IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE
COURT OF FIRST INSTANCE

BETWEEN

(1) ALEXANDER REUTER
(2) CARLO PIANESE
(3) ANDRE BLEDJIAN

Claimants

and

(1) WELLNESS UNITED INC.
(2) JACOB LOGOTHETIS (aka Iakovos Logothetis)
(3) ANGELA TUROVSKAYA

Defendants

JUDGMENT OF JUSTICE LORD ANGUS GLENNIE

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25 September 2023

Trial : Counsel: Mohamed Al Serkal Advocates and Legal Consultants, lead counsel is Mr Yash Bheeroo for the Claimants. The Defendants failed to attend.

Judgment : **27 October 2023**

UPON the Claim Form and Particulars of Claim dated 13 December 2021, as amended on 19 April 2022 and re-amended on 30 March 2023

AND UPON the Defendants' Statement of Defence dated 26 December 2022 and amended on 25 April 2023

AND UPON the Claimants' Reply to Defence dated 16 January 2023 and amended on 2 June 2023

AND UPON the Defendants' Application No. CFI-107-2021/7 dated 22 September 2023 seeking an adjournment of the Trial scheduled on 25 September 2023 (the "Defendants' Application" or "Application")

AND UPON hearing the Counsel for the Claimants at the Trial held before me on 25 September 2023 and the Defendants failing to appear (the "Trial")

AND UPON reading the Claimants' Skeleton Argument for Trial dated 20 September 2023

AND UPON reviewing all relevant material filed onto the Court file and Trial Bundle

AND UPON reviewing the Rules of the DIFC Courts (the "RDC")

IT IS HEREBY ORDERED THAT:

1. Judgment be entered into for the Claimants payable within 14 days of this Order as follows:

(1) The Defendants (Wellness United Inc., Jacob Logthetis (aka Iakovos Logothetis) and Angela Turovskaya) shall jointly and severally pay to the First Claimant (Alexander Reuter) the sum of USD 373,030.33 (inclusive of interest at a rate of 6% from 1 February 2019 to 1 October 2023) (the "C1 Judgment Sum").

(2) The Defendants (Wellness United Inc., Jacob Logthetis (aka Iakovos Logothetis) and Angela Turovskaya) shall jointly and severally pay to the Second Claimant (Carlo Pianese) the sum of USD 191,934.46 (inclusive of interest at a rate of 6% from 1 February 2019 to 1 October 2023) (the "C2 Judgment Sum").

(3) The Defendants (Wellness United Inc., Jacob Logthetis (aka Iakovos Logothetis) and Angela Turovskaya) shall jointly and severally pay to the Third Claimant (Andre Bledjian) the sum of USD 383,683.47 (inclusive of interest at a rate of 6% from 1 February 2019 to 1 October 2023) (the "C3 Judgment Sum").

2. Judgment debt interest shall accrue on said Judgment Sums at the rate of 9% per annum pursuant to Practice Direction No.4 of 2017 (Interest on Judgments) from the date of this Order until the date of full payment, in the daily amounts shown below, viz.:

(1) On the C1 Judgment Sum, interest accrues at USD 91.98 per day;

(2) On the C2 Judgment Sum, interest accrues at USD 47.33 per day; and

(3) On the C3 Judgment Sum, interest accrues at USD 94.61 per day.

3. The Defendants shall pay to the Claimants:

(1) The Claimants' costs of the proceedings on the indemnity basis, to be assessed by the Registrar, if not agreed, such costs to include all costs reserved under previous orders of the Court made in these proceedings.

(2) Interest on those costs at a rate of 10% above the Base Rate from the date of this Order until payment.

4. The Defendants shall pay to the Claimants the sums below on account of costs, pursuant to RDC 38.13, within 14 days of the date of this Order, as follows:

(1) USD 40,000 to the First Claimant (Alex Reuter).

(2) USD 15,000 to the Second Claimant (Carlo Pianese).

(3) USD 40,000 to the Third Claimant (Andre Bledjian).

Issued By:
Delvin Sumo
Assistant Registrar
Date of issue: 27 October 2023
At: 4pm

SCHEDULE OF REASONS

Introduction

1. These Reasons are common to actions CFI-107-2021 and CFI-108-2021. With one exception, the issues are the same in both actions. The actions were formally consolidated pursuant to paragraph 1 of the Case Management Order of H.E. Justice Nassir Al Nasser dated 2 June 2023, with action CFI-107-2021 designated as the lead action. For simplicity, I have made a separate Order in each action, with these Reasons being appended to both.

2. The Trial in both actions took place before me on Monday 25 September 2023. It was estimated to last for between three and four days. However, on the Friday before the Trial, the Second Defendant, acting on behalf of all of them, made an Application for an adjournment so that they could change their legal representation because of a difference of opinion about "the defense strategy". On the morning of the Trial, the Second Defendant made it clear by e-mail to the Registry that neither he nor the other Defendants would appear at the Trial. He was interviewing prospective legal counsel to act for the Defendants in the action. He was "in active deliberations for legal representation." Formally, there being no appearance by the Defendants, the Application to adjourn the Trial was not moved. Nonetheless, I heard submissions as to why the Application should be refused on its merits. There was nothing to indicate that this apparent difference between the Defendants and their lawyers was a recent problem. It could and should have been dealt with long ago. The Defendants had throughout the course of the proceedings demonstrated a continued lack of engagement with the process. In July 2022, they had allowed default judgments to be entered against them. Those default judgments were set aside in November/December 2022. They attended the Case Management Hearing in June 2023 at which orders were made for exchange of witness statements (by 31 August 2023) and expert reports on illegality under UAE law (by 31 July 2023), but they failed to serve any witness statements or expert reports by those dates or at all. This had the consequence that the Defendants would not, without permission from the court, be entitled to call any factual or expert evidence (RDC 29.55). The Defendants indicated that they did not intend to appear at the Pre-Trial Review, re-fixed for 1 September 2023, as a result of which the hearing was discharged. All this tends to show not only that the Defendants had not done anything to prepare for Trial but also that any problems they had with legal representation was long-standing and had not arisen only at the last minute. In such circumstances, the court must approach an Application for an adjournment "with a considerable degree of caution if not scepticism", as Justice Sir David Steel put it in *Corinth Pipeworks SA v Barclays Bank Plc and others* [2010] DIFC CFI 024 at paragraph 9. The hearing has been fixed since early June 2023 and the expense and inconvenience of an adjournment would be considerable. The court should only contemplate adjourning the Trial if an adjournment is really necessary to achieve justice between the parties. I was not satisfied that an adjournment was justified and I refused the Application.

3. The Trial proceeded in the absence of the Defendants. I heard evidence from Mr Alexander Reuter ("AR"), Mr Carlo Pianese ("CP") and Mr Andre Bledjian ("AB"). Each deposed to the truth of his witness statement and there was no cross-examination. I also admitted as hearsay evidence a statement from Mr Shiladitya Majumdar concerning his role in witnessing the signing of the Guarantees given by the Defendants. Finally, I heard evidence on UAE law from Mr Mohammad Al Muhtaseb, a lawyer in the firm of Tamimi & Co in Dubai. Again, there was no cross-examination. The evidence led by the Claimants was, with the one exception mentioned above, common to both actions.

The Claimants' claims in these actions

4. The Claimants' claims against the first Defendant ("WU") arise out of two loan agreements, a Convertible Loan Agreement dated 15 February 2018 and a Bridge Loan Agreement dated 24 October 2018. The claims against the Second and Third Defendants (respectively "D2" and "D3") arise out of Personal Guarantees entered into by them on those same dates as security for those loans under those Agreements.

Convertible Loan Agreement dd. 15 February 2018 ("the 2018 CLA")

5. The claim against WU in Action CFI-107-2021 is brought to recover sums accrued due under a Convertible Loan Agreement dated 15 February 2018 (the "2018 CLA"). As is narrated in the pre-amble, the 2018 CLA consolidated sums advanced under previous convertible loan agreements on 12 December 2016 (USD 390,000) and 28 September 2017 (USD 277,082), together with accrued interest, and granted an extension of the maturity date of those loans until 31 January 2019.

6. The 2018 CLA identified the Convertible Loan Amount as USD 700,713 divided between AR (USD 275,525), CP (USD 141,775) and AB

(USD 283,413). Interest was to accrue at 6% par annum. AR, CP and AB were referred to as "the Investors". The purpose was "to fund capital and operating expenses of WU". Under the heading "Conversion", the investors were each given the right to convert the principal amount owing to them (plus accrued interest) into equity, but this right was not exercised by any of them, with the result that the sums identified and accrued interest thereon became due on the Maturity Date, 31 January 2019.

7. The 2018 CLA provided that the amounts due to the Investors thereunder should be secured inter alia by a personal guarantee by the Second and Third Defendants (respectively "D2" and "D3").

8. It also contained a Governing Law and Jurisdiction clause which provided that the agreement, and any non-contractual obligations arising out of or in connection with it, should be governed by and construed in accordance with the laws of England and Wales and that any dispute, controversy or claim arising out of or in connection with the agreement should be referred to and finally settled by the courts of the DIFC. There has been no challenge to the jurisdiction of the DIFC courts.

The Personal Guarantee dd. 15 February 2018

9. On the same date D2 and D3 executed a Personal Guarantee ("PG") in favour of AR, CP and AB guaranteeing as primary obligors, jointly and severally, unconditionally and irrevocably due and punctual performance by WU of its obligations under the 2018 CLA. That PG provided that it and any non-contractual obligations arising out of or in connection with it should be governed by the laws of England and Wales; and that any disputes arising out of or in connection with the Guarantee should be referred to the exclusive jurisdiction of the DIFC courts. There has been no challenge to the jurisdiction of this court.

Loan Agreement dd. 24 October 2018 (the "Bridge Loan Agreement")

9. On the same date D2 and D3 executed a Personal Guarantee ("PG") in favour of AR, CP and AB guaranteeing as primary obligors, jointly and severally, unconditionally and irrevocably due and punctual performance by WU of its obligations under the 2018 CLA. That PG provided that it and any non-contractual obligations arising out of or in connection with it should be governed by the laws of England and Wales; and that any disputes arising out of or in connection with the Guarantee should be referred to the exclusive jurisdiction of the DIFC courts. There has been no challenge to the jurisdiction of this court.

Loan Agreement dd. 24 October 2018 (the "Bridge Loan Agreement")

10. The claim against WU in Action CFI-108-2021 is brought to recover sums accrued due under a Loan Agreement dated 24 October 2018 (the "Bridge Loan Agreement"). As is narrated in the pre-amble, the Bridge Loan Agreement was a new separate loan agreement independent of the 2018 CLA.

11. Under the Bridge Loan Agreement the Lenders, AR and AB, agreed to make available to WU a further USD 200,000, divided equally between them (i.e. USD 100,000 each). The purpose of the advance was again to fund capital and operating expenses of WU. Interest on the advance was payable at the rate of 12% per annum. The advance was due to be repaid on the Maturity Date, 31 January 2019. The Agreement contained a similar conversion clause, entitling the lenders to convert some or all of the loan into equity, which right was not exercised; it contained provision for the advance to be secured by a personal guarantee from D2 and D3; and it contained a Governing Law and Jurisdiction Clause in the same form and to the same effect. Again, there has been no challenge to the jurisdiction of this court.

The Personal Guarantee dd. 24 October 2018

12. Once again, on the same date D2 and D3 executed a Personal Guarantee ("PG") in favour of AR and AB (CP was not a party to the Bridge Loan Agreement) guaranteeing as primary obligors, jointly and severally, unconditionally and irrevocably due and punctual performance by WU of its obligations under the Bridge Loan Agreement. That PG provided that it and any non-contractual obligations arising out of or in connection with it should be governed by the laws of England and Wales; and that any disputes arising out of or in connection with the Guarantee should be referred to the exclusive jurisdiction of the DIFC courts. And again, there has been no challenge to the jurisdiction of this court.

Undisputed facts

13. A number of facts are not in dispute, nor could they be. It is not in dispute that the above Agreements were entered into, i.e. the 2018 CLA, the Bridge Loan Agreement and the Personal Guarantees. It is not in dispute that the sums of money mentioned in the 2018 CLA and in the Bridge Loan Agreement were in fact advanced to WU. It is not in dispute that the Claimants - AR, CP and AB under the 2018 CLA and AR and AB under the Bridge Loan Agreement - did not elect to convert their loans into equity and that therefore the advances fell due for repayment on the respective Maturity Date. And it is not in dispute that the loans were not repaid on those dates and have still not been repaid.

14. That these facts are undisputed is made clear in the Agreed Case Memorandum prepared in each action pursuant to the directions of the DIFC Court Registrar made on 7 April 2023 (and see RDC 26.8). These facts are spoken to by the Claimants' witnesses and corroborated by the bank statements, correspondence and other documentation filed in the process to which they refer in their evidence. They have not been cross-examined on their evidence. There has been no evidence adduced by the Defendants to contradict this. Accordingly, I find these facts proved.

15. Without more, those findings would be sufficient to entitle the Claimants to succeed. But in their pleadings, the Defendants raise a number of defences. I consider these below.

The Defendants' case

16. The Defendants' case can be taken from their Amended Statement of Defence which is in the same terms in each action. Three lines of defence are put forward:

(a) that the 2018 CFA is illegal under the laws of the UAE which apply to the Claimants because at the time of the transaction they were

based in the UAE;

(b) that there was a conflict of interest between the Claimant CP and D3, CP being a lawyer in a law firm in Dubai who advised D3 on certain matters pertaining to UAE and English law; and

(c) that the Personal Guarantee(s) is/are unenforceable since the signatures on it/them were not properly witnessed in contravention of s.1(3) of the Law of Property (Miscellaneous Provisions) Act 1989.

I shall deal with each in turn.

Illegality

17. The Defendants' case on illegality under UAE law relies on Articles 458 and 459 of the UAE Penal Code 2021, the relevant portion of which reads as follows:

"Article 458

Any person who lends another physical person a loan for an interest rate in return for late payments, and that is in any type of civil and commercial transactions, and whether the said interest is explicit or implicit, shall be liable to a jail sentence for a period not less than one (1) year and a fine not less than AED fifty thousand (50,000).

Article 459

Any physical person who is habitually engaged in practising interest lending, shall be sentenced to temporary imprisonment for a period not exceeding five (5) years and a

fine not less than AED one hundred thousand (100,000)."

Under reference to Articles 129 and 210 of the UAE Civil Transactions Law, it is argued that since one of the necessary elements for the formation of a contract is that it must be for a "licit cause", i.e. some lawful purpose, and a contract for an illicit (unlawful) purpose is void and unenforceable, then the two loan agreements which involve the loan of money for interest are themselves void and unenforceable.

18. There are two straightforward answers to this. First, as indicated in the text of Article 458 of the Penal Code quoted above - in fact the UAE Penal Code 2021 was not in force at the material time, but its predecessor, the 1987 Penal Code, where the relevant provisions are at Articles 409 and 412, was in similar terms so no point is taken on this - the law is intended to strike at interest-bearing loans to a "physical" or "natural" person and does not strike at loans made to companies for the purposes of their business. And second, that the loan agreements are governed by English law and do not anticipate or require performance in the UAE. I deal with each in turn.

19. The Claimants' expert witness confirmed, as one would expect, that there is no prohibition in UAE law on loans by individuals to companies for the purpose of their business. Articles 409 to 412 of the 1987 Penal Code will not apply to the transactions under the two loan agreements because they are not transactions between natural persons. Articles 710 and 714 of the UAE Civil Code prohibits interest-bearing loans in the context of a civil relationship. But interest-bearing loans are permitted in the context of a commercial relationship: Article 76 of the Federal Commercial Transactions Law. Support for this is to be found in the decision of the Dubai Court of Cassation (Commercial Appeal in Cassation No 89 of 2021). What amounts to a commercial relationship is a question of fact, on which clear guidance is difficult to find. The Dubai Court of Cassation has found a loan with the purpose of developing the business activities of the borrowing company to constitute a loan made in the context of a commercial relationship: Cassation Appeal No. 1054 of 2019 (commercial appeal). Given that the loans were expressly stated to have been provided with the purpose of funding the capital and operating expenses of WU, and that there was an option to convert the loan amounts into shares in the company, a UAE Court was likely to consider that the loan agreements were made in the context of a commercial relationship and were valid.

20. There was of course no cross-examination and no conflicting evidence on the point. The above explanation appears to me to make sense and I accept it.

21. On that basis, the loan agreements are not illegal or "illicit" under UAE law, and this illegality defence fails.

22. In any event, even if I had concluded that the loan would be illegal under UAE law, that is not the end of the matter. The loan agreements are expressly subject to English law. It is English law, therefore, which determines questions as to the existence, validity, effect, interpretation and performance of the agreements: see Articles 8 and 9 of DIFC Law No. 10 of 2005, Article 8(2)(c) of DIFC Law No. 3 of 2004 and *Sangeev Sawhney v Credit Suisse* (CFI 062/2021) at para.118. There is nothing illegal about such loan agreements under English law. True it is that the courts in England will not enforce a contract if that contract, or an act required or intended to be performed thereunder, is illegal by the place of performance: see *Ralli Bros v Compania Naviera Sota y Aznar* [1920] 2 KB 287, *Foster v Driscoll* [1929] 1 KB 470. (I have telescoped what are often regarded as two separate principles, one concerned with what the contract stipulates or requires and the other looking to the intention of the parties, but for present purposes the difference between the two principles are of no significance: for a recent discussion of the principle see Cockerill J in *Magdeev v Tsvetkov* [2020] EWHC 887 (Comm) at paras. 297-327.) However, the loan agreements do not necessitate performance in the UAE - the loan agreements identify the Claimants as nationals of Germany and Italy and the borrower, WU, as a company incorporated in the British Virgin Islands. They do not stipulate for payment/ repayment of the loan in any specific place. The Defendants have not asserted that in some way the loan agreements were intended to be performed in the UAE and in any case, they have adduced no evidence to support any such case.

23. In those circumstances, the illegality defence fails even if, contrary to my earlier finding, the loan agreements were illegal under UAE law.

Conflict of interest involving CP and D3

24. The Defendants assert that there was a conflict of interest between the claimant CP and D3, CP being a lawyer in a law firm in Dubai and in that capacity having advised D3 on certain matters pertaining to UAE and English law. It is said that this renders the 2018 CLA void. It has no impact on the Bridge Loan Agreement with which CP has no involvement.

25. I can deal with this briefly. The Defendants' case as pleaded in paragraph 14 onwards of their Amended Statement of Defence is wholly lacking in substance. The most charitable reading of it is that CP gave some advice to D3 on matters of UAE law and English law. It is not said, for example, that the advice related to the 2018 CLA or its predecessor loan agreements. It is not said how any advice given has caused any prejudice to D3. D3 provided a witness statement in November 2022 in support of the Defendants' Application to set aside the default judgment, but the Defendants have not sought to rely on it at this Trial. In any event I have read CP's witness statement. It has not been challenged and I accept it as true.

26. There is nothing in this point and I reject it.

Contravention of s.1(3) of the Law of Property (Miscellaneous Provisions) Act 1989

27. This line of defence only applies to the claims against D2 and D3 under the Personal Guarantees.

28. In paragraph 17A of their Amended Statement of Defence the Defendants say that "in contravention of s.1(3) of the Law of Property (Miscellaneous Provisions) Act 1989, no proper witness was physically present to attest the deed" and that in consequence the Claimants cannot recover any amount from D2 and/or D3 under the Guarantees.

29. The Personal Guarantee dated 15 February 2018 or a copy thereof was produced in evidence. It bears the signatures of all relevant parties and each is duly attested by Shiladitya Majumdar. Mr Majumdar's statement to this effect was relied on as hearsay evidence. I accept that evidence.

30. So far as concerns the Personal Guarantee dated 24 October 2018, it is accepted by the Claimants that the signatures of some of the signatories were not attested. The consequence, as they accept, is that that Guarantee is not enforceable as a deed. The advantage of being able to enforce it as a deed is that it is not necessary to prove that any consideration was given for the Guarantee. But the Guarantee can still be enforced as a contract: see *Signature Living Hotel Ltd v Andrei Sulyok and another* [2020] EWHC 257 (Ch). In this case there is no difficulty with showing consideration: the Guarantee was part and parcel of an interlinked transaction involving a commercial loan to WU. That is sufficient.

31. This line of defence therefore fails.

Conclusions on liability

32. For all these reasons, I find that the Claimants claims under the 2018 CLA, the Bridge Loan Agreement and the Personal Guarantees dated 15 February and 24 October 2018 all succeed in full.

33. The Claimant had an alternative case on restitution in the event that the Defendants' defences were successful. Given my conclusions set out above there is no need for me to consider that line of argument.

Interest

34. The 2018 CLA provided for interest at the rate of 6% per annum on the sums outstanding thereunder. The applicable rate under the Bridge Loan Agreement is 12% per annum. The principal sum awarded under those Agreements includes interest at those rates up to the beginning of October 2023.

35. Judgment Debt interest will accrue at the rate of 9% per annum from the date of this Order until payment.

Costs

36. The Claimants are entitled to their costs of this action, to include all costs reserved by previous orders. Those costs will be assessed by the Registrar on the indemnity basis. I am satisfied that the conduct of the Defendants - their failure to engage in the process as described above - justifies an order for payment of costs in both actions on the indemnity basis, and I so order.

37. On 4 April 2023, the Claimants made a Part 32 Offer in each action (RDC Part 32). Those offers were not accepted by the Defendants. The Claimants have now obtained judgments in their favour at least as favourable to them as the proposals contained within their offers: RDC 32.49. In those circumstances, I shall order the Defendants to pay interest on those costs in each action at the rate of 10% above the Base Rate from the date of this Order until payment: RDC 32.51(3). The Registrar will take account of this when assessing the costs of these actions.

38. I am satisfied that these are appropriate cases in which to order the Defendants to pay an amount on account of costs before those costs are assessed: RDC 38.13. The Order in each case gives effect to that.