transfer to him EUR 70 million worth of Reditum Bonds, to which he responded "Yes". He then said by way of explanation that his bank had called him up saying they needed a confirmation to receive the 70 million EUR Bonds and he asked the bank to send him the format so he could copy and paste and send it back because he was at work at the time. "So I did the same thing, I transferred, I sent it back to her. I did not even read it. That's it."

115. It was then put to him that it was a lie for him to have said in his Defence that the bond came from John Varoujan. He denied this saying, "[It] came from John. He is the - you know you talk about the company name, its Larmag, but who did this transaction, it's John."

116. Mr Aljaberi also refused to accept that he had lied in paragraph 21 of his Defence where he denied Larmag's plea in paragraph 31 of the POC that he had given written instructions to FAB that the bonds should be transferred into his account number 47502.

117. He said that what Mr Black for Larmag was saying was not true because Mr Black had said it [the bonds] were transferred from Elite into his account and he (Mr Aljaberi) never gave this instruction. When reminded of the wording of paragraph 21 of the Defence and when faced again with the assertion that paragraph 21 was not true, Mr Aljaberi replied, "If you say so, but, you know, as I agreed before a while ago there is an email and I said yes about it but what you are saying, it's not true." He then went to say he had given an email to his bank to accept the transfer and there was a big difference between transfer and accept.

(3) Mr Aljaberi's connection with entities having the word "Elite" in their names

118. Mr Aljaberi testified that he had never heard of Elite Holding or Elite Holding Group before being served with these proceedings. He had only ever acted for one company which had "Elite" in its name and that was an entity that ran a cement factory called Elite Factory which had ceased to exist in 2004. The email address elitehold@yahoo.com was a hangover from when Elite Factory was operating.

119. In response to this testimony, Mr Black put a number of documents to Mr Aljaberi which he (Mr Black) submitted controverted Mr Aljaberi's evidence. The first of these documents was a photograph published in Gulf News in 2007[9] of Mr Aljaberi behind whom could be seen the Elite Holding logo with an accompanying text that described him as "Chairman of Elite Holding." Mr Aljaberi accepted that it was him in the photograph. He said the newspaper had made a mistake in describing him as it did. At the time the photograph was taken he was representing the Presidential Palace as part of his role as Manager of Administration and Financial Protocol in the Palace. He accepted his name was not on the President's website: he said this was because he was not an Executive Member but only a manager on the protocol.

120. The next document[10] was a copy of an application to National Online Bank of Abu Dhabi in the name of Elite Holding Group dated 26 December 2009 that had been provided by FAB pursuant to a disclosure order. The National Bank of Abu Dhabi was FAB's predecessor. Under the heading "Corporate Information" the name of the applicant is stated to be "Elite Holding Group, P.O. Box 42662, (City) Abu Dhabi, (Emirate) Abu Dhabi". The applicant's account no. is stated to be 6201377866 held at Emirates Palace and the name inserted for the "User" is Mr Aljaberi, described as "Owner" whose email address was stated to be office@eliteholdinggroup.com. Above the signature of the applicant appear the words "I/We, the duly authorized signatory of Elite Holding Group" and the application form has been stamped stating that the signature had been verified by the Emirates Palace Branch, the account number checked and the application approved.

121. Mr Aljaberi insisted that the document was not his document. All the wrong documents had been attached to it, the trade licence did not bear his name. "It was totally nothing to do with his name" and there was no power of attorney for him to sign the application. He had no knowledge of

the email address office@eliteholdinggroup.com.

122. Mr Aljaberi was then asked about an email from John Varoujan dated 9 September 2011 addressed to the following email addresses: office@eliteholdinggroup.com; elitefactory@yahoo.ie[11]. This email had become evidence in the proceedings when it was produced pre-trial by Mr Aljaberi. It set out detailed projections of gold production given under the subject "gold reserves & resources". Mr Aljaberi denied having produced this document for these proceedings and said it had been manipulated.

123. He was asked why elitefactory@yahoo.com was being used when according to him, Elite Factory ceased to operate in 2004. He replied that this address still existed but it was not an active email. It was created long term but it was never used: once the business finished no one used it or opened it and no one had access to it.

124. He was asked why elitehold@yahoo.com has the word "hold" in it if this address was a legacy from the Elite Factory. He replied that Yahoo had the name elitehold as an option as a name which was the closest and easiest name.

125. The next document put to the witness was another email from Mr Varoujan dated 26 September 2011 addressed to office@holding group.com,[12] stating in the subject space "RE elite, gold/mtn swap book Euro35 m." This too was a document disclosed by Mr Aljaberi. However, Mr Aljaberi insisted that this document had not been directed to him and it was not his document.

126. Next Mr Aljaberi was taken to a document published by Twitter relating to the account of Aljaberi@elite666444)[13] which stated, inter alia: "Abdulla Aljaberi Retweeted @UseTips Feb 28 2017". The witness denied he had ever had a Twitter account.

127. Mr Black moved on to a copy of a Twitter message from Abdulla Ajaberi@elite666444 dated 31 December 2013 stating: "We are looking to Recruit 35 employment Send your CV info@ehuae.com." Mr Aljaberi denied that this had anything to do with him. He was also referred to a picture of himself on a boat[14] which he accepted was his boat at the time. This picture was issued by Twitter.

128. Mr Aljaberi was shown a LinkedIn page containing his details including: an email address of *elitegroupbanks.com; Partner elitegroupbanks.com; Manager and Administration, Presidential Palace Jan 2006 - Present; Owner, Eliteholdinggroup, Feb 1988 - Present; Chairman, Elite Holding Group, Jan 1988 - Present; www.eliteholdinggroup.com; Education Dublin City University; Air Force UAE, Bachelor's degree Business Administration and Management General 1988 - 2000.* Mr Aljaberi denied responsibility for the details in this document. He did not have LinkedIn. Some of the details, including some of the dates, were wrong.

129. Mr Aljaberi also denied that he was associated with a Waves Boat Rental company established in Abu Dhabi which, according to a website for Elite Holding Group,[15] became in 2005 one of the Elite Group of Companies opened by Mr Abdallah Aljaberi, the owner and general manager of Elite Holding Group.

130. Mr Aljaberi accepted that he had several accounts with a company called GoDaddy which he said sold domain names. It was from GoDaddy that he had acquired the domain names for Ain Abu Dhabi Investment and Elite Factory. He was shown a document from GoDaddy[16] that showed that GoDaddy hosts the EliteHold website. He denied that he had created the EliteHold website on GoDaddy or that that explained the payments he regularly makes to GoDaddy as evidenced by documents provided by FAB and FABS.

131. He was shown a print-out from the Elite Holding website[17] before it was taken down after the commencement of these proceedings which named him as Chairman of the Elite Holding Group. He denied he had anything to do with this website entry and he stated that he knew nothing about a company called Master Heat Sharjah referred to on the Elite Holding Group website[18] . However, he accepted that he was associated with a company called Master Heat Trading and a company called Master Heat Insurance Brokers.

132. He was also shown another entry on the website of Elite Holding Group that gave ICAD as the location of the Main Office. Mr Aljaberi said that ICAD was one of a number of industrial areas, 1, 2, 3 etc in Abu Dhabi. It was then pointed out to him that the Engagement Package Agreement prepared by Mr Tsai stated the address of the Applicant, Elite Holding Group, to be ICAD1, Factory, Land 126, Abu Dhabi Standard Chartered Building Emma & Squire (Downtown)[19]. Mr Aljaberi replied that he could not explain something he did not know about. At this point, Mr Black pointed out that the same address was given as part of the email signature to the reply to Mr Tsai's email of 6 June 2018 and reminded the Court of Mr Hutchinson's evidence in his second witness statement that a colleague of his visited the Standard Chartered Building in Emaar Square and was told that a company called Elite Holding FZE had been located on Level 5 under a contract with Regus, which contract had expired in May 2019, and the individual named as the contact between Elite Holding FZE and Regus was Mr Abdulla Al Jabri.

(4) The link between the telephone number given as Mr Aljaberi's number in documents produced by FAB and FABS and in an advertisement for Waves Rent A Boat, to the self same number used as the destination number in the period 19 July 2018 - 6 November 2018 by Mr Magnusson to send text messages to "Abdullah" and the number of the phone used to reply to Mr Magnusson messages

133. An English translation of an application by Mr Aljaberi to FABS to open a trading account sealed by FABS on 14 April 2018[20] was put to Mr Aljaberi. He admitted that the details provided in the document including the email address elitehold@yahoo.com were in his handwriting except for the telephone number 050-8883476 and his name. He insisted he did not write this number on the form. It was in different writing and had never been his number.

134. The number 050-8883476 also appeared as Mr Aljaberi's phone number in an internal record maintained by FAB and FABS.[21] Mr Aljaberi said that all the other details personal to him in this record were correct, except for the phone number.

135. Mr Aljaberi was taken to an email dated 15 August 2018 from Mr. Abdulla Jabri [mailto:elitehold@yahoo.com] to a Mr Bruno Blattner of Union Bancaire Priv&#xfffd;e (UBP)[22] .It was copied to: security transfers; Zarmineh Rab; Laurent Monod; Gernoth Dobianer. The subject was: "Mr. A*d*l*a*A*j*b*I Bond Transfer". The main body of the email reads:

Dear Bruno

My name is Mr Abdulla Al Jabri,

You have been working with Mr Laurent Monod on opening Zoya Corporate account at UBP. I'm writing to you regarding the 10 million bond transfer that I initiated from my custodial Bank First bu Dhabi Band (sic) (FAB), Aug 2. I spoke to FAB yesterday and they informed me that the bonds should be in Euro Clear soon; it is taking a bit longer due to change of ownership, from my name to Zoya LCC (corporate).

I have copied my FAB contact person. Kindly follow up with FAB and Euroclear and update me as required. I have also copied my trusted advisor, Zarmineh Rab, who is in Zurich at this time. But feel free to contact me directly on the mobile or email.Mr Aljaberiis also in touch with me.

Thank you
Regards
Abdullah Aljaberi
009 71 50-888 3476
www.elitehold.com

136. This document was produced by FAB and FABS pursuant to a disclosure order made by the Court. It was in their possession because the email had been copied by Mr Aljaberi to his FAB contact.

137. Mr Aljaberi denied sending this email. He said that everything in it - email, name, phone number, websites had been manipulated. He could prove he did not send it because the sending email address started with "mailto" and if you have it copied and you try to do the same thing, it will bounce back to you, it will never be sent. He could not admit he was in communication with UBP because he was under an NDA.

138. He admitted transferring EUR 4 million worth of bonds to Zoya LLC. He said he did this because he owed someone called Ewald money. Zarmineh Rab was one of his financial advisers.

139. Mr Aljaberi was also taken to an entry in the Africa Yellow Pages Online for Waves Rent a Boat[23] which appeared to be part of the Elite Hold Group and he was shown the telephone number given for this company which was also the same number that had been stated in his application for a trading account, appeared in the records of FAB and FABS and was identified in the email dated 15 August 2018. Mr Aljaberi said that he did not know this number. Someone other than himself had supplied the number to FAB and FABS. His number was different; it ended in 206.

140. Part of the disclosure provided by Larmag for these proceedings consisted of print-outs of text messages sent by Mr Magnusson to the person he believed was Mr Aljaberiand the text messages he received from this person. The authenticity of these documents was not questioned. The destination telephone number used by Mr Magnusson to send these texts and the number of the device used to send responsive texts to Mr Magnusson was the same number as Mr Aljaberi's number appearing in the documents produced by FAB and FABS - 050-8883476 - and the same as the number given for Waves Rent A Boat in the Africa Yellow Pages Online.

141. When these print-outs were put to Mr Aljaberi he denied receiving and sending these texts.

142. Mr Aljaberi was referred to a text sent by Mr Magnusson on 19 July 2018 at 16:46:29 in which he wrote "I just sent you an email to your pa@elitehold.com address" to which there was a reply at 16:49:35 sent by the phone with the number 050-8883476 stating "OK thanks." Mr Aljaberi denied receiving that email and denied using the pa@elitehold.com address.

(5) The involvement of Ms Dina Mohamed in the transfer of the Claimed Bonds into Mr Aljaberi's account with FAB

143. Mr Black took Mr Aljaberi to a series of emails sent over the period 2 July - 3 July 2018 between representatives of Swiss Invest and Ms Dina Mohamed, Senior Officer, Customer Service, FABS, and between Ms Mohamed and Mr Faisal Nawaz, who worked in FAB's Settlement Services Group. All these emails had the same heading: "Larmag Holding transfer of Euro 70 million nominal Reditum Bonds" and were copied in to elitehold@yahoo.com, inter alios. On 2 July 2018, Mr Gilles Wormser of Swiss Invest emailed Ms Mohamed informing her that he "had just had confirmation from Mr Magnusson to freely deliver the 70 Mln Reditum Bonds to your bank's Euroclear account" and asked to be supplied with that account. The following day, Ms Mohamed supplied Mr Wormser by email with the requested account details and requested to be sent client RF Instructions with CP SSI's to receive the bonds. The same day Stephen Spencer of Swiss Invest emailed Ms Mohamed providing his company's SSIs and suggesting a trade date of 2 July 2018, Value date 3 July 2018. Ms Mohamed then emailed Mr Faisal Nawaz asking him to check the email to Mr Spencer and to confirm if the suggested trade date was OK with him. Mr Nawaz replied that it was fine and asked to be provided with client instructions to proceed. In response, later that day, Ms Mohamed emailed Mr Nawaz attaching "instructions from Mr Abdulla". Mr Spencer then emailed Ms Mohamed saying, "Our instructions to deliver Free, have been sent to our agents" and later that day, Mr Nawaz emailed Mr Spencer, with his (Mr Nawaz's) team in copy stating: "I can confirm that securities are settled in our account."

144. Mr Aljaberi accepted that he received copies of all these emails but, with the exception of the email from Ms Mohamed, he never looked at them because "maybe they went to junk". He received thousands of emails about investments and so he thought these emails were of that sort. He never knew about Swiss Invest.

(6) Mr Aljaberi's PO Box Number

145. As related in paragraph 43 above, a scanned copy of the Engagement Package Letter dated 14 May 2014 sent by Mr Tsai to Elite Holding Group via Patrick N'dom was sent back to Mr Tsai by Patrick showing a copy of a handwritten signature above which appeared the words, "Authorising Signature, Name: Mr Abdullah S Aljaberi" together with a stamp bearing the words "Elite Holding Group PO Box 42662 Abu Dhabi

UAE".[24]

146. Mr Aljaberi denied signing this letter but accepted that PO Box 42662 was his family PO Box number. Asked to explain how that PO Box number appeared on this and other documents, he said anybody could have taken it. He said that in the UAE, especially in Abu Dhabi, you cannot use a PO Box as a business address but you have to attach a trade licence and everything with it. Thus, the fact the family PO Box number was stated as part of the Elite Group particulars did not mean that the account belonged to him.

147. Mr Black then took Mr Aljaberi to the result of an internet search for a company called Abdullah Saeed Aljaberi Maintenance & General Contracting which stated the company's address to be PO Box 42662, Abu Dhabi, United Arab Emirates[25] . Mr Aljaberi accepted that he used to have this company and when asked why he used PO Box 42662 as part of the company's address he said that at the time - the company was formed in '99, '98 -- you could use a PO Box number in this way.

148. Mr Black then went back to the entry in the Africa Yellow Pages Online for Waves Rent a Boat[26] referred to in paragraph 139 above which gave PO Box 42662 as part of the contact particulars for the company, as well as the same telephone number specified in the records of FAB and FABS. Mr Aljaberi said that someone had made up this page. At this point he was taken back to the application in the name of Elite Holding Group for National Online Bank of Abu Dhabi for an Online Corporate Banking account dated 26 December 2009[27] which contains the handwritten number 42662 in the space for the PO Box of the applicant. This document, said Mr Aljaberi, is a fake that has been manufactured by somebody.

149. Next, Mr Black took Mr Aljaberi to his first and second affidavits in which he gives PO Box 42662 as part of his address[28] . In response, Mr Aljaberi said he had done this because his account was a personal account.

(7) Emails addressed to or from or copied to email addresses containing the word "elitehold", particularly elitehold@yahoo.com

150. Mr Aljaberi was shown an email from Mr Mulhannah to "Abdullah" dated 18 June 2018[29] seeking the traders' details so that Mr Magnusson could have his desk in London reach out to FAB for settlement. Mr Aljaberi denied receiving this email. He was then shown a reply from the office of the Chairman of Elite Holding Group pa@elitehold.com copied to "Lars Erik Magnusson" and elitehold@yahoo.com, stating that "our CFO will update us once he come back to his office."[30] The subject of the email was stated to be "Re: Reditum Settlement 18 June 2018". At the bottom of the email appear the words: "Elite Holding Group, Quality Ready Mix Industry L.L.C" and telephone numbers for Dubai, UK and Dallas. Mr Aljaberi denied receiving a copy of this email. He said it had been manipulated as could be seen from the fact that the email stated it had been copied to Lars Erik Magnusson without adding the email address. He was then shown an email dated 19 June 2018[31] from: "Lars Erik Magnusson" to Elite Holding Group and Mr Mulhanna copied to elitehold@yahoo.com with the subject: "Re: Reditum Settlement 18 June 2018". In this email, Mr Magnusson asked to receive as soon as possible details of Mr Aljaberi's desk in FAB so he could instruct Larmag's London desk to contact Mr Aljaberi's desk to agree DVP settlement of the Reditum Bond transaction. Mr Aljaberi denied receiving this email and denied receiving a further email dated 20 June 2018 from Mr Magnusson[32] in which he referred to speaking to Mr Aljaberi on the telephone the previous week and stated that, based on the agreement made on the bond transaction, he had made a commitment on an acquisition of a real estate portfolio in The Netherlands. Mr Aljaberi also denied having spoken to Mr Magnusson on the phone.

151. Mr Aljaberi further denied knowing anything about an email dated 21 June 2018 said to be from Mr Ali Mohamed account@elitehold.com to Lars Eric Magnusson, copied to Elite Holding Group and Mr Mulhanna, stating that he is following up with FAB regarding the final review for Raditum (sic) Bond as we get credit line from FAB to minimize our risk for our big deal. Mr Aljaberi denied that he and Larmag agreed that Larmag would sell the bonds at a 10% discount.

152. Mr Black later put an email dated 30 June 2018[33] allegedly from Mr Ali Mohamed at account@elitehold.com to Mr Magnusson with subject "Receive Free Template - FAB clients.docx", stating, "I am delighted to inform you that we will transfer to your account tomorrow the amount was agreed to. Please find our international trading account with FAB Securities number trading account 47502. Please fill in the attached form and send it to Ms Dina Mohamed, senior officer customer service FAB Securities". In closing, the email gave Ms Mohamed's email address and telephone number. Mr Aljaberi said that "this detail was given to John (Varoujan) to transfer the bonds to me." He sent his account to John to close the deal and the Bank took over.

153. Mr Magnusson replied to the email, apparently from Mr Ali Mohamed, using the account@elitehold.com.

(8) The email address: pa@elitehold.com

154. It will be recalled that Mr Tsai was provided with this email address by Patrick N'dom and that Mr Tsai sent the Engagement Package Letter of 14 June 2018 to that address and also his email of 16 June 2018. In addition: (i) the reply to the latter email received by Mr Tsai was sent from pa@elitehold.com; (ii) Mr Magnusson stated in one of his text messages to "Mr Aljaberi" that he had sent an email to this address; and (iii) Mr Mulhanna received from this address a reply to his email dated 18 June 2018 seeking traders' details.

155. As related above, when asked about these emails to and from pa@elitehold.com, Mr Aljaberi denied knowing of or using this email address.

156. Towards the end of his cross-examination, Mr Aljaberi was asked about an email sent to pa@elitehold.com by Mr Keith Hutchinson, a partner in Clyde & Co. In Mr Hutchinson's First Affidavit, he deposes that, pursuant to an order of the Court, Clyde & Co served documents on several occasions on the Defendants by sending them to a range of email addresses (the "Elite Email Addresses") that included account@elitehold.com; legal@elitehold.com; pa@elitehold.com; elitehold@yahoo.com; and dr.louise@elitehold.com. In response to their email serving the Amended Claim Form and Amended POC, Clyde & Co received: (i) a "read receipt" from the email account pa@elitehold.com with the display name Elite Holding Group; and (ii) four "read receipts" from the email account info@orxycapital.com with the display name "Johnne".

157. Mr Hutchinson sent an email dated 7 February 2021 addressed to the Elite Email Addresses[34] to which he received a reply from Magen uinfor@orxycapital.com copied to, inter alios, Elite Holding Group and elitehold@yahoo.com.[35]

160. Mr Aljaberi was also cross-examined on his asset disclosure made in response to an order of the Court and he gave further evidence in chief about the state of his accounts with FAB and FABS. After the end of the trial with judgment reserved, Larmag sought and were granted further disclosure orders against FAB and FABS and Mr Aljaberi founding on Mr Aljaberi's asset evidence. FAB and FABS complied with the Court's order but Mr Aljaberi has not yet done so. In my view, the evidence going to Mr Aljaberi's assets is only of marginal relevance to the question whether Larmag has established its liability case against him and I propose to ignore it when dealing with the liability issue.

The parties' submissions on the evidence

The applicable standard of proof

161. The parties are agreed that the Court should adopt the same approach as that deployed in *GFH Capital Ltd v Haigh* [CFI-028-2014] (4 July, 2018) where Justice Sir Jeremy Cooke followed the ruling in *Re H Minors* [1996] AC 563: in civil cases, even where the allegations made against a party are of a grave and serious nature, the standard of proof is still the civil standard, namely, the balance of probabilities. In *Re H (Minors)*, the allegation was one of child abuse and Lord Nicholls observed[36] that in such a case, in deciding whether the allegation had been proved to this standard, the court will take into account that the more serious the allegation, the less likely it is, in the ordinary way, that the alleged event occurred.

162. For the sake of completeness, I observe that *Re H (Minors)* was followed by the House of Lords in *Re B (Children)* [2009] AC 11, a care proceedings case, and more recently by the EWCA in *Bank of St Petersberg PJSC et al v Vitaly Arkhangelsky et al* [2020] EWCA Civ 408, a case where dishonesty and fraud was alleged against the defendants.

163. I agree that the applicable standard of proof is the balance of probabilities and that standard should be applied consistently with the observations of Lord Bingham in *Re H (Minors)* as Sir Jeremy Cooke did in *GFH Capital*.

The submissions made on behalf of Larmag

164. Mr Black submitted that the evidence clearly showed that (i) Mr Aljaberi's account that Mr Varoujan had agreed to transfer bonds to him in part settlement of a large debt and Mr Ajabri had believed that the Claimed Bonds paid into his account with FABS came from Mr Varoujan, was dishonestly false; (ii) at all material times Mr Aljaberi held himself out as the Chairman of Elite Holding, the name of which company was the name on the account into which the Claimed Bonds were transferred; (iii) Mr Aljaberi had either used individuals calling themselves Mr Ali Mohamed or Mr Alqasabi or Ms Raca or Mr Razzouk (whose name appears as signatory on the Annex to the JVA); or Mr Aljaberi had simply used those names as pseudonyms, to perpetrate a fraudulent scheme by which Larmag was induced: [A] to transfer into Mr Aljaberi's FAB account the Claimed Bonds, relying on: (a) a joint venture agreement with Elite Holding that there would be a prepayment of EUR 20 million before the bonds were transferred; and (b) the First Noor Bank Statement; and [B] to procure the coupon payment EUR 2,187,500 to Mr Aljaberi's account relying on Mr Aljaberi's false statements that FAB had approved financing the acquisition of the bonds if the interest on the bonds was paid and that Elite Holding would return the coupon to Larmag; (iv) Mr Aljaberi (by his own admission) transferred 5000 of the Claimed Bonds, with a nominal value of EUR 5 million to Zoya Holding Limited and significantly dissipated the coupon payment of EUR 2,187,500, including a payment of 1,752,069 Dirhams (EUR 400,000) to Ms Zarmineh Rab.

The submissions made on behalf of Mr Aljaberi

165. Mr Thompson QC for Mr Aljaberi submitted that, so convinced was Mr Magnusson of Larmag's case, he had not presented a full picture of the relevant events in his evidence. He also suggested that Mr Magnusson was not a careful witness as shown by his late change of evidence concerning the drafting of the Annex to the JV, his referring to a Durk Foster in a Witness Statement when he should have referred to Dirk Koster, and his failure in two Witness Statements to name the source of his knowledge of particular matters.

166. Next, Mr Thompson submitted that "it beggars belief" that none of the individuals working in Larmag's interest who took part in negotiating the agreement for the sale of the Claimed Bonds ever met "Mr Aljaberi" face to face. It was therefore wrong of Mr Tsai and Mr Sandberg to say that they were "introduced" to Mr Aljaberi. Indeed, one has to get to Patrick N'dom and Kevin Yang before you get to anyone who had actually met Mr Aljaberi.

167. Mr Thompson also criticized Larmag for having failed to track down Mr Ali Mohamed, Mr Al Aqasabi and Ms Rab,[37] all of whom would be expected to be in the UAE, and for having failed to call Patrick N'dom and Kevin Yang as witnesses.

168. Mr Thompson further submitted that Mr Aljaberi's evidence that he had simply cut and pasted the subject line of the email he received asking him to confirm the transfer of the bonds into his account without thinking about it so that he did not appreciate that the transferor of the bonds into his account was Larmag Holding rather John Varoujan, "was not really open to question."

169. I was also urged to take into account the cultural gap that arose from the fact that the proceedings were in English in the DIFC Courts, whereas English was not Mr Aljaberi's first language and he was unused to the rules and practices of the DIFC Courts.

170. Mr Thompson also contended that the case was essentially one of identity theft and where a person is charged with such a theft, he really has nothing to say other than "it was not me". Mr Thompson further argued that it was in his client's favour that despite being accused on numerous occasions by Mr Black of dishonesty (as Mr Black was obliged to do), Mr Aljaberi was never once shaken and what he said did not undermine his case.

171. Finally, it was submitted that Mr Aljaberi's account of an agreement with Mr Varoujan that the latter would transfer some bonds to Mr Aljaberi in part payment of a large debt, resulting from Mr Aljaberi having been "ripped off" by Mr Varoujan, was credible. It was clear from some newspaper reports that were before the Court that accused Mr Varoujan of defrauding investors in his Gold Hedge Royalty Corporation of $40 million, that Mr Varoujan existed and was a major fraudster.

The Court's findings on the issues of fact

172. I say at the outset that I found Mr Aljaberi to be quite fluent in English and that in very large part he had a good understanding of what was being put to him by Mr Black and myself. It was also clear that he had acquired considerable commercial experience as a businessman. That said, there were occasions when he asked for questions to be re-phrased to assist his understanding and I accept and will take into account Mr Thompson's observations on the cultural gap faced by Mr Aljaberi in these proceedings.

Did Mr Aljaberi honestly believe when the Claimed Bonds were transferred into his account with FABS that the transferor of the bonds was John Varoujan?

173. In my view, it is abundantly clear that the answer to this question is No. Whilst I am prepared to proceed on the basis that Mr Aljaberi's company, Ain Abu Dhabi Investment, made investments in Mr Varoujan's company, Gold Standard Investment Company, I have concluded that Mr Aljaberi's evidence that: (a) Mr Varoujan agreed in 2016 to transfer a bond to Mr Aljaberi's account in part settlement of a large debt owed by Mr Varoujan in respect of the aforesaid investments; (b) Mr Aljaberi believed that the bonds that were transferred into his FABS account came from Mr Varoujan, is a concocted story. I say this for the following reasons:

(1) Mr Aljaberi's evidence that he had received payments in US dollars from Mr Varoujan six months after the investment agreements and after the "debt agreement" in 2010, is inconsistent with the currency of account of the investment agreements, which was Euros, and his evidence that Mr Varoujan had told him that he only had US dollars available to pay the returns due under the agreements is profoundly unconvincing.

(2) The debts due under the investment agreements were due to Ain Abu Dhabi Investment and not to Mr Varoujan personally and yet Mr Aljaberi testified that he had closed down this company at some time he could not remember.

(3) Although on his own evidence, Mr Aljaberi had known Mr Varoujan's full name since 2002/2003 when he (Mr Aljaberi) carried out background checks on him through contacts in the Abu Dhabi police, in paragraph 42.1 of his Defence, he simply pleaded that on or about 4 July 2018, he acquired the bonds "from a previous bondholder (who has since died) in consideration for the release by him of a debt due from that same person". Further, in his response dated 18 June 2020 to Larmag's Request for Further Information dated 31 May 2020, Mr Aljaberi stated that it was only after serving his earlier response dated 8 May 2020 that, upon further searching, he was able to ascertain John BH's name.

(4) Having in his first response to Larmag's Request for Information declined to give any details as to the "previous bondholder", in his further response dated 8 May 2020 Mr Aljaberi stated that the debt owed by the previous bondholder (now named "John BH") was EUR 150 million and that John BH agreed that over time he would transfer to Mr Aljaberi any assets of value until he had paid the debt. He also stated that this agreement (later referred to as "the debt agreement") was not in writing. However, in his oral evidence under cross-examination, Mr Aljaberi said the sum owed was more than Euros 200 million, but he could not remember how much .[39]

(5) Mr Aljaberi's testimony that, when in 2016 Mr Varoujan agreed to transfer a bond in part settlement of the debt owed, Mr Varoujan did not disclose the value of the bond and nor was he asked to do so, casts considerable doubt on whether there ever was such an agreement in 2016 since the purpose of the alleged agreement can only have been to assure Mr Aljaberi that significant progress was at last going to be made in delivering on the alleged debt agreement.

(6) Before the trial, Mr Aljaberi produced copies of various emails ostensibly sent by John Varoujan on 9, 17, 21, and 26 September 2018 to office@holdinggroup.com that provided what appears to be detailed information as to the trading of Gold Standard Corporation or another of his companies. The email of 9 September 2018 on which Mr Aljaberi was cross-examined was also sent to elitefactory@yahoo.com. These documents were obviously disclosed by Mr Aljaberi to bolster his case that he believed that the Claimed Bonds were transferred into his account by John Varoujan. However, as recounted above, when the first of these emails was put to Mr Aljaberi in cross-examination, he denied having produced it for the proceedings and made the equally baseless claim it had been manipulated. I have no doubt that, in so testifying, he realised that the document was strong evidence that, contrary to his earlier testimony,[40] he used the office@holdinggroup.com email address at the relevant time. I have no doubt that Mr Aljaberi would have adopted the same stance if all of the emails had been put to him. The documents are not referred to, or relied on, in Mr Aljaberi's evidence in chief and are not positively relied on for the truth of their contents by Larmag. In my judgment, their initial deployment by Mr Aljaberi in the proceedings and his subsequent baseless assertion made in respect of the 9 September 2018 email that he had not disclosed it, casts very considerable doubt over the whole of his evidence about his alleged dealings with John Varoujan and his evidence that he did not use the office@holdinggroup.com address.

40. When questioned about the application to National Bank of Abu Dhabi he denied that office@holdinggroup.com was one of his email addresses, see D3, 7: 8-12.

(7) There were the following inconsistencies and untruths in Mr Aljaberi's cross-examination recorded in the transcript set out in paragraph 109 above.

(a) Mr Aljaberi for the first time stated that about a week before the transfer of the Claimed Bonds into his account, Mr Varoujan told him he was going to transfer a 70 million Euro bond to him. Almost immediately after this testimony, Mr Aljaberi stated that he had not said this. He said that it was "a negotiation". In 2015, 2016, Mr Varoujan had signed "the agreement for the bond". Then he corrected himself to say it was "the agreement for the debts" that had been signed, and he went on to claim that he was not aware he had to produce this latter agreement. But this is flatly inconsistent with his statement in his further response dated 8 May 2020 to Larmag's Request for Further Information, verified by a signed statement of truth, that the agreement for the debts had not been in writing .

(b) Mr Aljaberi then repeated his claim that Mr Varoujan had told him by telephone a week before the bonds were transferred, that the bond was coming but he was not told who the issuer of the bonds was and he did not ask who the issuer was. This testimony was flatly inconsistent with the following passage in paragraph 26 of Mr Aljaberi's First Witness Statement:

> "I first became aware that the bond transaction was going ahead when I was contacted by my bank by email on 3 July 2018 and asked whether I accepted receipt of the Bonds. The bonds were being transferred free delivery. In other words, there would be no payment in return. I confirmed my acceptance of the Bonds".

When I put it to him that he said nothing in this paragraph about a telephone call from Mr Varoujan about a week before the transfer of the bonds, Mr Aljaberi agreed. He then attempted to give an explanation for why he thought he did not have to mention the telephone call in his Witness Statement (see lines 23 -25 and 1 -6 of the extract of the transcript set out in paragraph 109 above). Making due allowance for the fact that English is not Mr Aljaberi's first language, I nonetheless find this explanation to be wholly unconvincing and I have no hesitation in concluding that Mr Aljaberi made up his evidence that he was expecting Euro bonds with a nominal value of EUR 70 million to be transferred to him before he was asked by FABS to accept receipt of these bonds.

(c) In my judgment, even if he had had grounds prior to the end of 3 July 2018 for thinking that Mr Varoujan was committed to transferring a Euro bond to his account, Mr Aljaberi would have perfectly well appreciated by this point in time that the bonds that were to be transferred into his account by free delivery were going to be transferred by Larmag Holding.

(d) It is not in dispute that on 3 July 2018 Mr Aljaberi received an email from FABS whose subject was "Larmag Holding transfer of Euro 70 million nominal Reditum bonds" in connection with a request that he give instructions to proceed with the captioned transfer. As noted above, Mr Aljaberi was questioned closely on his reply to this email . The email is set out in full in paragraph 112 above. Mr Aljaberi testified that he copied parts of FABS's email including the references to a transfer by Larmag Holding and pasted them into his reply without reading them. I do not accept this evidence. In my judgment, having been told by FABS that bonds worth EUR 70 million were going to be transferred into his account by free delivery he must, as an astute businessman, have taken notice of the subject of the email and seen and appreciated that the transferor of the bonds was Larmag Holdings. And if he had really been expecting bonds of this type and value to be coming from Mr Varoujan, he would have tried to contact him and/or Ms Dina Mohamed who had requested him to send the necessary instructions, and/or Larmag Holding, to enquire if Mr Varoujan was the true transferor. However, he took neither of these actions. His evidence that he did not have time to contact Larmag rings very hollow indeed.

(e) In my judgment, Mr Aljaberi well understood how damaging this email was to his case that the bonds had come from Mr Varoujan and, in consequence, took steps to avoid giving a proper response to Larmag's Request for Information that he explain the email, by replying:

> "The Third Defendant does not understand the evidence of this request. The contents of this email do not contradict the contents of paragraphs 6 and 7 of the Defence. Moreover, the Third Defendant is not affiliated to FABS other than as a customer and is therefore unable to provide any explanation of the actions taken by FABS."

(f) Also, in paragraph 21 of his Defence (verified by a statement of truth signed by him), Mr Aljaberi cynically denied Larmag's plea in paragraph 31 of the POC that he had given written instructions to FAB that the Bonds should be transferred into his account number 47502 as alleged or at all. Mr Aljaberi's response to Mr Black's assertion that he had lied in paragraph 21 of his Defence is rehearsed in paragraphs 116-117 above. In my judgment, it is clear that Mr Aljaberi's response is wholly disingenuous and I have no hesitation in finding that this part of his Defence was indeed knowingly untruthful.

174. If Mr Aljaberi did not honestly believe on the day that the Claimed Bonds were transferred by Mr Varoujan, it must follow in the circumstances of this case that if Elite Holding exists as a legal person, it also did not believe that the bonds were transferred by Mr Varoujan, since at all material times Mr Aljaberi would have been acting as agent for Elite Holding. As for Mr Mohamed, if he exists, he plainly knew from his role in the negotiations in respect of the proposed sale and purchase of the Claimed Bonds and his role and in sending the email of 2 July 2018 enclosing the forged First Noor Bank Statement, that Larmag was the transferor of the bonds.

175. Accordingly, neither Mr Aljaberi nor Elite Holding nor Mr Mohamed believed that the Claimed Bonds had been transferred into Mr Aljaberi's account with FABS by Mr Varoujan when: (i) the EUR 2,181,506.81 coupon payment was received in the Coupon Account on or around 27 August 2018; (ii) Mr Aljaberi transferred 5000 of the Claimed Bonds to Zoya Holding Ltd on 11 September 2019; (iii) Mr Aljaberi made payments out of funds resulting from the coupon payment as detailed in Dr Barbous's Affidavit and third Witness Statement. In these circumstances, given that no defence based on a subsequent change of position is pleaded by Mr Aljaberi or Elite Holding, it follows that Larmag's unjust enrichment claim against them under Articles 318 and 319 in respect of: (i) the Claimed Bonds; (ii) the transfer of 5000 of those bonds to Zoya Holding Ltd; (iii) any proceeds resulting from that transfer; and (iv) any proceeds resulting from the subsequent transfer of 4000 of the said bonds to a third party, succeeds.

176. As to the coupon payment, this was paid by Reditum but Larmag, as the 100% parent of Reditum, made it a condition that the money be repaid to it by Mr Aljaberi because it remained the owner of the bonds and this condition was deceitfully agreed to by Mr Aljaberi. He was deceitful because he never intended to honour his agreement to the condition and he induced Larmag to agree to the payment. In these circumstances, I conclude that it is arguable that the coupon was transferred without lawful cause within Article 318 and/or there was no disposition of the coupon within Article 319 of the UAE Civil Code, but I think it is implicit in those Articles that the claimant must have had title to, or an immediate right to possess, the property by which the defendant has been unjustly enriched. It follows that, whilst Reditum might well have had a claim under Articles 318 and 319, Larmag does not and thus Larmag's restitutionary claim in respect of the coupon fails.

Has Larmag established its claim for damages that it was induced by deceitful misrepresentations made contrary to Articles 282 and 285 of the UAE Civil Code by Mr Aljaberi, Mr Mohamed and Elite Holding, to transfer the Claimed Bonds to Mr Aljaberi's account without receiving the agreed EUR 20 million upfront payment and to make the coupon payment of EUR 2,181,506.81?

177. The evidence relied on by Larmag for its damages claim is circumstantial evidence. Larmag submits that when a number of individual pieces of evidence are considered as a whole, the Court can safely conclude that its claims in deceit under Articles 282 and 285 of the UAE Civil Code against Mr Aljaberi, Mr Mohamed and Elite Holding have been established.

178. In my opinion, the most pertinent pieces of circumstantial evidence are as follows.

(1) The Claimed Bonds were transferred by Larmag into Mr Aljaberi's account with FABS.

179. This, in my view, is a very significant piece of evidence because it tends strongly to undermine Mr Aljaberi's case that he had nothing to do with the dealings that undoubtedly took place between Larmag, on the one hand, and a third party or third parties on the other hand, in respect of a sale and purchase of the Claimed Bonds. This is so because it is extremely hard to see why the third party or third parties would practise a fraud from which they would not benefit since the bonds were going to end up in Mr Aljabri's account which they would be powerless to operate.

180. In the course of his evidence, Mr Aljaberi raised the possibility that it was Mr Varoujan, or unknown identity thieves, who owed him money who had practised the fraud. In my view these theories hold no water because: (a) no-one in the first category has let it be known to Mr Aljaberi that outstanding debts have been paid through procuring the transfer of the Claimed Bonds into his account; (b) Mr Aljaberi testified that he has made no attempts to contact Mr Varoujan following the transfer of the bonds; and (c) it would have been obvious to the postulated fraudsters and Mr Varoujan that Mr Aljaberi might reject the transfer of the bonds on the basis that he knew nothing of it, or Larmag would challenge the transfer and thereby frustrate the whole dishonest enterprise.

181. There are also no credible grounds to support a theory that fraudulent third parties acted together not to acquire ownership of the bonds, but to embarrass Mr Aljaberi and blacken his name.

(2) The connection to Mr Aljaberi of the telephone number (971)-050-8883476 ("the number") which was used by: (a) Mr Magnusson to send text messages in the period 19 July - 6 November 2018 concerning the expected loan from FAB to finance the purchase of the Claimed Bonds and the interest payment of EUR 2,187,500; and (b) the person who sent text messages in reply to Mr Magnusson.

182. The number is given as Mr Aljaberi's number in the following documents produced by FAB and FABS under an order of the Court that they produce documents relating to their customer, Mr Aljaberi:

(1) the application admittedly made by Mr Aljaberi to FABS to open a trading account which was sealed by FABS on 14 April 2018;

(2) the internal records maintained by FAB and FABS;

(3) the email dated 15 August 2018 sent to Bruno Blattner of UBP.

183. The number is also given as the number in The Africa Yellow Pages Online for the company Waves Rent a Boat which company appears to be part of the Elite Hold Group.

184. Mr Aljaberi's evidence in response to these documents is rehearsed in paragraphs 133 - 137 above. He asserted that documents (i) and (iii) had been manipulated and had had inserted into them a telephone number that was not his and he maintained that he had never sent (iii). As to (ii), the number in those records was not his but the rest of the information therein was correct. He also maintained that someone had provided a false number for the entry in The Africa Yellow Pages Online.

185. Mr Aljaberi also relied on a certificate dated 24 August 2020 entitled "To Whomsoever It May Concern: No Due Clearance Certificate"[43] , issued by Etisalat that he exhibited to his Witness Statement. He claimed that this document demonstrated that the number was not his. I reject this assertion. The certificate states that it is issued on the request of a customer with the below mentioned Identification and Etisalat Accounts. It does not state that the mentioned accounts are the only accounts held by the customer. Further, and of considerably more significance, the ID number of the customer (Mr Aljaberi) set out in the certificate -- 784-1972-1596251-1 - (which could only have come from Mr Aljaberi) is not Mr Aljaberi's ID number. Instead, his ID number is 784-1976-3605092, as he accepted when he was shown the documents held by FAB and FABS[44] which set out his ID Number.

186. I also reject Mr Aljaberi's evidence that: (a) he did not write the telephone number specified in his application to FABS to open a trading account sealed by FABS on 14 April 2018; and (b) part of the document had been manipulated. In my judgment, the proposition that someone within FABS or within Larmag's solicitors might have altered the original number after the application had been lodged is a baseless and scandalous suggestion. I have no doubt that all of the details included in the application were inserted by Mr Aljaberi, including the number.

187. In addition, I reject Mr Aljaberi's evidence that everything in the email dated 15 August 2020 that was transmitted to Bruno Blattner (using the elitehold@yahoo.com email account) had been manipulated and that he had not sent it. The elitehold@yahoo.com account was an account registered to Mr Aljaberi which he admitted he had used to send the email dated 3 July 2018 to FABS confirming his instructions in respect of the Claimed Bonds. His suggestion that the word "mailto" before the words "elitehold@yahoo.com" meant that a reply to the email would be undeliverable depended on the wholly unrealistic speculation that a recipient of the email seeking to reply to it would not simply click on a reply sign (usually an arrow of some sort) or input elitehold@yahoo.com, but instead would type in the recipient's address as "mailto elitehold@yahoo.com." Further, despite his unconvincing attempt at first to avoid answering questions on the text of the email on the ground that he was subject to an NDA in favour UBP, he did not deny that he transferred EUR 5 million of the Claimed Bonds to Zoya Holding Ltd, which transfer is mentioned in the email, or that Zarmineh Rab, who is described in the document as "a trusted advisor," was indeed a financial adviser to whom he had lent 1,752,069 Dirhams (EUR 400,00). I therefore find it impossible to conceive of anyone wanting to send this email with the false appearance that it came from Mr Aljaberi. In my judgment, Mr Aljaberi sent the email and did so in the terms contained in the document.

188. Accordingly, I conclude that the telephone number given as Mr Aljaberi's number in documents (i), (ii) and (iii) was indeed registered to and used by him from at least 14 April 2018 to 23 October 2018 and that the number appearing in The African Yellow Pages Online for Waves Rent a Boat was included in the belief that it was the number of the proprietor of, or a senior executive within, that company. As already noted, this is the destination number used by Mr Magnusson in the period 19 July - 6 November 2018 to send the text messages appearing in Bundle E at pages E/456-466 and was the number of the device used to reply to those messages.

189. In the light of the conclusion stated in paragraph 188 above, based as it is on powerful evidence, I have no hesitation in further finding that it was Mr Aljaberi to whom Mr Magnusson's messages were sent and who replied by text to Mr Magnusson.

190. The topics raised in the text messages sent by Mr Magnusson included: (i) the receipt of the email sent by "Mr Mohamed" which enclosed the Noor Bank Letter; (ii) a meeting that Mr Aljaberi has said he would attend to procure the release of the FAB loan; (iii) Mr Magnusson stating that, on an earlier occasion, Mr Aljaberi had told him the Central Bank had sent him a letter stating that the loan money would be released to Larmag; (iv) an enquiry from Mr Aljaberi whether Mr Magnusson had received the cash for the bonds; (iv) Mr Magnusson's forthcoming visit to Dubai; and (v) the EUR 2,187,500 coupon payment. In one message, Mr Magnusson also said that when Mr Aljaberi was back from Peru, he (Mr Magnusson) would like to complete the business deal regarding the JVA and that the balance of the interest on the bonds is repaid to Larmag Holding.

191. This evidence clearly shows that Mr Aljaberi cynically lied to the Court when he testified that he had never heard of Larmag Holding before he was served with the instant proceedings. The truth is that he dealt directly with Mr Magnusson as to the basis on which Larmag would transfer the Claimed Bonds to Elite Holding and he was fully aware that Larmag was only willing to transfer the Bonds once it was assured that the USD 20 million pre-payment had been paid.

(3) The PO Box No 42662 given as part of the authorising signatory's ("Mr Aljaberi's") address on the Engagement Package Agreement[45] sent back to Mr Tsai, also appeared as part of: (a) the address of Mr Aljaberi's company Abdulla Saeed Al Jabri Maintenance & General Contracting on the internet; (b) the address of Waves Rent A Boat in The African Yellow Pages Online; (c) Elite Holding Group's address in the application dated 26 December 2009 made by Mr Aljaberi for corporate banking; (d) Mr Aljaberi's address stated in his first and second affidavits.

192. Mr Aljaberi's evidence in respect of PO Box No 42662 is dealt with above in paragraphs 145 - 149. In my judgment, Mr Aljaberi used PO Box No 42662 when it suited him both as part of a corporate address and as his particular PO Box when communicating about commercial matters or when giving specific particulars about himself for official purposes. I reject his evidence that the application made to National Online Bank of Abu Dhabi in the name of Elite Holding Group dated 26 December 2009, a document disclosed by FAB and FABS pursuant to a disclosure order issued by this Court, was not his document. The implication of this part of his evidence is that the document was dishonestly manufactured, a proposition which I regard as a baseless, desperate attempt to escape the consequences the document has for Mr Aljaberi's case in these proceedings.

(4) Mr Aljaberi's connection with entities having the word "Elite" in their names.

193. The significance of this evidential topic is that Patrick N'dom told Mr Tsai that "Elite Holding Group", acting by Mr Aljaberi, was a potential purchaser of the Reditum Bonds and that that company name was then used to designate the prospective purchaser in the communications between Larmag and the individual brokers acting for it on the one hand, and those acting for the prospective purchaser on the other hand, to the point that Elite Holding Group was named as the purchaser in the draft agreement for the sale of the Reditum Bonds, the JVA, the Annex and the account details (47502 Elite Holding Group) provided by Mr Magnusson to Swiss Invest[46] .

194. As related in paragraph 118 above, Mr Aljaberi testified, as part of his denial that he had anything to do with the transfer of the Claimed Bonds into his FABS account, that he had never heard of Elite Holding or the Elite Holding Group before he was served with these proceedings. He said he had only ever acted for one company which had "Elite" in its name and that ran a cement factory under the name Elite Factory that had ceased to exist in 2004. The email address elitehold@yahoo.com was a hangover from when Elite Factory was operating.

195. The principal documents relied on by Larmag for its case that Mr Aljaberi was very much connected with entities having "Elite" in their names, and Mr Aljaberi's evidence in response thereto, are related in paragraphs 118-132 above, and in respect of document (vii), in paragraphs 135 - 138. These documents include:

(1) the item published in Gulf News in 2007 showing a picture of Mr Aljaberi described as "Chairman of Elite Holding";

(2) the copy of the application to National Online Bank of Abu Dhabi dated 26 December 2009 in the name of Elite Holding Group which I have found was completed by Mr Aljaberi and has not been manipulated as he alleged;

(3) the emails ostensibly from John Varoujan that were produced by Mr Aljaberi as part of his disclosure (and therefore, consistently with the contents thereof, must have been received by him) which were respectively addressed to office@eliteholdinggroup.com and factory@yahoo.ie and office@holdinggroup.com;

(4) the Twitter documents relating to the account of Aljaberi@elite664444 including the message dated 31 December 2013 announcing that 35 new employees were being sought;

(5) the Linkedin page containing Mr Aljaberi's details including: "Owner, Eliteholdinggroup, Feb 1988 - Present Chairman, Elite Holding Group, Jan 1988 - Present";

(6) the print-out from the Elite Holding website before it was taken down which named Mr Aljaberi as Chairman of the Elite Holding Group; and

(7) the email dated 15 August 2018 that Mr Aljaberi sent to Mr Bruno Blattner of UBP which ended: "Abdullah Aljaberi, 009 71-50-888 346, www. Elitehold.com

196. The application to National Online Bank of Abu Dhabi dated 26 December 2009 completed by Mr Aljaberi in the name of Elite Holding Group is direct evidence that, as at that date, he was holding himself out as having control of an entity of that name. So too is the email dated 15 August 2018 sent to Bruno Blattner which I find was sent by Mr Aljaberi in the terms appearing in the document produced by FAB and FABS.

197. Turning to the emails from Mr Varoujan, these must have been received, or possibly concocted by, Mr Aljaberi for him to have been able to

produce them as documents he intended to rely on in the proceedings. As already recorded, Mr Aljaberi testified that he did not disclose these documents to Larmag and had not received them. I unhesitatingly reject the implied assertion arising from this evidence that the documents were manipulated by Larmag's solicitors or a third party. It follows that the emails are either genuine and were received by Mr Aljaberi or he concocted them. If they are genuine, they are good evidence that Mr Aljaberi had access to and control over the email accounts whose addresses were used by Mr Varoujan to send the documents. If the emails were concocted by Mr Aljaberi, the fact that he chose to represent that they were addressed to office@eliteholdinggroup.com, factory@yahoo.ie, and office@holdingroup.com suggests to some limited extent that he did indeed have access to and control over these email accounts.

198. Whilst these emails raise doubts about the overall credibility of Mr Aljaberi, it was not put to Mr Aljaberi that he himself had concocted them, and I therefore propose to leave them out of account in reaching a conclusion on whether he was connected with entities having "Elite" in their names, as alleged by Larmag.

199. As to the other documents, there are too many of them for their repeated statements linking Mr Aljaberi to entities with the word Elite in their names to be explained by the coincidence of the intervention by third parties providing false information about Mr Aljaberi over a considerable period of years, particularly in the light of Mr Aljaberi's own use of the name Elite Holding Group in the National Online Bank of Abu Dhabi application dated 26 December 2009 and his inclusion of www.elitehold.com in the email to Bruno Blattner.

200. I therefore find that, at all times material to these proceedings, Mr Aljaberi had a close connection with entities, incorporated or simply represented to exist, that had the word Elite in their names, including Elite Holding, Elite Holding Group and www.elitehold.com.

(5) The involvement of Ms Dina Mohamed, Senior Officer, Customer Service, FABS, in the transfer of the Claimed Bonds into Mr Aljerabi's FABS.

201. Mr Magnusson testified that he received the contact details of Ms Mohamed from Mr Tsai on 1 June 2018 and spoke to Ms Mohamed in the week of 5 June 2018. It is clear from Mr Tsai's Witness Statement and his email to "Mr Aljaberi" dated 6 June 2018[47] that Mr Tsai obtained Ms Mohamed's contact details from Patrick N'dom. If the individuals Mr Tsai and Mr Magnusson were dealing with on a proposed sale of the Reditum Bonds were fraudsters who were dishonestly using Mr Aljaberi's identity, it would be most surprising that they would have known that Ms Mohamed was a contact at FABS used by Mr Aljaberi, and her contact details or, if they did, that they would have put Larmag in contact with Ms Mohamed given the real risk she would tell Mr Aljaberi about her communications with Mr Magnusson concerning a possible purchase of the bonds by Elite Holding Group.

202. The same point applies to the email dated 30 June 2018[48] to Mr Magnusson, ostensibly from Mr Mohamed, by which Mr Magnusson was given the details of Elitehold's trading account with FABS numbered 47502 and requested to send an attached form to Ms Dina Mohamed whose email address and direct phone number at FABS were provided.

(6) Emails copied to elitehold@yahoo.com in the period May to 3 July 2018 and on 12 August 2018.

203. The following emails in this period were copied or forwarded to elitehold@yahoo.com:

(1) The email sent by Mr Tsai to pa@elitehold.com under the subject "Re: Reditum Bond Transaction"[49] in reply to the confrontational email he had received earlier that day from the "Chairman's Office."[50] Mr Aljaberi denied receiving this email. His lawyer had asked him to check the list of names and they never appeared in his emails.

(2) The email from the Office of the Chairman of Elite Holding Group to Mr Mulhanna under the subject: "Re Reditum Settlement 18 June 2018"[51] responding to the request for the trader's details, stating that "our CFO will update us once he come to his Office." Mr Aljaberi denied receiving this email. He said he had sent all the names of those sending him emails to his lawyers and he had checked and none of them appeared in his inbox. He added that the email had been sent cc Lars (Mr Magnusson) but someone had added his email when that someone provided these documents "because cc always comes name then the email immediately". He had just realised that the email had been doctored.

(3) The email from Mr Magnusson to "Abdullah" dated 19 June 2018 under the heading: "Re Reditum Settlement 18 June 2018[52] asking to receive the contact details of his (Mr Aljaberi's) desk in FAB. Mr Aljaberi also denied receiving this message.

(4) The email by which Mr Al Mulhanna forwarded to elitehold@yahoo.com the email dated 12 August 2018 by which Mr Magnusson informed "Mr Aljaberi" and "Mr Mohamed" that the coupon would have to be repaid to Larmag as soon as it was received into the account at FABS.

204. I reject Mr Aljaberi's evidence that he did not receive these emails. As with his assertions that other documents in the case have been manipulated, his claim that these emails were not received and that emails (i) and (ii) have been doctored has no credible foundation, which no doubt explains why Mr Thompson did not put to Mr Magnusson that he had doctored the emails after they had been received.

205. The fact, as I find it to be, that these emails were received by Mr Aljaberi significantly undermines his case that he had nothing to do with the negotiations and communications that led Larmag to transfer the Claimed Bonds into his FABS account. As an astute, experienced businessman, it is highly unlikely that, given their subject line, he did not open and read these emails, if indeed he was not the author of them.

The factual conclusions reached on the circumstantial evidence.

206. As I have already found, Mr Aljaberi never believed that the Claimed Bonds came from Mr Varoujan. On the contrary, he knew that these bonds were being transferred by Larmag. His evidence that there was an agreement between him and John Varoujan that the latter would transfer into his account a Euro bond in part payment of a debt is untrue. I have also found that the theories advanced or hinted at by Mr Aljaberi that those responsible for the transfer of the Claimed Bonds were either fraudsters who stole his identity and with whom he had no connection, or John

Varoujan, who stole the bonds to make good on the alleged debt agreement, simply do not hold water.

207. I turn then to the above six features of the evidence and I have reached the conclusion that when they are considered together they are a sure foundation for the conclusion that Mr Aljaberi was centrally involved right from the start in all the deceitful negotiations, communications and representations that led to the transfer of the Claimed Bonds into his FABS account and the payment of interest into the Coupon Account.

208. Thus, I find that Mr Aljaberi on behalf of Elite Holding Group signed the Engagement Package Agreement sent to him by Mr Tsai via Patrick N'dom. (Elite Holding Group of course was the entity on whose behalf Mr Aljaberi filled out the application to National Online Bank of Abu Dhabi at the end of 2009 and it was named as the company of which Mr Aljaberi was Chairman in his LinkedIn entry). Next to his signature on the Engagement Package Agreement there was a rectangular stamp containing his PO Box number, which number he used occasionally to identify companies with which he was associated or to identify himself in commercial and/or official documents. It was also Mr Aljaberi who replied to Mr Tsai's email on 6 June 2018 sent to pa@elitehold.com. In doing so, Mr Aljaberi used that same email account and he received Mr Tsai's reply that was also sent to pa@elitehold.com and copied to elite@yahoo.com.

Mr Aljaberi's deceits for which he is liable under Articles 282 and 285 of the UAE Civil Code and for which Elite Holding is also liable, Mr Aljaberi having acted as its agent.

209. It was with Mr Aljaberi that Mr Magnusson negotiated the sale and purchase of the Claimed Bonds, in the course of which Mr Aljaberi said he would obtain a loan from FAB to fund the proposed purchase price of EUR 65 million. Mr Aljaberi took no steps to obtain such a loan. He had no intention of doing any such thing. The bonds having been transferred by "free delivery," Mr Aljaberi was resolved to treat them as his own, free from any obligation to pay for them.

210. In mid-June 2018, it was Mr Aljaberi who told Mr Magnusson over the phone that he could not proceed with the proposed deal because FAB would only lend him 60% of the face value of the bonds. This again was a knowingly false statement. At no time did he raise with FAB the possibility of a loan to be secured by a pledge or some other form of security. Later, it was Mr Aljaberi who suggested: (i) a joint venture under which Larmag would remain owner of one third of the Claimed Bonds and Elite Holding would own two thirds; (ii) that the loan from FAB of 60% of the nominal value of the bonds (EUR 42 million) would be used to pay Larmag two thirds of the purchase price of EUR 63 million; and (iii) that the coupon paid on the bonds would be used to pay first the interest due on the FAB loan and then split one third, two thirds.

211. Following the delivery by Mr Magnusson by email of the JVA and the Annex under which the bonds were only going to be transferred if Elite Holding first paid Larmag EUR 20 million (a stipulation of which Mr Aljaberi was well aware), Mr Aljaberi fraudulently and deceitfully sent or authorized the sending of the email of 2 July 2018 represented to be from Mr Mohamed enclosing the forged First Noor Bank Statement which purported to confirm that AED 85.4 million (EUR 20 million) had been transferred to Larmag's account with ING in the Netherlands. In so doing, Mr Aljaberi induced Larmag, as was his intention, to transfer the Claimed Bonds into his FABS account.

212. Mr Aljaberi also acted deceitfully when he: (a) sent or authorized the sending of: (i) the email of 9 July 2018 which stated that the funds had been released on 9 July 2018 and enclosed the forged Second Noor Bank Statement; and (ii) the email of 25 July 2018 which enclosed the Noor Bank Letter; (b) told Mr Magnusson on several occasions between 25 July and 31 July 2018 that the transfer of the money due from Elite Holding was out of his hands because the money had been frozen by the UAE Central Bank; (c) told Mr Magnusson in the second week of August 2018 that the financing for the Claimed Bonds had been approved by FAB on condition that the interest due on the bonds would be paid, and thereby, as he intended, induced Larmag to pay the EUR 2,187,500 coupon into the Coupon Account.

213. If Mr Ali Mohamed exists, it is plain on the evidence that he, too, his liable under Articles 282 and 285 for the following deceits: (i) the delivery to Mr Magnusson on 2 July 2018 of the forged First Noor Bank Statement; (ii) the delivery to Mr Magnusson on 9 July 2018 of the email enclosing the forged Second Noor Bank Statement and stating that the funds had been released that day and should be in Larmag's account within 3 to 7 working days; (iii) the delivery of the email dated 25 July 2018 to Mr Magnusson enclosing the forged Noor Bank Letter; (iv) together with Mr Aljaberi, assuring Mr Magnusson that the coupon was to be paid to Larmag and stating that there was a restriction that the coupon could only be repaid by payments of AED 100,000 per week.

214. The deceits practised by Mr Aljaberi and, if they exist, Elite Holding and Mr Mohamed, involve such grave dishonesty that there can be no question but that these Defendants must pay the costs of this action to be assessed on the indemnity basis.

The remedies sought by Larmag against Mr Aljaberi, Mr Mohamed and Elite Holding

(1) The restitution claims under Articles 318, 319 and 324 of the UAE Civil Code

215. Pursuant to Articles 318, 319 and 324 of the UAE Civil Code, in aid of achieving: (i) actual restitution in respect of the entirety of the Claimed Bonds; and/or (ii) money in lieu of such actual restitution; and (iii) money received or receivable by Mr Aljaberi and/or Elite Holding arising from the dealings of each or both of them in respect of any of the Claimed Bonds, Larmag is entitled to an order that Mr Aljaberi on his own behalf and on behalf of Elite Holding must: (i) forthwith give all necessary instructions and make all necessary arrangements for the transfer to the Claimant by free delivery of the 65,000 Claimed Bonds held in his account 47502 with FABS; (ii) within 14 days serve an affidavit exhibiting all relevant documents accounting for: (a) the 5000 Claimed Bonds transferred from his said account 47502 to Zoya Holding Limited (**"Zoya"**) and the sale by Zoya of 4000 of the said 5000 Claimed Bonds it received from Mr Aljaberi, disclosing the consideration received for the transfer to Zoya and the name of the transferee who received the said 4000 Claimed Bonds from Zoya and the consideration received by Zoya for that latter transfer and the identity of who controls Zoya.

216. If the Claimant receives the damages awarded below in respect of the deceitful misappropriation of all the EUR 70 million Claimed Bonds, it will not be entitled to a payment in lieu of actual restitution of any of those bonds because this would be double recovery for the same wrongful act.

The claims for damages

The claim under Article 40 (2) of the DIFC Remedies Law

217. I deal first with Larmag's claim for multiple damages under Article 40 (2) of the DIFC Remedies Law. As stated above, Larmag submitted that this remedy was a matter of procedure in the same way that the assessment and calculation of damages are procedural. Accordingly, so the submission went, the Court was free to make an award under this provision if it was satisfied that Mr Aljaberi's conduct producing actual damages was deliberate and particularly egregious or offensive.

218. Adopting the reasoning of Lord Hoffmann in *Harding v Wealands*, in my judgment, if the UAE causes of action relied on by Larmag for its damages claims are all predicated on the claimant having suffered harm which can be compensated in damages, Larmag's claim under Article 40 (2) must fail. This is because all elements of a cause of action under the lex causae are matters of substance and cannot be departed from on procedural grounds. Mr Black cited no jurisprudence, doctrine or scholarly writings to show that Article 293 was not limited to moral damages to *compensate* for non-material harm but extended to non-compensatory exemplary or punitive damages. The Court is left therefore to decide this question as a matter of interpretation and, in my opinion, as I have already held earlier in this judgment, Article 293 allows for *compensatory* moral damages where the claimant has suffered non-material harm, such as emotional upset or distress and does not allow for non-compensatory exemplary or punitive damages.

219. I reach the same conclusion if I focus primarily on Article 40 (2) and consider whether that provision is procedural or substantial in nature and, if the latter, whether it is sufficiently analogous to Article 293 for it to be relied on by Larmag. In my opinion, consistently with the decision of the House of Lords in Harding v Wealands, provisions relating to damages will only be of a procedural nature where they deal with the assessment and quantification of damages; particular heads or types of damage are generally not procedural but are matters of substance. Adopting this approach, I find that Article 40 (2) is not a procedural provision but is of a substantive nature and it is not sufficiently analogous to Article 293 to be available to Larmag because, as I have held, the damages Article 40 (2) provides for are not compensatory but are exemplary or punitive.

220. Accordingly, for the reasons given in paragraphs 217 - 219, I find that Larmag cannot pursue its claim for multiple damages under Article 40 (2) of the DIFC Remedies Law.

The claims for non-counterfactual losses.

221. Larmag's case for damages for losses both counterfactual and non-counterfactual is very clearly and conveniently articulated in the expert report of Mr Andy Cottle, a Partner in the forensic practice of BDO LLP, based primarily in London and Dubai.

222. Mr Cottle's report usefully refers to the evidence relied on by Larmag to establish its claims.

Legal expenses

223. Mr Cottle included the costs of the instant proceedings under this head of claim. It was accepted by Mr Black that these costs cannot be awarded as damages but they can of course be recovered by a joint and several costs order in favour of Larmag against Mr Aljaberi, Elite Holding and Mr Mohamed.

224. Larmag also claims: (i) EUR 18,093 for fees paid to Swiss Counsel in attempts to recover that part of the Claimed Bonds that are held in Switzerland; and (ii) EUR 247,735 for fees paid to Baker & McKenzie in respect of criminal proceedings on-shore against Mr Aljaberi and Mr Mohamed. Mr Thompson submitted that the costs claimed for Baker & McKenzie's fees ought not to be allowed or at least should be substantially reduced because there appeared to have been duplication in the work done in Amsterdam and the UAE, no prosecution was opened as a result of the alleged work and some of the work related to preparing reports to the UAE Central Bank and possible proceedings against FAB and FABS. Mr Thompson also argued that there was insufficient documentary back-up for the work done by the Swiss lawyers. I reject Mr Thompson's submissions and hold that the sums claimed for the fees payable to the Swiss lawyers and Baker & McKenzie are recoverable on the ground that they were caused by the wrongful acts I have found the three active Defendants to have committed and that they were reasonably incurred.

Wasted management time

225. I accept Mr Sandberg's evidence that: (a) 654 hours of management time was devoted to dealing with the dispute over the Claimed Bonds by Mr Magnusson, Mr Sandberg, Mr Dirk Koster (the CFO) (the **"Executives"**) and other employees; and (b) the total annual remuneration packages for the three executives and the unnamed employees were respectively EUR 577,200; EUR 260,800; EUR 193,400; and EUR 95,000.

226. Mr Cottle proposed taking a simple average hourly rate of EUR 250 based on the total cost of the executives (EUR 1,031,400) and a total number of 1,350 hours work per year and on this basis proposed recovery of the total sum of EUR 159,000 based on 636 hours (being the number of weeks (106) since 3 July 2018, the date when payment for the Claimed Bonds should have been received, to the original redemption date of 15 July 2020.

227. In cross-examination by Mr Thompson, Mr Sandberg accepted that Mr Magnusson worked about 75 hours in a week, he himself worked about 55 hours a week and Mr Koster worked about 40 hours a week.

228. When cross-examining Mr Cottle, Mr Thompson pointed out that the actual hours a week worked by the executives were much higher than the 30 hours a week that Mr Cottle had used in coming to his hourly cost of EUR 250. It was put to Mr Cottle that if one took 2,720 hours a year instead of the 1,350 hours a year he had taken, the hourly rate would go down to about EUR 126 -125, which would reduce the claim to about EUR 80,000. Mr Cottle replied that if you were going to go into that level of accuracy you would want to think about the balance between the times that people had spent on dealing with the fraud. Thus, if Mr Magnusson had spent a lot more time, even though he worked longer hours, one might end up in a situation where the two might counter-affect each other.

229. In his closing submissions, Mr Thompson argued that, where the time spent by staff other than the three executives has been stripped out of the calculation by Mr Cottle, and the time spent by each of the executives dealing with the aftermath of the fraud is unknown, it should be assumed that the total time spent on the fraud is split evenly between the executives and the actual hours each executive worked a week should be taken as the basis for the applicable hourly rate. He contended that adopting this approach, which he maintained was the correct approach in the

circumstances, would effectively reduce the claimable sum to around EUR 80,000.

230. In my view there is an element of cherry picking in Mr Thompson's approach, in that it leaves out of account the fact that Mr Magnusson's remuneration was considerably higher than that of the other two executives and the fact that it is likely that Mr Magnusson spent considerably more hours dealing with the fraud than his two colleagues did. That said, I think there is sufficient in Mr Thompson's point that the actual hours worked by the executives per week were significantly higher than the 30 hours adopted by Mr Cottle to call for a reduction of 30% in the figure advocated by Mr Cottle. Accordingly, under this head of loss I award damages in the sum of EUR 113,300.

The cost of the trip to Dubai to meet Mr Aljaberi and Mr Mohamed

231. As related above, Mr Magnusson, Kettylin Magnusson (assistant to Mr Magnusson), Mr Sandberg and Mr Al Mulhanna travelled to Dubai to meet Mr Aljaberi and Mr Mohamed in an attempt to resolve the difficulties that had emerged over the bond transaction. The total costs of this trip are EUR 14,982.

232. In my judgment, this expenditure was caused by the deceitful conduct of Mr Aljaberi, Elite Holding and Mr Mohamed and was reasonably incurred. I therefore award the claimed sum under this head.

Reputational Damages

233. Mr Sandberg testified that Larmag had suffered reputational damage caused by the misappropriation of the Claimed Bonds in that, as a consequence of being denied the purchase price for the bonds, and the bonds themselves: (a) the Larmag Group has suffered reputational damage in financial markets due to having had to postpone two coupon payments and defer the maturity date; and (b) has suffered such damage in the Dutch Real Estate market due to its inability to follow through with its plans to purchase various Dutch assets.

234. Mr Cottle estimated the impact of this reputational damage to be at least 10% of the nominal value of the EUR 70 million Reditum Bonds transaction, although he did not provide any reasons or justification for coming up with this figure.

235. In fact, loss of reputation damages have not been pleaded and Mr Black did not seek an award of such damages. I therefore make no order under this head of damages.

Damages for the deceitful misappropriation of the Claimed Bonds

236. Larmag's claim under this head is supported by the expert report of Mr Andrew Caldwell, FRICS, who has 30 years' experience in valuing businesses, shares, intellectual property and other assets. In Mr Caldwell's expert opinion, the value of the Claimed Bonds at the valuation date of 3 July 2018 was EUR 57,711,500. In reaching this valuation he used a combination of the market and income valuation approaches. The market approach involves identification of assets, or transactions in assets, considered comparable to the subject matter of the valuation and under the income approach projected cash flows are discounted back to the valuation date, generating a net present value for the future cash flow stream from the asset or business.

237. Mr Caldwell was provided with details of five transactions involving the Reditum Bonds, three of which were private brokered sales concluded in March 2018 for bonds with a nominal value of: (1) EUR 800,000, sold at 100% of face value; (2) EUR 82,000, sold at 99.5% of face value; (3) 100,000, sold at 101% of face value. The fourth transaction was the apparent agreement by Elite Holding to purchase the Claimed Bonds at 90% of face value in July 2018, and the fifth transaction was a private brokered sale to a pension fund of bonds with a face value of EUR 99,000,000 at 82.4% of face value (the **"August 2018 transaction"**). Using this information, together with the interest payable on the bonds (6.25%) and the redemption date of 15 July 2020, Mr Caldwell calculated the implied annual rates of return in respect of each of the five transactions. These were 6.25%, 6.46% and 5.81% respectively for the first three transactions, 10.93 % for the Elite Holding transaction and 16.96% for the August 2018 transaction.

238. Mr Caldwell pointed out that the figure taken as the price under the August 2018 transaction giving rise to the rate of return of 16.97% was the net proceeds of the sale, which might mean that this rate of return was an overstatement and the value attributed to the bonds was an understatement of market value.

239. On the basis of historic price information taken from the Frankfurt Stock Exchange, Mr Caldwell concluded that whilst the Reditum Bonds traded at par at the start of 2018, from early 2018 transactions involving these bonds had been at a price lower than par.

240. Given that the price agreed by Elite Holding may have been influenced by fraud, Mr Caldwell concluded that he could not be satisfied that this transaction was on arms' length terms and excluded it in reaching his valuation of the Claimed Bonds. Not having been provided with any evidence that suggested that the August 2018 transaction was not on an arms' length basis, and given it occurred at a larger discount to face value than the Elite Holding transaction, Mr Caldwell treated the August 2018 transaction as having occurred on an arms' length basis and as being consistent with the definition of fair market value. He was also of the view that the annual required rate of return for this transaction of 16.96% was consistent with a market rate on an arms' length basis as of the valuation date, 3 July 2018.

241. As a cross-check to the implied internal rate of return, Mr Caldwell considered the creditworthiness (ie the credit rating) of the Reditum Bonds and their issuer as at the valuation date. In the event, he was unable to assess a credit rating for Reditum because he could not find any relevant historical credit rating information. In respect of the bonds, based on the information he was able to find from public sources, the Reditum Bonds had had a below investment grade status even before the Bloomberg "B" rating expired, because obligations with that rating are considered speculative and subject to a high credit risk. In Mr Caldwell's view, the yield on EUR denominated corporate bonds rated below B (ie rated "CCC") with a similar maturity date of 2 years (as at the valuation date) was suitable for assessing the rate of interest on the Claimed Bonds in an arms' length transaction at this date.

242. As at the valuation date, the annual yield on 2 year "CCC" rated EUR corporate bonds was 16.76%, which Mr Caldwell considered to be a market rate of interest for the remaining life of the Claimed Bonds.

243. Mr Caldwell estimated the implied valuation of the Claimed Bonds on the basis they had been sold at a price of 82.4% of their face value and on this basis estimated the NPV of the bonds to be EUR 57,711,500. As a cross-check, he estimated the NPV of the bonds based on an annual market interest rate of 16.76% as at the valuation date to be EUR 55,458, 746. He saw no reason why the fair market value of the Claimed Bonds at 3 July 2018 would not be EUR 57,711,500 based on the same conditions as the August 2018 transaction and this was the fair market value he put on the bonds as at the valuation date as related in paragraph 236 above.

244. When cross-examining Mr Caldwell, Mr Thompson made a number of criticisms of his valuation. These included: (a) the suggestion that Mr Caldwell should have considered taking into account the fact that EUR 28.3 million of the Reditum Bonds were sold to third party investors in 2015; (b) the suggestion that Mr Caldwell ought to have considered whether there was a market at all in the Reditum Bonds given that if one took the August 2018 transaction out of the equation, there seemed to be no one at all who was interested in buying the bonds; (c) when carrying out his cross check by looking at the yields for "CCC" rated bonds provided by Capital IQ , Mr Caldwell ought to have taken into account the volatility of the yield curve that was evident after the valuation date of 3 July 2018; and (d) Mr Caldwell had put aside all the other relevant information about the marketability of the bonds and relied solely on the August 2018 transaction for his valuation.

245. In my judgment, Mr Caldwell's report provides sufficient evidence of the market value of the Claimed Bonds at the date they were wrongly appropriated (3 July 2018) for the Court to adopt his valuation of EUR 57,711,500. I accept his evidence that the August 2018 transaction was a strong indicator of what the value of the Bonds was around the valuation date. I also accept his evidence that: (a) it was wrong to say that the bonds were unmarketable since marketability depended on price; and (b) he considered the evidence of the yield curve and had given it due weighting in light of the August 2018 transaction and an estimated value based on a synthesized approach to a Euro bond.

246. It follows that Larmag is entitled to an order that Mr Aljaberi, Elite Holding and Mr Mohamed must pay damages in the sum of EUR 57,711,500 under Articles 282 and 285 of the UAE Civil Code in respect of the deceits that induced Larmag to transfer the Claimed Bonds into Mr Aljaberi's account with FABS.

Damages in respect of the coupon payment deceitfully procured and dissipated by Mr Aljaberi

247. Mr Aljaberi, Elite Holding and Mr Mohamed deceitfully induced Reditum (represented by Mr Magnusson) to pay the coupon and induced Larmag to agree to the payment subject to the condition that it would be repaid to Larmag. If Reditum were a party to these proceedings it would have a clear right to damages of EUR 2,181,506.81 less the EUR 76,770 repaid, but it is not a party and therefore there can be no question of an award of damages in its favour.

248. Is Larmag entitled to damages on the basis that: (a) the coupon was not returned as promised; or (b) on the basis that if the deceitful promise had not been made, Larmag would not have agreed to the payment of the coupon and the coupon would not have been paid? No claim for breach of contract is made by Larmag against Mr Aljaberi and the other two Defendants sued in respect of the coupon. There can therefore be no recovery of damages on basis (a).

249. As to (b), Mr Black did not explain how Larmag was entitled to recover damages in the sum of the coupon notwithstanding that it was Reditum's money that funded the payment. He might have argued that Larmag's loss is the diminution of the value of its shareholding in Reditum resulting from the loss to Reditum of having paid away the EUR 2,181,506.81 (less EUR 76,770). However, he did not so, and I do not think I should consider a basis of recovery that was not argued. Larmag's claim for damages in respect of the coupon is therefore dismissed.

Counterfactual Damages - damages for the diminution in the value of Larmag's shareholding in LRE2 due to the loss of an opportunity to increase the value of that shareholding caused by the deceitful misappropriation of the Claimed Bonds

250. The case for this head of damages is advanced in the expert report of Mr Andy Cottle. Larmag also relies on a valuation as at 15 July 2020[53] made by Mr Ruud P. Winkster of the net market values and the gross market values of the six properties purchased by Larmag with the proceeds from the August 2018 transaction, under which 99 million Reditum Bonds were sold to a German pension fund for EUR 81,620,753.

251. The counterfactual scenario if Larmag had not been deprived of the Claimed Bonds advanced in Mr Cottle's report is as follows; (1) The EUR 170 million Claimed Bonds would have been sold in August 2018 at a price equivalent to the value of those bonds given by Mr Caldwell (EUR 57,700,000). The purchaser would most likely have been the pension fund which purchased 99 million Reditum Bonds in that same month. (2) These proceeds would then have been transferred to Reditum which would have lent them to LRE2. (3) LRE2 would then have used these loan monies to purchase properties (the **"Additional Properties"**) from among the 41 properties with a total price of approximately EUR 240 million[54] contained in a list referred to in a Letter of Intent dated 2018 which Larmag had sent to a potential seller of the properties. (4) The funds invested in the Additional Properties would have resulted in returns consisting of capital gains in the increase in the value of the properties and the yield from the rental income earned on letting the properties. (5) The aforesaid counterfactual capital gains can be estimated by reference to the capital gains that would have been made as at 15 July 2020 on the six properties purchased at a cost of EUR 57,919,860 with the proceeds of the August 2018 transaction (the **"Six Properties"**). Mr Winkster estimates that the total capital gain on these properties as of 15 July 2020 would have been EUR 12,445,140, which represents a return of 21.5%. Applying that percentage return to the EUR 57,700,000 that would have been invested in properties referred to in the letter of intent, produces an appreciation return of EUR 12,405,500, on which there would be deferred tax @ 25%, giving a net figure of EUR 9,304,125. (6) The properties acquired by Larmag have not yet been sold by LRE2. When they are sold, unrealised gains will be crystallised as a profit. Since LRE2 is a 100% subsidiary of Larmag, the increase in the value of Larmag's shareholding in LRE2 that would have resulted if the Claimed Bonds had been sold in August 2018, in accordance with Larmag's counterfactual scenario, is the measure of the diminution of the value of Larmag's shareholding in LRE2, which is EUR 9,304,125.

252. Mr Thompson argued in closing that, on analysis, Larmag's counterfactual damages claim was hopeless and must fail. Relying on a passage in paragraph 754 of Warren J's judgment *in Dadourian Group International Inc v Simms et al* [2006] EWHC 2973 (Ch), he first submitted that the claim failed because: (a) Larmag had failed to mitigate its loss by causing Reditum to issue more bonds to replace the misappropriated bonds; and (b) no loss resulted from the misappropriation of the Claimed Bonds because there was no market for Reditum Bonds. I decline to accept this submission. It is not for a Claimant to have to show that he mitigated his losses in the absence of a particularised plea that he has failed to do so;

rather, it is for a defendant to plead and then prove that the claimant had failed to mitigate. Mr Aljaberi satisfied neither of these requirements. In particular, it was not suggested to Mr Magnusson in cross-examination that Larmag could and should have mitigated its losses by procuring the issue of further bonds. I also reject the contention that there was no market for the Claimed Bonds. There was a market for the bonds at a discount to their face value as evidenced by the August 2018 transaction.

253. Next, Mr Thompson advanced a rolled-up submission that the counterfactual claim was caught by the principle of company law promulgated by the UK Supreme Court in *Marex Financial Ltd v Sevilleja* [2021] AC 39 and that Larmag was not the proper plaintiff to bring this particular damages claim. The Marex principle holds that shareholders in a company cannot bring an action to make good a diminution in the value of the shareholding, or in the dividends they received, which flows from loss suffered by the company for the recovery of which it had a cause of action, even if the company were to decline or failed to make good the loss.

254. Mr Thompson argued that whilst Larmag might have a claim based on its ownership of the Claimed Bonds for certain direct losses, it had no proper standing to sue for the diminution of the value of its shareholding caused by the damage done to LRE2 as a consequence of the misappropriation of the bonds. This was because either Reditum or LRE2 was in reality the proper plaintiff to sue in respect of the misappropriation of the bonds. Mr Thompson argued that the Court should look through both the corporate structure of the Larmag Group (with an SPV issuing the Reditum bonds) and the custodian agreement under which Larmag acquired title to the remaining Reditum Bonds. Normally, corporate bonds are issued by the company providing the redemption covenant and which has title to the issued bonds which is retained until the bonds are sold. In Mr Thompson's submission, the acceptance of Larmag as proper Claimant for the counterfactual damages claim means that Reditum's redemption obligation is kept out of the equation, which defies commercial reality.

255. After lengthy consideration, I have decided not to accede to Mr Thompson's argument. In my judgment, where a corporate claimant which has title to bonds suffers loss caused by being wrongfully deprived of an opportunity to sell the bonds to achieve an increase in its assets, the defendant must take the claimant as he finds it in terms both of its ownership of the bonds and the corporate structure of which it is part. Neither LRE2 nor Reditum was the owner of the Claimed Bonds and neither was induced to transfer the bonds by reason of any deceit having been practised upon it. Neither therefore had a maintainable claim against Mr Aljaberi for damages for misappropriation of the Claimed Bonds and accordingly the Marex principle was not engaged. In short, Larmag was entitled to bring the counterfactual damages claim which it did.

256. I am also of the view that even if LRE2 had a claim for losses resulting from the misappropriation of the Claimed Bonds (which it does not), the Marex principle is inapplicable in the instant proceedings. This is because the principle is substantive and not procedural in nature, and thus, where, as here, the law applicable to the rights and liabilities of the parties is not DIFC law or English law, but UAE law, and it has not been established that UAE law applies an equivalent principle, the Marex principle has no application.

257. In my judgment, the counterfactual scenario advanced by Mr Cottle is a cogent one that is supported by the evidence of Mr Sandberg and Mr Magnusson which I accept. I am also of the view that the loss claimed for is not too remote. Mr Aljaberi knew full well that Larmag intended to use the money generated by the sale of the bonds to invest in real estate in Europe.

258. Adopting the approach approved by Toulson LJ in *Parabola Investments Ltd v Browalla Cal Ltd* [2010] EWCA Civ 486 at [22] and [23], I find on the balance of probabilities that if the Claimed Bonds had not been deceitfully misappropriated, Larmag would have increased the value of its shareholding in LRE2, and taking into account the inevitable uncertainties of what that increase in value would have been, I find that the increase in value would have been 70% of the increase estimated by Mr Cottle. Accordingly, I award damages in the sum of EUR 6,512,887.00 under this head of damages.

The relief granted by the Court the Third, Fourth and Fifth Defendants

(A) Restitutionary relief against the Third and the Fifth Defendants

(1) The Third Defendant must: (i) forthwith give all necessary instructions and make all necessary arrangements for the transfer to the Claimant by free delivery of the 65,000 Retitum SA Corporate Bonds (the **"Reditum Bonds"**) held in his account 47502 with the Second Defendant; (ii) within 14 days of the date hereof serve an affidavit exhibiting all relevant documents accounting for: (a) the 5000 Reditum Bonds transferred from his said account 47502 to Zoya Holding Limited (**"Zoya"**) and the sale by Zoya of 4,000 of the said 5,000 Reditum Bonds it received from the Third Defendant and/or the Fifth Defendant, disclosing the consideration received for the transfer to Zoya and the name of the transferee who received the said 4000 Reditum Bonds from Zoya and the consideration received by Zoya for that latter transfer and the identity of who controls Zoya.

(2) The Third and Fifth Defendants must pay to the Claimant: (i) a sum equivalent to the value of the 5,000 Reditum Bonds transferred to Zoya if the Claimant opts for this remedy rather than seeking damages for misappropriation of all the Claimed Bonds; (ii) a sum equivalent to such consideration as Zoya is found on the taking of the said account to have paid to the Third Defendant and/or the Fifth Defendant in respect of the said transfer of 5,000 Reditum Bonds to Zoya; and (ii) a sum equivalent to such consideration as is found on the taking of the said account to have been received by Zoya or the Third and/or the Fourth Defendant for the sale of the 4,000 of the Reditum Bonds to a third party.

(3) The Third Defendant must procure the transfer by free delivery to the Claimant of all of the Reditum Bonds that are found on the taking of the said account to remain within the disposition of Zoya.

(B) Damages awarded against the Third, Fourth & Fifth Defendants

The Third, Fourth and Fifth Defendants must pay damages to the Claimant:

(1) In the sum of EUR 57,711,500, in respect of the deceit practised by them that induced Larmag to transfer the Claimed Bonds into the Third Defendant's account 47502 with FABS.

(2) In the sum of EUR 6,512,887, in respect of the Claimant's lost opportunity of increasing the value of its shareholding in LRE2 caused by

these Defendants' deceitful misappropriation of the Claimed Bonds.

(3) In the sum of EUR 113,300, in respect of the waste of management time caused by their wrongful deceitful conduct.

(4) In the sum of EUR 14,982, in respect of the expenditure by the Claimant on the trip to Dubai to investigate the problems caused by the deceitful misappropriation of the Claimed Bonds.

(C) Interest

(1) The Third, Fourth and Fifth Defendants must pay interest from 3 July 2018 on the sums herein awarded under Paragraph (B) above to the Claimant at the rate of Euribor plus 2%.

(2) The Third and the Fifth Defendants must pay interest from 3 July 2018 on the sum awarded under (A) (2) (i) at the rate of Euribor plus 2%.

(3) In respect of the damages awarded under (A) (2) (ii), the Third and the Fifth Defendants must pay interest at the rate of Euribor plus 2% from the dates the consideration for the sale of the 5,000 Reditum Bonds to Zoya and the consideration for the sale by Zoya of 4,000 of the Reditum Bonds to the third party were received.

(4) Costs

The Third, Fourth and Fifth Defendants must pay the costs of this action to be assessed by the Registrar on the indemnity basis, if not agreed.

Issued by:
Ayesha Bin Kalban
Deputy Registrar
Date of Issue: 15 August 2021
At:10am