Neutral Citation Number: [2025] EWCA Civ 14

Case No: CA-2023-002582

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (KBD)
Mr Justice Andrew Henshaw
CL-2022-000274

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20 January 2025

Before:

LORD JUSTICE PHILLIPS
LORD JUSTICE SNOWDEN
and
LORD JUSTICE ZACAROLI

- -

Between:

CLIFFORD CHANCE LLP **CLIFFORD CHANCE EUROPE LLP**	**Claimants/ Respondents**
- and -	
SOCIÉTÉ GÉNÉRALE S.A.	**Defendant/ Appellant**

- -
- -

Graham Chapman KC and Seohyung Kim (instructed by **Signature Litigation LLP**)
for the **Defendant/Appellant**
Andrew Onslow KC and James McWilliams (instructed by **Reed Smith LLP**)
for the **Claimants/Respondents**

Hearing date: 8 October 2024

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Approved Judgment

This judgment was handed down remotely at 2 pm on Monday 20 January 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives

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Lord Justice Phillips:

1. In February 2008 the defendant ("SocGen") engaged the London branch of the first claimant ("CC LLP") to act as its solicitor in relation to a claim against Goldas Kuyumculuk Sanayi Ithalat Ihracat AS and associated companies (collectively "Goldas") in the Commercial Court in London ("the Goldas Litigation"). The claim was eventually struck out in April 2017. SocGen asserts that CC LLP was negligent in its handling of the Goldas Litigation and seeks damages in excess of €140 million.

2. The main issue on this appeal is whether CC LLP was party to a framework agreement between SocGen and the second claimant ("CC Europe") executed in December 2012 (and revised and extended in 2015), so as to be bound by the exclusive jurisdiction clause in favour of the High Court of Paris contained in article 12 of the General Conditions annexed to that agreement ("the 2012 Framework Agreement"). The applicable law of the 2012 Framework Agreement was the law of France.

3. CC LLP maintains that it was not party to that agreement, but was (and remained) separately engaged by SocGen under an implied retainer, governed by English law, which arose when it was engaged in 2008. CC LLP and CC Europe commenced these proceedings seeking declarations of non-liability to SocGen and further, in the case of CC Europe, a declaration that it was not acting for SocGen in the Goldas Litigation.

4. By an application issued on 27 January 2023, SocGen challenged the jurisdiction of the English court, relying on the exclusive jurisdiction clause in the 2012 Framework Agreement. Alternatively, SocGen asserted that the French court, and not the English court, was the most appropriate forum for the determination of the dispute.

5. On 27 October 2023 Henshaw J ("the Judge") dismissed the application, holding that (i) CC LLP had the better of the argument as to whether it was bound by the exclusive jurisdiction clause in the 2012 Framework Agreement; (ii) although CC Europe was bound by that exclusive jurisdiction clause, there were exceptional reasons to refuse a stay of CC Europe's claim; and (iii) the courts of France were not clearly and distinctly the more appropriate forum.

6. SocGen now appeals the first two elements of the Judge's decision with permission granted by Males LJ.

The essential facts

7. The following summary of the facts relevant to SocGen's appeal is drawn from the Judge's more detailed account between [6] and [81] of his judgment.

The parties

8. SocGen is an international bank incorporated and headquartered in France and registered as an overseas company in England and Wales.

9. CC LLP was incorporated in England and Wales on 1 November 2006 and carries on its legal practice from London and through overseas branches, including in Dubai. CC LLP also controls subsidiary entities through which it provides legal services in other

jurisdictions. CC LLP assumed the role of the principal Clifford Chance entity in December 2006, replacing Clifford Chance Limited Liability Partnership ("CC USA"), a limited liability partnership incorporated under the laws of the State of New York.

10. CC Europe was incorporated on 24 March 2005 in England and Wales, is one of the subsidiary entities controlled by CC LLP since December 2006 and is the legal entity through which Clifford Chance provides legal services in France. Prior to CC Europe's incorporation, Clifford Chance provided legal services in France through Clifford Chance SELAFA ("CC Selafa"), a company incorporated under the laws of France. The legal practice of CC Selafa was transferred to CC Europe on 6 July 2005.

The 2003 Framework Agreement

11. SocGen and CC Selafa (defined as "the Firm") executed an undated framework agreement covering the period 1 January 2003 to 31 December 2005 ("the 2003 Framework Agreement"), agreeing the "principles of [SocGen's] purchasing policy in the area of the services provided by the Firm". The CEO of CC Selefa, Yves Wehrli, signed on its behalf.

12. The 2003 Framework Agreement was expressed to have worldwide application, article 8.1 setting maximum hourly fee rates chargeable by the Firm in France, in the United Kingdom and in the United States, and Appendix 6 providing for maximum hourly rates discounted from the "Clifford Chance guideline charge rates" in 23 Clifford Chance offices worldwide. The applicable law was the law of France, but there was no jurisdiction clause.

The 2006 Framework Agreement

13. In September 2006 SocGen and CC Europe (replacing CC Selafa as "the Firm") entered what was described as "Amendment No 1" to the 2003 Framework Agreement, extending its term retroactively from 1 January 2006 to 31 December 2008 ("the 2006 Framework Agreement"). Mr Wehrli, now Managing Partner of CC Europe, signed on its behalf.

14. The maximum hourly rates for France, the United Kingdom and the United States were updated in article 3 and for all Clifford Chance offices worldwide in Appendix 1. Article 5 provided that the Firm would maintain professional indemnity insurance, stating that the certificate of insurance was at Appendix 2: the certificate so appended was dated 13 July 2005 and verified insurance in the name of Clifford Chance LLP (which was presumably CC USA as at that date). Appendix 4 listed contacts for each Clifford Chance office, including London.

SocGen's engagement of CC LLP in 2008

15. Goldas is an international gold jewellery manufacturer based in Turkey and Dubai. In 2007 and 2008 SocGen supplied 15.725 metric tonnes of gold bullion to Goldas on a consignment basis but subsequently learned that Goldas had begun using the gold without paying for it. The bullion agreements were subject to English law and jurisdiction clauses.

16. SocGen approached CC Europe in Paris for assistance with its difficulties with Goldas ("the Goldas Dispute"), but instead, on 20 February 2008, CC Europe referred the matter to Clifford Chance in Dubai (a branch of CC LLP) and that office was duly instructed by SocGen. However, on 26 February 2008 the matter was passed to Clifford Chance in London (also an office of CC LLP). The London office was instructed by SocGen and the designated Partner for the matter was Denis Brock, a Partner in the Litigation & Dispute Resolution practice at CC LLP. On transfer to CC LLP in London, the file for the Goldas Dispute at CC LLP in Dubai was closed and a fresh file was opened in London. For the remainder of Clifford Chance's involvement, the Goldas Dispute remained with CC LLP in London.

17. No formal written retainer was agreed between SocGen and CC LLP to govern the instruction. CC LLP (and not CC Europe) invoiced SocGen in respect of professional fees and disbursements in relation to the Goldas matter, and SocGen made payment to CC LLP. On 4 March 2008, in sending CC LLP's first invoice, Mr Brock referred to having discussed with SocGen at a meeting in Paris on 28 February 2008 that CC LLP's fees would be "affected by the application of agreed rates for SocGen".

The start of the Goldas Litigation

18. In March and April 2008 SocGen, represented by CC LLP, obtained worldwide freezing orders against Goldas in the Commercial Court in London and issued claim forms as required by those orders.

19. There were immediate complaints that the claim forms had not been served validly on Goldas in Turkey and Dubai, but in any event the proceedings were not progressed.

The 2009 Framework Agreement

20. A further Framework Contract was entered between SocGen and CC Europe (again defined as "the Firm") in respect of the period from 1 January 2009 to 31 December 2011 ("the 2009 Framework Agreement"). Mr Wehrli signed for CC Europe "acting as shareholder".

21. The substantive provisions were similar to those in the prior agreements, relating to engagements worldwide. Appendix 5 set out maximum hourly rates by country and level of fee-earner and also provided for rebates on the rates, the rebate for Great Britain being 7%.

22. The 2009 Framework Agreement was the first to contain a jurisdiction clause, article 18 providing:

> "GOVERNING LAW
>
> The Contract shall be governed by French law.
>
> Any dispute relating to fees shall be referred to the Bâtonnier [President] of the Bar Association of the Paris Bar in the first instance.
>
> Any other dispute must be brought before the High Court of Paris."

Application of the agreed hourly rates and reporting

23. The Judge recorded the following:

> "41. Invoices for work on the Goldas Dispute, for example one dated 5 August [2009], indicate that CC LLP applied the agreed hourly rates, i.e. the updated rates set out in Appendix 5 to the 2009 Framework Agreement, and the agreed 7% discount.
>
> 42. Reports dating from at least 2010 indicate that CC LLP was providing to SocGen periodic reports that were compliant with the reporting requirements set out in the 2009 Framework Agreement…"

The 2012 Framework Agreement

24. On 12 April 2012 SocGen and CC Europe executed a framework agreement relating to the period 1 January 2012 to 31 December 2016, but this time CC Europe was expressly stated to be:

> "..acting in its own name and on behalf of all offices of Clifford Chance LLP, represented by Mr Yves Wehrli, acting as Managing Partner, duly authorised for the purposes hereof,
>
> Hereinafter referred to as "CLIFFORD CHANCE or the "Firm"".

25. By 2012, SocGen had introduced a standardised set of "Terms and Conditions Applicable to the Relationship between the [SocGen] Group and its Entities and Law Firms", and these formed the first part of the 2012 Framework Agreement. Article 12 of the General Terms provided for French law and jurisdiction in the same terms as article 18 of the 2009 Framework Agreement as set out in paragraph 22 above.

26. There then followed "Special Conditions Applicable to the Relationship between the [SocGen] Group and its Entities and Clifford Chance". The Judge summarised the relevant Special Conditions as follows:

> 50. Article 3 dealt with contact persons. Article 3.2 stated:
>
> "3.2. In each country where the SG Group and Clifford Chance operate, the relationship is managed cumulatively by:
>
> (a) the legal officer(s) of the local SG Group entity(ies) (see Appendix 5)
>
> (b) the associate lawyer in charge of the Clifford Chance local office (see Appendix 6)"
>
> The contact list in Appendix 6 listed relationship partners by country, including the UK.

51. Article 4 concerned preferential price conditions between Clifford Chance and the SocGen Group, and stated:

> "4.1. In accordance with Article 5 of the Terms and Conditions, the parties agree on the following preferential pricing conditions for the SG Group's own account operations:
>
> 4.1.1. : Maximum hourly rates for France, UK, US, by seniority (see Appendix 7);
>
> 4.1.2. : Maximum fixed prices per service, based on the description in the appendix, for France, UK, US (see Appendix 8);
>
> 4.1.3. : Maximum hourly rates for countries other than France, UK and US by seniority (see Appendix 9);
>
> 4.2. The parties favour the use on a case-by-case basis, at SG's request or on Clifford Chance's proposal, of innovative alternative invoicing methods, including but not limited to:
>
> - Blended hourly rates, where a single hourly rate applicable to any type of work performed by any lawyer involved in a file (or depending on the seniority of the lawyer) is provided.
>
> - Fixed-fee arrangements, paid according to the type of file, for any file falling within a particular category, geographic area, period or other.
>
> - Flat-fee arrangements, for each stage of a case, distinguishing between high-value-added work phases and more routine phases.
>
> - Deal-based billings, established in advance and for the entire operation, including a reduction in fees in the event of failure of the operation
>
> . …"
>
> (follow[ed] by a number of further alternative variant fee structures)".

Subsequent work on the Goldas Litigation

27. CC LLP continued to advise SocGen in respect of the Goldas Dispute, pursued by way of insolvency proceedings in Turkey. No further attempts were made to serve the claim forms in the Goldas Litigation. As a result, the claim forms expired and SocGen's claims against Goldas in England became time-barred in 2014.

The 2015 amendment

28. Amendment No.1 to the Special Conditions of the 2012 Framework Agreement extended its term to 31 December 2017, repeating the capacity in which CC Europe

was acting and that Mr Wehrli was executing the amendment and was duly authorised to do so. Save for updating the price conditions, the Special Conditions remained unchanged in all material respects.

The strike-out of the Goldas Litigation

29. On 9 February 2016 Goldas applied to strike out the claims in the Goldas Litigation, that application being granted on 3 April 2017. CC LLP continued to apply the updated agreed hourly rates in its invoices for work, including in relation to the strike-out application.

30. CC LLP's retainer was terminated in May 2017. The strike out was upheld on appeal on 15 May 2018.

The dispute between SocGen and CC LLP and CC Europe

31. By letter dated 23 February 2022 SocGen served on CC Europe a "letter de mise en demeure", the equivalent to a Letter of Claim.

32. CC LLP and CC Europe issued the claim form in these proceedings on 30 May 2022, serving SocGen at its address in Canary Wharf. SocGen filed an acknowledgement of service on 20 June 2022 in which it stated its intention to dispute the jurisdiction of this court. Following expiry of an extension and standstill agreement, SocGen issued its application contesting the jurisdiction on 27 January 2023.

33. Among the evidence served was a witness statement dated 7 July 2023 from Christopher Perrin, a partner in CC LLP who was the firm's Executive Partner and General Counsel from 2003 to 2021 (presumably, in fact, of CC USA until CC LLP assumed the role of principal Clifford Chance entity in December 2006). Mr Perrin stated as follows:

> "6. It has been a longstanding matter of firm policy, brought about at my instigation after the merger I have described at paragraph 4 above, that any Clifford Chance partner wishing to enter into an agreement with a client binding any Clifford Chance entity beyond the office or offices in that partner's own country is required to refer that client agreement to "the centre". I do not now recall precisely when that policy was implemented but I am confident that it was in place by 2004 and may in fact have been in place in 2003. For the period with which these proceedings are concerned, the policy in practice meant that the agreement in question needed to be referred to me or to Angela Robertson, the Head of the London 'Clearance Centre' (one of four offices managing client and work acceptance, the others being in New York, Frankfurt and Hong Kong).
>
> 7. I do not recall approving any of the Framework Agreements and they do not bear any sign that they had been vetted and approved by me or Angela Robertson. By way of example, we would never have approved a draft which was to bind the firm worldwide if it was not in English, or translated into English. In the circumstances, I believe that no approval was either sought or given to CC Paris or CC Europe in

> respect of the Framework Agreements. I infer that no such approval was sought - certainly in the case of all of the Framework Agreements after the 2003 Agreement - because those responsible for negotiating the same did not understand the relevant agreement to bind any Clifford Chance entity beside CC Paris or CC Europe.
>
> 8. In the circumstances, to the extent - which I make clear I do not accept - that the Framework Agreements do purport to bind CC LLP, they were entered into by CC Paris and CC Europe without authority from CC LLP."

34. SocGen commenced its own proceedings against CC Europe and CC LLP in France, with the first hearing taking place on 7 March 2024.

The main issue: whether CC LLP was bound by the French jurisdiction clause

The Judge's judgment

35. The Judge recorded at [65] that it was common ground that the main principles of contractual interpretation in French law are settled and since 2016 have been codified as part of the French Civil Code. He identified the following key points of relevance:

> "i) Where the wording of a clause is unambiguous, it must be applied purely and simply without distortion.
>
> ii) If there is ambiguity in the wording of a clause, the court must first look to ascertain the common intention of the parties rather than the literal meaning of its terms. In doing so, the court will consider (in no particular order) (a) the remainder of the contract, including any preamble, (b) other documents relevant to the contract, (c) pre-contractual negotiations and (d) post-contract conduct.
>
> iii) If the common intention of the parties cannot be found, the court will interpret the meaning of the clause in question by reference to the meaning that a reasonable person in the same position as the contracting parties would attribute to it.
>
> iv) A contract should be interpreted, insofar as possible, to: a) ensure consistency with the contract as a whole; and b) favour an interpretation that confers an effect to each clause rather than one that does not."

36. At [66] the Judge set out the relevant principles of the French law of agency, taken from SocGen's evidence:

> "9.1 The principle of "representation" allows an agent to bind a principal to a contract as though that principal were, itself, a party.

> 9.2 Usually, for a principal to be bound to a contract in this manner it is required that (a) the agent is vested (in the case of commercial parties, ordinarily by agreement) with the power of agency and acts within the limits of the powers given to it; (b) the agent assumes the capacity of agent; and (c) the agent has the required intention to enter into a contract.
>
> 9.3 Where no power has been conferred on a purported agent or an agent exceeds the power given to it, the general position is that the agent will not bind the principal and the relevant contract will be unenforceable against the principal.
>
> 9.4 However, under a well-established legal principle of the 'apparent mandate', a contract binds the principal "*even in the event of absence or exceeding powers, when the co-contracting party acts in good faith and has serious reason to believe that the agent had the capacity to deal with [it]".* This principle was codified under Article 1156 of the revised Civil Code which provides that a contract will be enforceable against the principal where *"the contracting third party has legitimately believed in the reality of the agent's powers, in particular, due to the principal's behaviour or statements"*."

37. At [79] the Judge recorded that a party alleging a binding jurisdiction agreement needs to show a good arguable case, going on to state:

> "In practice this means that:
>
> i) The party relying on the existence of the agreement must supply an evidential basis showing that it has the better argument (and not much the better argument).
>
> ii) If there is an issue of fact about it, or some other reason for doubting whether it applies, the court must take a view on the material available if it can reliably do so.
>
> iii) The nature of the issue and the limitations of the material available at the interlocutory stage may be such that no reliable assessment can be made, in which case there is a good arguable case for the existence of the agreement if there is a plausible (albeit contested) evidential basis for it.
>
> (*Dicey* § 12-083, summarising the restatement in *Kaefer Aislamientos SA de CV v AMS Drilling Mexico SA de CV* [2019] EWCA Civ 10 of the tests as formulated in *Brownlie v Four Seasons Holdings Inc* [2017] UKSC 80, and *Goldman Sachs International v Novo Banco SA* [2018] UKSC 34)."

38. The Judge, rightly in my view, started his analysis by addressing the contractual position when CC LLP was instructed by SocGen in February 2008. At [84] he recognised that the 2006 Framework Agreement was in force at that time as between

SocGen and CC Europe, but that CC LLP had not even been in existence when the 2003 Framework Agreement and the 2006 Framework Agreement were made. Between [86] and [94] the Judge considered, and rejected, SocGen's contention that CC LLP had become party to the 2006 Framework Agreement by conduct, concluding that any contract of retainer that arose was an inferred one and that it was very likely that such a retainer did arise, subject to the law of England, as the place where CC LLP was habitually resident, and where its relevant branch was providing services in English litigation.

39. At [98] the Judge rejected the further suggestion that CC LLP became party to the 2009 Framework Agreement, pointing out that it was even less likely that "…an existing retainer, governed by English law and relating to English litigation, would be converted in mid stream to a French law contract subject to exclusive French jurisdiction".

40. Turning to the 2012 Framework Agreement, the Judge recognised at [101] that a new development was that CC Europe had stated that it entered it (and the amendment in 2015) "*acting in its own name and on behalf of all offices of Clifford Chance LLP".* This new provision, the Judge stated at [102], gave rise to two questions: first, whether CC LLP was bound as principal to the 2012 Framework Agreement, and second, if it was bound, whether that meant that the choice of law and jurisdiction provision applied to individual retainers of CC LLP anywhere in the world, including in relation to existing engagements.

41. As to the first question, the Judge recorded at [103] that SocGen had not made any positive assertion that CC Europe had CC LLP's actual authority to bind it, nor that SocGen had any specific state of mind or belief about any such actual authority. The Judge expressed the view that it was therefore not surprising that CC LLP's response on the question of actual authority was relatively concise, in the form of the evidence of Mr Perrin set out in paragraph 33 above. The Judge rejected SocGen's criticism of that evidence, and held that it allowed a reliable assessment to be made that no such authority was in fact given, setting out his reasoning as follows:

> "104. SocGen criticises this evidence on the basis that it is based on recollection and Mr Perrin does not make clear what enquiries he has made about contemporary documents. In addition, it might be said in SocGen's favour that (a) the fact that CC Europe stated, in the Framework Agreements, that it was acting on behalf of CC LLP in itself constitutes evidence that CC Europe had CC LLP's authority, and (b) the fact that CC LLP subsequently abided by the fee maxima set out in the 2012 Framework Agreement is evidence that it was aware of that agreement, and thus of the fact that CC Europe had stated that it was entering into the 2012 Framework Agreement on CC LLP's behalf, yet did not demur from that statement.
>
> 105. However, those points have to be weighed against Mr Perrin's evidence, which is the only direct evidence on the point, and in the context of the inherent probabilities. I find it improbable that CC LLP would have given authority to CC Europe to bind it to an agreement of this nature without some careful vetting process having taken place. More plausibly, CC Europe may have taken the view that, by stating that it was acting on behalf of 'all offices' of Clifford Chance, it was

> confirming that (as in previous Framework Agreements) it was itself agreeing how matters would be handled both in its own and in CC LLP's various offices, as opposed to directly binding CC LLP to the Framework Agreement. At any rate, I am not persuaded that SocGen has the better of the argument that CC Europe had CC LLP's actual authority to bind CC LLP to the Framework Agreements. I consider that Mr Perrin's evidence allows a reliable assessment to be made that no such authority was in fact given."

42. As for apparent authority, at [106] the Judge pointed out that SocGen had not adduced any direct evidence of any behaviour or statements by CC LLP indicating that CC Europe was authorised to bind it to the Framework Agreements. The Judge held that the fact that CC LLP subsequently abided by the agreed rates and reporting mechanisms was not sufficient, since it was equally consistent with CC LLP simply having lived up to undertakings given to SocGen by CC Europe alone from 2008 onwards. Nor had SocGen adduced direct evidence of any actual belief by SocGen in the existence of such authority. The Judge concluded that SocGen had not shown a plausible evidential basis that would support an argument based on the apparent mandate doctrine.

43. Turning at [107] to the second question he had identified, the Judge held that, even if CC LLP were bound as principal to the 2012 Framework Agreement, he did not consider that the choice of law and jurisdiction provisions applied to individual retainers of CC LLP anywhere in the world, still less to existing arrangements, stating:

> "It would have been surprising for a choice of French law and the jurisdiction of the Batonnier/the High Court of Paris to have been made in relation to retainers between all SocGen and all Clifford Chance entities, all over the world and in relation to all kinds of case, including litigation governed by local rules of procedure and professional duties. Conversely, the choice of law and jurisdiction made sense as governing the overarching relationship between SocGen and CC Europe constituted by the Framework Agreements themselves, and the local relationship between SocGen and CC Europe in Paris. The Framework Agreements did not unambiguously state that that choice of law and jurisdiction would apply to individual retainers around the world, and the available evidence does not support the view that the parties intended that."

44. Accordingly, the Judge concluded at [108] that SocGen did not have the better of the argument that the jurisdiction clause in the 2012 Framework Agreement (as originally executed or as amended) bound CC LLP. He considered that CC LLP had the better of the argument.

The basis of SocGen's appeal

45. SocGen's single ground of appeal on this aspect asserts that the Judge should have found that CC LLP was bound by an exclusive jurisdiction clause appearing in one or more of the Framework Agreements. The particulars provided of that assertion, which it is necessary to set out almost in full, are as follows:

> "(1) The Judge held that "*the 2003 and 2006 Framework Agreements set out principles and procedures that were evidently intended to be applied to work done for SocGen entities by Clifford Chance entitles across the world"* [87]. However, and in spite of that finding, the Judge wrongly held that Clifford Chance entities were nonetheless not bound by the terms of the 2003 and 2006 Framework Agreements [87]. The Judge wrongly reached a similar conclusion in respect of the 2009 Framework Agreement [96] and the 2012 and 2015 Framework Agreements [106].
>
> (2) In effect the Judge found that although it was intended all Clifford Chance entities, wheresoever located, would adhere to the terms of the Framework Agreements, they were nevertheless not bound by the terms of the Framework Agreements. This is a conclusion that is all the more surprising for the 2012 and 2015 Framework Agreements, which as the Judge correctly found stated that CC Europe entered into them "*acting in its own name and on behalf of all offices of Clifford Chance LLP*" [101].
>
> (3) The Judge's interpretation would lead to unpredictable and unnecessary uncertainty. It would lead to the result of SocGen having no recourse against CC LLP for it failing to adhere to the terms of the Framework Agreement despite it being intended by all that CC LLP was to adhere to it, and, in the context of the 2012 and 2105 Framework Agreements, CC Europe having entered into those Framework Agreements on CC LLP's behalf.
>
> (4) The Judge's construction is wrong as a matter of French law…in that it fails to give effect to the wording of the agreements and/or fails to reflect the true intentions of the parties and/or fails to accord with the meaning that a reasonable person in the position of the parties would understand the agreements to have. The proper interpretation is that the Framework Agreements intended to bind and did in fact bind all of the SocGen entities and all of the Clifford Chance entities worldwide."

46. It is apparent from the above that the pleaded basis of SocGen's appeal on this aspect is that the Judge erred as a matter of interpretation of the Framework Agreements, asserting that the Judge failed to give effect to the true intention of the parties to those agreements that all Clifford Chance entities would be bound by their terms. The assumption necessarily underlying that contention is that CC LLP was one of the parties to the Framework Agreements.

47. However, it is entirely clear that the Judge did not decide the question of whether CC LLP was bound by the Framework Agreements as a matter of interpretation, but on the basis that SocGen did not have a good arguable case that CC LLP was, or became, a party to them. In relation to the 2012 Framework Agreement (and its 2015 amendment), the Judge proceeded on the basis that CC Europe purported to be acting on behalf of CC LLP (that being clear as a matter of interpretation of the express wording), but held that, on the evidence, SocGen could not show a good arguable case that CC Europe had either actual or apparent authority to bind CC LLP.

48. It follows that SocGen's ground of appeal does not challenge the Judge's findings that CC LLP was not a party to the Framework Agreements. In relation to the 2012 Framework Agreement, it does not challenge the Judge's assessment of the evidence (in particular that of Mr Perrin) and his conclusion on the issue of CC Europe's authority to bind CC LLP. Instead SocGen relies on a "bootstraps" argument that CC LLP should be held to be bound by the Framework Agreements because the wording of those agreements show an intention that it would be so bound.

49. It is also notable that the ground of appeal does not challenge the Judge's alternative finding that, even if CC LLP was a party to the 2012 Framework Agreement (or the amended 2015 version) so as to be bound by the provisions as to jurisdiction, those provisions nevertheless did not apply (as a matter of interpretation) to CC LLP's existing English law retainer.

50. SocGen's skeleton argument also advanced the appeal on the basis of interpretation and did not even mention (let alone challenge) the Judge's assessment of the evidence and findings as to authority in relation to the 2012 Framework Agreement (and the 2015 amendment). The sole reference to the issue of authority, in paragraph 34, was as follows:

> "If and to the extent that CC Europe did not have actual authority to enter into an agreement binding on CC LLP (itself a surprising conclusion), a failure within the firm's internal arrangements for approving a contract should not result in a client of the firm being left with an agreement of extremely limited value binding only CC Europe and not other Clifford chance entities with whom it dealt…"

51. That single sentence neither challenges the Judge's finding on authority, nor explains the legal basis on which CC LLP could be bound by the terms of an agreement it did not authorise.

52. On the other hand, SocGen's skeleton argument did challenge the Judge's alternative finding as to the scope of the choice of law and jurisdiction provisions, contending that the Judge took a restrictive view of those clauses, in particular placing too much emphasis on the referring of fee disputes to the Batonnier of the Paris Bar.

53. In the course of his oral submissions on behalf of SocGen, Mr Chapman relied on only the 2012 Framework Agreement (and its amended 2015 version), as that is the agreement which both contains a jurisdiction clause and purports to bind CC LLP. Mr Chapman explained that the appeal was intended to be a challenge to the Judge's findings that CC Europe lacked authority (actual or apparent) to contract on behalf of CC LLP, the argument being that the express wording of the contract, its background circumstances, CC LLP's compliance with the Framework terms and the inherent probabilities outweighed the evidence of Mr Perrin, such that the Judge should have held that SocGen had the better of the argument on authority.

54. Mr Onslow KC, on behalf of the respondent, objected to SocGen challenging the Judge's factual and evaluative findings on authority when its ground of appeal and skeleton argument raised only (if mistakenly) issues of contractual interpretation, pointing out that the skeleton argument did not even mention Mr Perrin, let alone criticise the Judge's acceptance of his evidence.

55. Mr Chapman's response was that his oral arguments on authority did fall within the introductory wording of SocGen's ground of appeal, being arguments as to why the Judge should have found that CC LLP was bound by the exclusive jurisdiction clauses in the 2012 Framework Agreement. Whilst strictly accurate, I do not consider that that is an answer to CC LLP's objection. The introductory wording was no more than a statement of the result SocGen was seeking. The basis on which the judgment was challenged (contractual interpretation) was made plain in the four particulars of the ground of appeal (misconceived though it was) and did not encompass a challenge to the Judge's findings on authority. Nor were the arguments advanced orally by Mr Chapman contained in or even hinted at in his skeleton argument. Indeed, the one reference to lack of authority in paragraph 34 of the skeleton argument, far from challenging that finding, appeared implicitly to accept it.

56. For those reasons I accept Mr Onslow's submission that, even allowing some latitude, it is not open to SocGen on this appeal to challenge the Judge's factual or evaluative findings on the question of authority. However, as the matter was fully argued by the parties, I will set out my views on the issue below.

CC Europe's authority to bind CC LLP

57. As for actual authority, Mr Chapman submitted that the starting point is that CC Europe, in entering the 2012 Framework Agreement, expressly stated that it was contracting on behalf of CC LLP, it being inherently unlikely that a law firm would so state, in relation to its parent law firm, if it did not have authority so to do. Further, CC LLP adhered to the fee structure and reporting requirements of that agreement (without demur as to the wording suggesting it was a party), adding to the presumption that it had authorised its execution. On the other side of the balancing exercise is Mr Perrin's evidence, which Mr Chapman criticised for its brevity and its apparent confusion as to (a) the identity of the principal Clifford Chance entity prior to December 2006 and (b) the distinction between Clifford Chance entities and Clifford Chance offices. On the key issue, the approval (or lack of approval) by CC LLP of the Framework Agreements, Mr Chapman pointed out that Mr Perrin's evidence was based entirely on his recollection and belief, no mention being made of investigations or research having been carried out.

58. On the basis of the above comparison, Mr Chapman submitted that the balance fell firmly in favour of finding that CC Europe did have authority to bind CC LLP, going so far as to suggest that the Judge should have rejected Mr Perrin's evidence as unreliable.

59. The difficulty for SocGen, however, is that at [104]-[105] the Judge did undertake the balancing exercise between the matters Mr Chapman identified, giving weight to the undoubtedly powerful factors on which Mr Chapman relied, but taking into account the strong countervailing aspect that SocGen did not itself file any evidence on the question of authority (notwithstanding that SocGen was necessarily involved in the negotiation and execution of the Framework Agreements) and that Mr Perrin's evidence was uncontradicted. Mr Chapman argued in that regard that the Judge failed to recognise that Mr Perrin's evidence was served late in the day, but that is difficult to understand. Mr Perrin's statement was served on 7 July 2023, over two months before the hearing, in response to SocGen's solicitors serving evidence as to the law of France in relation to authority. SocGen had ample time to serve a response to Mr Perrin's statement.

60. In the circumstances the Judge was entitled to reach the conclusion at [105] that Mr Perrin's evidence allowed a reliable assessment to be made that no authority was in fact given by CC LLP to CC Europe in relation to the Framework Agreements. SocGen has failed to demonstrate that that evaluation was plainly wrong.

61. As for apparent mandate, Mr Chapman pointed out the Judge was unable to make a reliable assessment either way on the material available, so was required to decide whether there was a plausible evidential basis, even if contested, for SocGen's case. Mr Chapman submitted that the facts of the case were more than sufficient to provide a plausible evidential basis for SocGen having "legitimately believed in the reality of [CC Europe's] powers" to bind CC LLP within the meaning of Article 1156 of the Revised Civil Code (see paragraph 36 above), such that the Judge' conclusion was plainly wrong. I do not agree. As the Judge pointed out at [106], SocGen did not adduce any direct evidence as to CC LLP's "behaviour or statements" relevant to the execution of the Framework Agreements by CC Europe, nor as to its own knowledge or belief in that regard. The Judge's finding that SocGen had not shown a plausible evidential basis that would support an argument based on the apparent mandate doctrine was plainly open to him and, in my judgment, was correct.

Conclusion

62. For the above reasons, I would dismiss SocGen's appeal against the Judge's finding that CC LLP was not bound by the exclusive jurisdiction clauses in the Framework Agreement. It is therefore not necessary to consider the challenge (advanced in SocGen's skeleton argument if not in its grounds of appeal) to the Judge's alternative finding that those clauses did not, in any event, extend to the existing retainer of CC LLP in respect of the Goldas Litigation.

The position of CC Europe

The Judge's judgment

63. The Judge recognised at [109] that CC Europe is bound by the jurisdiction clauses in the Framework Agreements. Earlier in his judgment at [78] he had summarised the law as to the stay of proceedings commenced in breach of an exclusive jurisdiction clause as follows:

> "Where a contract provides that all disputes between the parties are to be referred to the exclusive jurisdiction of a foreign tribunal, the English court will stay proceedings instituted in England in breach of such agreement unless the claimant can satisfy the court that strong reasons exist to allow them to continue (*Dicey*, 12R-062(3), citing among other cases *The Eleftheria* [1970] P. 94, 100 and *Donohue v Armco* [2001] UKHL 64 § 24). Lord Bingham in *Donoghue* stated, for example, that *"[t]he authorities show that the English court may well decline to grant an injunction or a stay, as the case may be, where the interests of parties other than the parties bound by the exclusive jurisdiction clause are involved or grounds of claim not the subject of the clause are part of the relevant dispute so that there is a risk of parallel proceedings and inconsistent decisions*" (§ 27). Hence *Briggs* [Civil Judgments and Jurisdiction 7th ed] states:

> "… in the context of genuine multipartite litigation, where some but not all of those genuinely involved in the dispute are party to the jurisdiction agreement, the jurisdiction agreement may not be given effect, even if it is for the English courts, as was confirmed by the House of Lords in *Donohue v Armco Inc*.. Although there may be a contractual agreement on jurisdiction, this will not be specifically enforced where to do so would fracture the coherent adjudication of a multipartite dispute. Of course, the potential for abuse of this principle is understood, and if a court believes that non-parties to the jurisdiction agreement – affiliates and subsidiaries, or 'friends and relations' as they were memorably described in *Donohue v Armco Inc* – have been put up to litigate by one party, in order to contend that they were not bound by the jurisdiction agreement, with a view to fabricating an exception, a court should detect it. But where there is no such manipulation, the existence of a jurisdiction agreement is strongly indicative, but is not conclusive, on the question whether relief will be ordered." (*Briggs* § 23.15, footnotes omitted)"

64. Applying those principles, the Judge rejected SocGen's application for a stay or dismissal of CC Europe's claim as follows:

> "110. …[T]here is in reality no substantive claim against CC Europe, and in that sense no dispute on which the jurisdiction clause could bite. Although SocGen's formal letter of demand is addressed to both CC LLP and CC Europe, SocGen has put forward no remotely arguable basis on which CC Europe, as opposed to CC LLP, could be said to have been retained in relation to the Goldas Dispute or liable for the acts and omissions it alleges...It is hard to see why SocGen's letter of claim asserted any claim against CC Europe at all (save perhaps with a view to seeking an advantage in terms of choice of law and/or jurisdiction).
>
> 111. On that basis, it might be suggested, there is no basis on which CC Europe could need negative declaratory relief of the kind it seeks by its present claim in England. I am not persuaded that that would follow: there may be room for such relief to be sought even in circumstances where the counterparty (here, SocGen) has not put forward any real substantive claim against a claimant. In any event, however, I would accept Clifford Chance's submission that to prevent CC Europe from seeking relief in England would lead to fragmentation of the proceedings; and that – particularly in circumstances where no genuine claim has been asserted against CC Europe – there would be exceptional reasons to refuse a stay despite the existence of the jurisdiction agreement. In terms of the statement from *Briggs* quoted in § 78 above, this is not a case where it could be suggested that the involvement of CC LLP is a contrivance to avoid the application of the jurisdiction clause. On the contrary, CC LLP is the real defendant to SocGen's claims, whereas CC Europe has no real involvement in them."

SocGen's grounds of appeal

65. SocGen first challenges the Judge's assumption that there is no substantive claim against CC Europe. SocGen points out that the letter of claim addressed to CC Europe asserted a claim on the basis that CC Europe was the "dominus litis", a French law claim based on the concept that CC Europe had a supervisory role in relation to the conduct of the Goldas Litigation by CC LLP. SocGen further emphasises that the Judge did not have evidence of French law in that regard, and that in any event the pleadings in the French proceedings have not closed. SocGen contends that if CC Europe wishes to obtain a negative declaration in respect of its liability for such a claim, it is contractually obliged to do so in France, where proceedings on the same issue are already underway.

66. The second challenge is to the Judge's concern that staying CC Europe's claim in this jurisdiction would lead to a multiplicity and/or a fragmentation of proceedings. SocGen points out that there is already and will continue to be a multiplicity of proceedings, pointing out that (i) that position was caused by the respondents' decision to seek negative declarations in England when proceedings were being brought in France; and (ii) such multiplicity was foreseeable by the parties when (contrary to SocGen's case) CC LLP was implicitly retained separately and on different terms as to governing law than had been agreed between CC Europe and SocGen.

67. In my judgment neither of those challenges undermines the Judge's finding that there are strong reasons not to stay CC Europe's claim in this jurisdiction. There is no doubt that SocGen's primary and substantive claim is against CC LLP, being the firm that was retained in relation to the Goldas Litigation and whose actions or inactions are now alleged to have been negligent. That is apparent from the letter of claim addressed to CC Europe, all the faults and negligence alleged being those in the conduct of the Goldas Litigation by CC LLP. The Judge determined that England is the appropriate forum for determination of that dispute. I accept that the Judge may have gone too far in concluding (at this stage and on the evidence before him) that SocGen does not have a genuine claim against CC Europe under French law. But even if there is some parasitic claim against CC Europe based on a "supervisory" role (SocGen having failed to adduce any evidence as to the existence of such a claim, let alone to explain its nature and effect), it is plainly desirable that it be determined in the same proceedings as the dispute between SocGen and CC LLP, namely, in these proceedings in the appropriate forum. There are strong reasons why CC Europe should not be debarred from seeking a declaration together with CC LLP in England, the effect of staying its claim being to require CC Europe to defend itself separately in France in respect of the very actions of CC LLP which will be the subject of these proceedings.

68. It is true that the French proceedings may continue notwithstanding the Judge's order, and that may be a result of Clifford Chance entities having bifurcated their contractual relations with SocGen and having then initiated proceedings in this jurisdiction. But that is not a sufficient reason to fragment these proceedings before the plainly appropriate forum. There must be a realistic expectation that SocGen, and indeed the French court, will be reluctant to duplicate in France proceedings in England as to the alleged negligent conduct by English solicitors of Commercial Court proceedings in London.

Conclusion

69. I would dismiss the appeal.

Lord Justice Snowden

70. I agree.

Lord Justice Zacaroli

71. I also agree.