Neutral Citation Number: [2021] EWHC 327 (Comm)

Case No: CL-2019-000129

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice,
Rolls Building
Fetter Lane,
London, EC4A 1NL

Date: 17/02/2021

Before :

THE HONOURABLE MR JUSTICE CALVER

- -

Between :

PIRAEUS FINANCIAL HOLDINGS S.A	**Claimant**
- and –	
(1) GRAND ANEMI	**Defendants**
(2) GRANDUNION INC	
(3) MICHAIL ZOLOTAS	

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Rajesh Pillai QC (instructed by **Reed Smith LLP**) for the **Claimant**
No one in attendance for the Defendants

Hearing dates: 16 February 2021

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Approved Judgment

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 17 February 2021 at 1pm

Mr Justice Calver:

A. INTRODUCTION

1. The Claimant (**the Bank**) brings this action to recover US $96,272,124.04 from the First Defendant (**Grand Anemi**) under a Loan Agreement dated 28 August 2009 (**Loan Agreement**).

2. The Bank also claims that each of the Second and Third Defendants (**Grandunion** and **Mr Zolotas**) are separately liable because they entered contracts on the same date that, properly construed, take effect as indemnities by which they have assumed a primary liability (as principal debtors) to repay the Bank (**the Grandunion and Zolotas Indemnities**).

3. None of the Defendants have acknowledged service or filed a Defence. Until late on 9 February 2020, the Defendants had not taken any part in these proceedings. On that date, Mr Zolotas emailed the Court making various criticisms of the Bank but not raising any specific defences to this action. Despite being sent the trial bundle and the Claimant's written argument for trial, and despite the fact that Mr. Zolotas knew that the trial was fixed for a hearing on 16 February 2021 he did not attend the trial, nor did the other defendants.

4. The Bank relied upon a recent statement from Charles Hewetson (the partner with conduct of this matter at Reed Smith LLP) for confirmation regarding the service of the hearing materials upon, and notification of the trial date to the Defendants through the service agents identified in the relevant contracts. In all the circumstances I was satisfied that the Court should proceed with the trial in the absence of the Defendants pursuant to CPR 39.3.

5. The Court heard evidence from three witnesses of fact called by the Bank:

    a. Ms Manolatou, who dealt with the Defendants' loan accounts and recovery actions from 2012 onwards as part of her role in the Corporate Workout Division, first at Marfin Egnatia Bank/Cyprus Popular Bank and then at the Bank.

    b. Mr Kiosklidis, who worked in Ms Manolatou's department from March 2013 at Marfin Egnatia Bank/Cyprus Popular Bank and then at the Bank, where he dealt with the Defendants' loan accounts and recovery actions. He left the Bank at the end of November 2020.

    c. Ms Kourkoumeli**,** who has worked at the Bank since 2004 and headed (as Senior Director) the Non-Performing Exposures Strategy, Planning and Monitoring team since 2014. She was aware of the background to the Bank's acquisition of various assets from Cyprus Popular Bank in March 2013 and

has identified and collated the relevant documents from that time to assist the Court. She was not, however, directly involved in the relevant events.

6. In addition, the court received oral and written expert evidence of Greek law from Professor Gortsos, who is Professor of Public Economic Law, Director of the Public Law Department and Academic Head of the LLM Program in "Financial Regulation" at the Law School of the National and Kapodistrian University of Athens. The Court also received written expert evidence of Marshall Islands law from James McCaffrey, a practising lawyer in that jurisdiction and a former President of the Marshall Islands Law Society. He did not give oral evidence.

7. The case was ably presented for the Bank by Mr. Rajesh Pillai QC. Mr. Pillai was scrupulous in presenting the case fairly and thoroughly, informing the court of all points which the Defendants might have taken against the Claimant's case had they been present. In the circumstances the court can feel the same degree of assurance about the fairness of the trial as was expressed by HHJ Waksman QC in *CMOC Sales & Marketing Limited v Person Unknown* [2018] EWHC 2230 (Comm) at [14] as follows:

> *"Where the trial is not attended by one of the parties, there is still an obligation of fair presentation which is less extensive than the duty of full and frank disclosure on a without notice application. Mr Justice Cresswell in Braspetro Oil Services v FPSO Construction Inc [2007] EWHC 1359 (Comm) said as follows, that he required the claimant to draw to the attention of the court: " points, factual or legal, that might be to the benefit of [the defendant]. " He noted that claims which were considered not to be sustainable were not in fact pursued. He said that the claimant brought to the attention of the court points which the defendant had taken before it decided to play no further part. He said that the claimant brought to his attention points which had never been taken by the defendant but which might have been had it decided to defend the proceedings, and it had taken all steps to bring to the attention of the defendant what has been happening here. The court had, in that case, through the eight-day hearing, carefully examined and tested the claimant's case. I adopt those observations and I consider that the injunctions of Mr Justice Cresswell have been fully followed here. I also did not regard this trial as merely an exercise of rubber-stamping but tested and considered all aspects of the case".*

8. The Court itself questioned the factual and expert witnesses to clarify points in issue that were of concern to it.

B. THE FACTUAL BACKGROUND

9. In the late 2000s Mr Zolotas had a number of large-scale commercial interests, from shipping to real estate and investments. He operated primarily through a company named Stamford Navigation Inc. (a Liberian company run from Greece) and, later, Newlead Holdings Ltd (a Bermuda company that was publicly listed on the NASDAQ

exchange). For convenience Mr Zolotas and related entities are referred to as the **Zolotas Group**.

10. The two corporate Defendants were part of that Group. Grandunion was incorporated in the Marshall Islands by Mr Zolotas (and two others) in 2007 and he is its ultimate beneficial owner through entities known as Focus Maritime (as to 50%) and Newborn (as to 50%), both of which are wholly owned by Mr. Zolotas (or at least were at all material times). In 2009, Grandunion signed a letter of intent with Aries Maritime, a company listed on the NASDAQ, for the acquisition of the latter. The new company was named Newlead Holdings Ltd ("Newlead"), a Bermudan company. Mr Zolotas served as the founder, chief executive, and largest shareholder of Newlead, a public shipping enterprise that formally traded on the NASDAQ.

11. Grand Anemi was at all material times a Maltese single-ship owning entity in turn entirely owned by Grandunion. Since he owns 100% of Grand Union, it follows that Mr. Zolotas also owns Grand Anemi (indeed, as at August 2009, when he entered into the Zolotas Indemnity, Mr Zolotas was stated in that contract to be a "major beneficial owner" of the shares in Grand Anemi).

(i) Background to Mr Zolotas' business – 2005 to 2009

12. The Zolotas Group had interests in (primarily) the shipping industry, though it had diversified into real estate and other investments. Mr Zolotas and his companies had been customers of Marfin Bank SA in Cyprus since at least 2005. In July 2007, Egnatia merged with Marfin Bank SA and Laiki Bank to become Marfin Egnatia Bank SA. The Cypriot Marfin Popular Bank Public Co. Ltd ("Marfin Popular Bank") acquired Marfin Egnatia Bank in March 2011. Marfin Popular Bank then changed its name to Cyprus Popular Bank Public Co. Ltd ("CPB") on 5 April 2012.

13. Lending to the Zolotas Group companies was usually accompanied by what Ms Manolatou describes as "*collateral packages, consisting of personal guarantees (including given by Mr Zolotas himself), corporate guarantees, share pledges, and mortgages over Group vessels and real estate holdings*." Similar arrangements were entered into in respect of the Loan Agreement and the Indemnities in this case.

(ii) The Loan Agreement and the Indemnities – August 2009

14. The Loan Agreement is an English law governed contract dated 28 August 2009 between Marfin Egnatia Bank, Grand Rodosi Inc (**Grand Rodosi**), a Liberian company, and Grand Anemi. These companies were each single-vessel owning entities that were part of the Zolotas Group. The execution of the Grandunion and Zolotas Indemnities was a condition precedent to entry into the Loan Agreement. Under the Loan Agreement, Marfin Egnatia Bank agreed to make available a revolving credit facility of up to US$112 million for the purposes of refinancing existing indebtedness and to finance working and investment capital needs of the two companies.

Terms of the Loan Agreement

15. The Loan Agreement provided in particular as follows:

> *1. PURPOSE*
> *A This Agreement sets out the terms and conditions on which the Lender has agreed to make available to the Borrowers as joint and several borrowers a revolving credit*
> *facility, not exceeding at any relevant time the aggregate amount of One hundred*
> *Twelve million Dollars ($112,000,000) in multiple Advances in the following amounts*
> *and for the following purposes:*
> *(i) an Advance of up to Eighty Nine million Five hundred thousand Dollars ($89,500,000) for the purpose of refinancing in full certain outstanding indebtedness in relation to, inter alia, the Ships pursuant to the Existing Financial Agreements; and*
> *(ii) Advances in amounts approved by the Lender for the purpose of providing the*
> *Borrowers with working and investment capital.*
>
> *3. THE FACILITY – THE BORROWERS JOINT AND SEVERAL LIABILITY*
> *3.1 The Lender hereby agrees to make available to the Borrowers subject to the terms and the conditions hereof the Facility for the purposes stated in Clause 1 (A) in an aggregate amount not exceeding at any relevant time One hundred Twelve million Dollars ($112,000,000) provided however that no Working and Investment Capital Advance shall be drawdown unless specifically approved by the Lender.*
> *3.4 Each of the Borrowers declares that it is and will, throughout the Security Period,*
> *remain a principal debtor for all amounts owing under this Agreement and neither of the Borrowers shall in any circumstances be construed to be a surety for the obligations of the other Borrower hereunder.*
> *…*
> *7. INTEREST*
> *7.1 Subject to the terms of this Agreement the Borrowers shall pay to the Lender interest in respect of each Advance (or the relevant part thereof) accruing at the Interest Rate for each Interest Period relating thereto in arrears on the last day of each Interest Period, provided that where such Interest Period is of a duration longer than three (3) months, accrued interest in respect of such Advance (or such part thereof) shall be paid every three (3) months during such Interest Period and on the last day of such Interest Period.*
> *7.2 Interest shall be calculated on the basis of the actual number of days elapsed and a three hundred and sixty (360) day year.*
> *7.3 The Interest Rate applicable for each Interest Period shall be calculated and determined by the Lender on each Interest Determination Date and each such determination of an interest Rate hereunder shall be promptly notified by*

the Lender to the Borrowers at the beginning of each Interest Period in respect thereof

7.4 The Lender's certificate as to the Interest Rate applicable shall be final and (except in the case of manifest error) binding on the Borrowers and the other Security Parties.

8. DEFAULT INTEREST

8.1 In the event of a failure by the Borrowers to pay any amount on the date on which such amount is due and payable pursuant to this Agreement and/or the Master Agreement and/or the other Finance Documents and irrespective of any notice by the Lender or any other person to the Borrowers in respect of such failure, the Borrowers shall pay Interest on such amount on demand from the date of such default up to the date of actual payment (as well after as before judgment) at the per annum rate which is the aggregate of (a) two point five per cent (2.5%) and (b) the Applicable Margin and (c) the rate at which the Lender in accordance With its normal practice Is offered deposits in Dollars in the London Interbank Market for such period as the Lender may select at or about 11.00 a.m. (London time) on the Banking Day immediately following that on which the Lender becomes aware of the default and, so long as the default continues, such rate shall be recalculated on the same basis thereafter.

8.2 Any interest which shall have accrued under Clause 8.1 in respect of an unpaid amount shall be due and payable at the end of the period by reference to which it is calculated or such other date or dates as the Lender may specify by written notice to the Borrowers

8.3 Clause 7.2 shall apply to the calculation of interest on amounts in default.

11. REPAYMENT

11.1 Subject as hereinafter provided, the aggregate of all outstanding amounts of the Facility shall be repaid by the Borrowers upon the earlier of:

i) the Original Expiration Date or, subject to Clause 11.2 in the case of any extension or renewal of the Facility pursuant to Clause 11.3, the last Banking Day of the period specified in the Lender's notice referred to in Clause 11.3; and

ii) the Demand Date, provided however that unless an Event of Default has occurred the Lender shall give a ninety (90) days prior written notice to the Borrowers of its intention to make a demand for repayment hereunder whereupon in either such case, the Facility shall be cancelled and no further Advances shall be drawn down.

11.2 The Borrowers may request in writing an extension of the Facility for further periods of up to twelve (12) months, PROVIDED THAT such request must be addressed to the Lender at least twenty (20) Business Days prior to the Original Expiration Date or (in case the Facility has already been extended pursuant to the terms of this Clause) twenty (20) Banking Days prior to the relevant Expiration Date specified in the Lender's notice referred to in Clause 11.3.

11.3 The Lender may (in its sole and absolute discretion) by a notice in writing to the Borrowers, consent to the request of the Borrowers referred to in Clause 11.2 above and agree to the extension of the Facility for one or more periods of up to twelve (12) months. PROVIDED HOWEVER THAT the Lender may at its discretion, upon giving its consent to such extension adjust the Applicable Limit as it may deem appropriate. If the Lender does not give

such consent as aforesaid, all outstanding amounts of the Facility shall be repayable in accordance with Clause 11.1. Any such notice shall be without prejudice to the Lender's right to make demand upon the Borrowers at any time pursuant to Clause 11.1 (ii).
11.4 Each amount payable in respect of the Facility shall be paid in Dollars.
…
13. EVIDENCE OF DEBT
13.1 The Lender shall maintain in accordance with its usual practice one or more Loan Accounts in the name of the Borrowers evidencing the Indebtedness which shall be in the "account current" referred to in the Mortgage over the Anemi Ship.
13.2 In any legal action or proceedings arising out of or in connection with this Agreement and/or the other Finance Documents the entries made in the loan Account(s) maintained pursuant to Clause 13.1 shall be conclusive evidence (save in the case of manifest error) of the existence and amounts of the liabilities of the Borrowers therein recorded.
14. PAYMENTS
14.1 All amounts payable under this Agreement and/or the other Finance Documents by the Borrowers, including amounts payable under this Clause 14, shall be paid in full to the Lender without set-off or counterclaim or retention and free and clear of and without any deduction or withholding for or on account of any Taxes.
…
24. EVENTS OF DEFAULT
24.1 If:
24.1.1 the Borrowers or either of them or any other Security Party fail to pay on the due date for payment any amount which shall have become due hereunder or under the other Finance Documents…
then, and in any such event and at any time thereafter, the Lender may by written notice to the Borrowers declare that the Facility of the lender shall be cancelled. whereupon the same shall be cancelled and declare the Indebtedness immediately due and payable whereupon the same shall become so payable to the Lender…"

16. It follows that subject to extension or renewal (which in fact occurred), by clause 11, repayment was due either on the "Original Expiration Date" (being a year after the first drawdown or the last banking day under any extension notice) or else on the date of a demand. 90 days' written notice was required of the intention to make a demand, unless an event of default had occurred.

17. The Indemnities taken from Grandunion and Mr. Zolotas were two of a number of forms of security, which also included a mortgage over the two vessels m/v Grand Rodosi and m/v Grand Anemi.

The terms of the Grandunion Indemnity

18. The Grandunion Indemnity was governed by English law. The following were the key terms of the indemnity.

19. Grandunion agreed by clause 4.1(a) to guarantee the Borrowers' due and punctual performance of their obligations and under clause 4.1(b) "*to discharge the Indebtedness from time to time on the Lender's first demand, together with interest costs, fees and other expenses on the amount demanded*" and that "*[t]he liability of the Guarantor shall be to pay to the Lender, on the Lender's first demand, the full amount from time to time owing to the Lender by the Borrowers under the Financial Agreement, the Master Agreement and/or the other Finance Documents*."

20. Clause 4.2 was a "*separate, additional and continuing obligation*" to apply in the event that Clause 4.1 was void or unenforceable against Grandunion for any reason and provided that "*the Guarantor will be liable to the Lender as a sole and principal debtor by way of indemnity for the same amount as that for which the Guarantor would have been liable had that Indebtedness been recoverable*".

21. Clause 7.1 stated in relation to Grandunion's liability that the "*Guarantee and Indemnity constitutes the primary obligation of the Guarantor to the Lender and the Guarantor shall be liable, jointly and severally with the Borrowers and with each other guarantor …. for the amounts secured by this Guarantee and Indemnity not only as surety but also as if it were the principal debtor under the Financial Agreement…*".

22. Clause 7.3 provided that "*Without prejudice to the generality of Clause 10, the Guarantor hereby waives any rights which the Guarantor may have to require the Lender first to proceed against or enforce any guarantee or security of, or claim payment from the Borrowers or either of them or any Other Guarantor of the Borrowers' obligations to the Lender before claiming from the Guarantor under this Guarantee and Indemnity as well as all other rights, remedies, defences or exceptions (if any) which are or may be given to a guarantor by any applicable law including without limitation (and notwithstanding the provisions of Clause 19) Articles 853, 855, 856, 858, 859, 860, 861, 862, 863, 864, 866, 867 and 868 of the Greek Civil Code (or any statutory re enactment or modification thereof).*"

Terms of the Zolotas Indemnity

23. Under the Zolotas Indemnity (which was governed by Greek law), Mr Zolotas agreed by clause 4 "*as primary obligor and debtor and not merely as surety*" that he "*irrevocably and unconditionally guarantees the full prompt and punctual payment by the Borrowers to the Lender of all amounts from time to time or at any time outstanding, due, owing or payable to the Lender by the Borrowers (whether as principal or surety) by way of principal, interest, fees or otherwise actually or contingently under the terms of the Financial Agreement, the Master Agreement or the other Finance Documents or in connection therewith and unconditionally undertakes to pay to the Lender the said amounts on the Lender's first demand*". That liability was "*to pay to the Lender the full amount from time to time owing to the Lender by the Borrowers or either of them under the Financial Agreement and/or the other Finance Documents*."

24. The language of clause 7 went further. That provided as follows:

"7.1 This Guarantee constitutes the primary obligation of the Guarantor and the Guarantor shall be liable, jointly and severally with the Borrowers and with each other guarantor of the Borrowers' obligations to the Lender (each the "Other Guarantor") for the amounts secured by this Guarantee not only as surety but also as if he was the principal debtor under the Financial Agreement, the Master Agreement and the other Finance Documents.
7.3 Without prejudice to the generality of Clause 10, the Guarantor hereby waives any rights which the Guarantor may have to require the Lender first to proceed against or enforce any guarantee or security of, or claim payment from the Borrowers or either of them and/or any Other Guarantor before claiming from the Guarantor under this Guarantee as well as all other rights, remedies, defences or exceptions (if any) which are or may be given to a guarantor by any applicable law including without limitation and notwithstanding the provisions of Clause 19.1, Articles 853, 855, 856, 859, 860,861, 862, 863, 864, 866, 867 and 868 of the Greek Civil Code (or any statutory re-enactment or modification thereof).
7.4 In any legal action or proceedings arising out of or in connection with this Guarantee, the entries made in the Loan Accounts maintained by the Lender pursuant to Clause13.1 of the Financial Agreement shall be conclusive evidence (save in case of manifest error) of the existence and the amount of the liabilities of the Borrowers or either of them therein recorded and of the Guarantor under this Guarantee."

Proper construction of the two Indemnities

25. So far as **Grandunion's liability** under the Grandunion Indemnity is concerned, as a matter of English law a contract may (as here) contain both guarantee and indemnity obligations.[1]

26. The applicable principles in a case such as the present were summarised by Sir William Blackburne in *Vossloh Aktiengesellschaft (VAG) v Alpha Trains* [2010] EWHC 2443 at [19]-[28] and [34] as follows:

(1) Each case depends upon the actual words used. The Court approaches the task of characterisation without any preconceptions as to what the instrument creates ([20]);
(2) It is not necessary to shoe-horn a surety contract into the category of either pure guarantee or pure indemnity if it is in truth a mixture of primary and secondary elements - "Whether a particular contract of suretyship is of the one kind or the other or indeed a combination of the two turns on its true construction" ([27]).
(3) The spectrum of contractual possibilities has pure guarantees at one end and performance bonds (a particularly strict form of indemnity contract) at the other ([34]). The space in between is occupied by modified guarantees, hybrid contracts (i.e. those which are a combination of guarantee and indemnity obligations) and pure contracts of indemnity (albeit short of performance bonds).

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1 *Chitty on Contracts, 33rd Edn,* 45-008. See also *Kfw v Singal* [2020] EWHC 2214 (Comm) at [37]-[38].

27. The Grandunion Indemnity is a hybrid contract – being a combination of guarantee and indemnity obligations.

28. Cl 4 is entitled "Guarantee and Indemnity". It provides a conventional guarantor's obligations in respect of performance by the Borrowers (4.1(a)) and that the "*liability of the Guarantor shall be to pay to the Lender, on the Lender's first demand, the full amount from time to time owing*" (4.1(b)).[2] Cl 4.2 contains an indemnity said to arise if Cl 4.1 is void or unenforceable.

29. However, clause 7.1 of the Grandunion Indemnity makes clear that Grandunion is liable as a principal debtor. The wording provides that the instrument "*constitutes the primary obligation of [Grandunion] to the Lender and [Grandunion] shall be liable jointly and severally with the Borrowers and with each other guarantor of the Borrowers' obligations to the Lender….for the amounts secured by this Guarantee and Indemnity not only as surety but also as it if were the principal debtor under the Financial Agreement…*".

30. Grandunion's liability as principal debtor is not qualified in any way by clause 4; it is not contingent upon there being a shortfall or an inability on the part of the Bank to claim in some other way.

31. So far as **Mr. Zolotas' liability** under the Zolotas Indemnity is concerned, that is governed by Greek law.

32. Professor Gortsos explains that Articles 847-870 of the Greek Civil Code apply to guarantees. A contract of guarantee under Greek law shall be construed, like any contract, in accordance with Articles 173 and 200 of the Greek Civil Code. Pursuant to these provisions, the Court's task is to ascertain the true intention of the parties, without adherence to the wording of the contract, considered in light of the principle of good faith, whilst also taking customary (business) practice and usages into consideration.

33. Professor Gortsos explains how under Greek law parties can agree a "first demand guarantee" that has analogous legal effects to an indemnity. This differs from a typical guarantee under the Greek Civil Code because it is not of an accessory character and neither presupposes the existence of a valid underlying (secured) obligation, nor grants the "first demand guarantor" the benefit of raising all the non-individual objections and defences to which the principal debtor is entitled.

34. Moreover, in such a case the creditor is entitled to claim from the "first demand guarantor" after a valid reason to claim has occurred, without however having to

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[2] There are also various standard provisions that preserve the lender's rights against Grandunion by restricting the principle of co-extensiveness which otherwise applies to a true guarantee. See for example clause 9 (permitting the lender to vary the terms of the Loan Agreement or any other finance documents) and clause 10 (confirming that the lender's rights are preserved and not waived by giving indulgence or time) confirm that Grandunion's liability to the lender is preserved.

prove such a reason. The "first demand guarantor" cannot refuse to indemnify the creditor, except where there is an abusive exercise of rights.

35. Accordingly, Professor Gortsos explains that whilst clause 4.1 did create a guarantee liability (payable on the Lender's first demand), this contract goes further. As a matter of Greek law the language of clause 7.1 establishes a liability on the part of Mr. Zolotas as principal debtor which is equivalent to an indemnity. Thus, if Grand Anemi is liable to make payment under the Loan Agreement, then Mr Zolotas is also separately liable to make payment in respect of the same Indebtedness.

36. It can be seen that this accords with the approach that an English Court would take to construing the Zolotas Indemnity.

37. In short, in my judgment it is plain that both Grandunion and Mr. Zolotas assumed a primary obligation to repay the loan together with interest (under clause 7), as though it/he was a principal debtor under the Loan Agreement, separate from their liability as guarantors (under clause 4). That is so as a matter of both English law (under the Grandunion Indemnity) and as a matter of Greek Law (under the Zolotas Indemnity).

(iii) Drawdown and default under the Loan Agreement

38. The Marfin account statement shows that drawdown took place under the Loan Agreement in the sums of US$ 109,195,785.14 on 28 August 2009 and US$ 11,229,107.56 on 26 August 2010. Those monies were paid out to the benefit of Grand Anemi.

39. Between 2 September 2009 and 30 July 2012, Grand Anemi made repayments further to the Loan Agreement, including in respect of capital, fees, expenses and interest. Part of the capital was repaid prior to the second drawdown. The total indebtedness was also reduced by US$ 31 million in March 2010 and US$ 23 million by way of 'dropdown' of part of the debt to Newlead in return for shares in Newlead.

40. In about March 2010 Marfin Egnatia Bank released Grand Rodosi from the Loan Agreement. The release is referred to in the recitals to a 9 December 2011 addendum to a share pledge by Grandunion but the Bank can no longer locate the relevant release.

41. Over the course of 2010 the Newlead and Grandunion businesses suffered losses and in early 2011 Marfin Egnatia Bank was asked to consent to a global restructuring of the lending to the Zolotas Group. The documents record distressed market conditions giving rise to cashflow difficulties for Newlead. This led to a downturn in the share price of Newlead and an anticipated sale of Grandunion's assets.

42. Marfin Egnatia Bank renewed the Loan Agreement until the end of February 2013. The Bank has not found the document that was executed thereafter but believes it was achieved by a (third) side letter dated 9 December 2011 which is referred to at Recital B in a share pledge arrangement of that date. Ms Manolatou's evidence was that this renewal indeed went ahead.

43. In March 2011, the Marfin Popular Bank acquired Marfin Egnatia Bank. The combined entity later changed its name to Cyprus Popular Bank.

44. From 30 July 2012, Grand Anemi failed to make payments of interest due under clause 7.1 of the Loan Agreement. The Marfin Egnatia Bank statement shows the last transaction on the loan account taking place on 30 July 2012. Grand Anemi had also failed to make a renewal payment that had fallen due on 31 August 2011, and that was a breach of clause 26.1. These non-payments constituted an Event of Default under clause 24.1.1 of the Loan Agreement. Accordingly, Cyprus Popular Bank (to which Marfin Popular Bank had changed its name) was then entitled to declare that the facility was cancelled and having done so, the outstanding "Indebtedness" would then become immediately due and payable to the lender. The lender was also entitled to demand payment of the Indebtedness without providing notice under Cl 11.1(ii) by reason of the Event of Default.

(iv) The letter of demand of 1 March 2013

45. Cyprus Popular Bank did indeed issue a letter of demand on 1 March 2013 in respect of this Event of Default.

46. The relevant unpaid sums set out in the letter of demand were stated to be as follows:

Interest period	**Clause**	**Value US$**
30/04/2012 - 30/07/2012	7.1	615,377.07
30/07/2012 - 30/10/2012	7.1	619,388.11
30/10/2012 - 31/01/2013	7.1	599,635.17
31/01/2013 - 28/02/2013	7.1	183,872.84
Default interest on the above	8	41,144.17

47. Cyprus Popular Bank accordingly demanded the full "Indebtedness" (being the outstanding sums due to the bank) by reason of the event of default. As at 1 March 2013, that sum was US$ 59,846,742.53 (including interest). This sum has continued to grow thereafter by reason of the incurring of interest. This demand was sent to Grand Anemi and Grandunion at the address specified for notices in the relevant contracts (c/o Stamford Navigation). I find that since Mr Zolotas was the ultimate beneficial owner of these entities, he received this notice and would undoubtedly have been aware of the demand (although that is not necessary for his liability to arise under the Zolotas Indemnity – see further below).

48. There is no record of any written response to the demand from any of the Defendants.

(v) Transfer of the Loan Agreement and Indemnities to the Claimant – March 2013

49. While these matters were being pursued between the lender, borrower and sureties, the Greek and Cypriot banking systems were in the grip of a crisis by reason of the global recession. Professor Gortsos addressed the detail of this crisis as context to his

analysis of the transfer of rights to the Claimant. He explained that when the Greek sovereign debt was restructured under the EU Council in March 2012, the knock-on effect was a EUR 4.5-5 billion loss to Cypriot credit institutions, because (in addition to other systemic weaknesses) they had been heavily exposed to holdings in Greek government and bank bonds. Cyprus Popular Bank and Bank of Cyprus (being the two largest Cypriot credit institutions) bore some EUR 3.5 billion of that loss. Financial assistance programmes were negotiated over the following year, culminating in a restructuring plan that was endorsed by the various primary stakeholders between 24 April 2013 and 15 May 2013.

50. Cyprus Popular Bank was essentially split into two parts, preserving a "good part" which was primarily merged into the Bank of Cyprus and hiving off a "bad part", comprising assets that were ultimately to be wound up. The good assets in question were in Cyprus and in Greece. The Bank purchased the assets and liabilities of the branches and specific subsidiaries in Greece of Cyprus Popular Bank, the Bank of Cyprus and the Hellenic Bank. Thereafter, Cyprus Popular Bank ceased to exist as a credit institution and moved into a special administration process.

51. The Loan Agreement and the Indemnities formed part of the Cyprus Popular Bank's Greek operations, because the original lender (Marfin Egnatia Bank) had been a Greek bank and the asset was not transferred out of Cyprus Popular Bank's Greek operations. The relevant legal steps were as follows.

52. First, further to Article 9 of the *Cypriot Resolution of Credit and Other Institutions Law of 2013*, the Central Bank of Cyprus passed a Decree dated 26 March 2013 under Cypriot law, imposing the sale of Cyprus Popular Bank's operations in Greece to Piraeus Bank S.A (i.e. the Bank, as it then was) (**the Cypriot Decree**).

53. The Cypriot Decree referred to a "*Purchase and Sale Agreement*" between Cyprus Popular Bank (the Selling Entity) and the Bank (the Acquiring Entity) by which Cyprus Popular Bank was to sell "*the assets, rights and obligations in relation to [its] operations in the Hellenic Republic*".

54. Paragraph 3 of the Cypriot Decree imposed the sale upon Cyprus Popular Bank. Paragraph 5 confirmed that Cyprus Popular Bank "*transfers through sale to the Acquiring Entity all assets, rights and liabilities, on the terms and subject to the conditions [set out] in this Decree and according to the Purchase and Sale Agreement.*" The compensation due was as provided for in that agreement.

55. Paragraph 11 separately addressed the transfer of certain assets to the Bank of Cyprus. Professor Gortsos explained how this clause operated and confirmed that it related to the transfer of Cypriot assets from Cyprus Popular Bank to the Bank of Cyprus. It did not relate to the transfer of rights to the Claimant in respect of assets and liabilities of branches in Greece. [3]

[3] While this is a Cypriot law Decree, Professor Gortsos explains that he is able to comment for the following reason. "*The context to the transfer of the rights relevant to the claim is the*

56. Second, on the same date, 26 March 2013, through its Credit and Insurance Committee the Bank of Greece (acting as a banking supervisory authority) approved the purchase by the Bank (as it then was) of the assets and liabilities in Greece of the various branches and subsidiaries of three Cypriot credit institutions: Cyprus Popular Bank, the Bank of Cyprus and Hellenic Bank. That approval was given in the context of the relevant legislation and requests filed by the Bank, along with the "*Buyer-Seller Agreements*" by reference to the assets set out therein and a business plan accompanied by a valuation. This decision was rendered under Greek law.

57. Third and last, also on 26 March 2013, Cyprus Popular Bank (as Seller) and the Bank (as Purchaser) entered into the Sale and Transfer Agreement (**STA**) contemplated in the above instruments. By the STA (which was governed by Greek law), the Bank purchased the relevant assets of Cyprus Popular Bank in Greece - including the Loan Agreement and Indemnities.

Analysis

58. Professor Gortsos explained that in the context of the Cypriot Resolution and Decree, while the STA is a contract for the sale and purchase of assets, the rights further to which the Bank brings its claims were transferred by way of assignment. This assignment was implemented under Greek law by the STA.

59. Whilst an assignment is only effective once the debtor is notified, under Greek law notification can be informal or implicit. Indeed, the debtor can be notified by a source other than the assignor/assignee themselves. Whilst Professor Gortsos very properly pointed out that the contrary view is advanced by Professor Georgiades in his book *Notice in the Law of Obligations*, vol. 2, 5th edition, 2007, p. 205, where he says "*Lack of notice is not replaced by the fact that the debtor knows that the assignment was made*", citing the Court of Appeals of Thessaloniki 21/1950, as Professor Gortsos pointed out that view is contradicted by the Supreme Court of Greece, case number 1706/2005, in which the Court states that:

> "*No notice thereof to the debtor is required if the latter is already aware of the assignment…. For the occurrence of the results of the assignment the notice as per Article 460 of the Civil Code is not required if the assignment was made with the consent of the debtor or if the debtor is already aware of the assignment*." (underlining added)

Furthermore, recognition or acceptance of the assignment also equates to notification. As the the Supreme Court of Greece also stated in case 1216/1995:

(Cypriot) Resolution of Credit and Other Institutions Law of 2013 (the "Resolution Law"). While I am not a Cypriot lawyer, I am very familiar with the operation of this Law because it was applied in the context of Greek law and Greek companies from March 2013 and thereafter. I therefore explain how this operated and I am not aware of there being any controversy as to the meaning or effect of this law in relation to the matters which I address in this report."

"*The acknowledgment or acceptance of the assignment by the debtor is a notice*".

60. I prefer Professor Gortsos's analysis and I find that the assignments were effective as a matter of Greek law and the Bank is accordingly entitled to brings these claims for the following reasons.

(1) STA clause 2.1 confirmed the Bank's purchase of the "Transferred Assets" from 17:00 (in Greece) on 26 March 2013. Schedule 1 confirmed the Transferred Assets included "The Greek Loans".

(2) The Greek Loans were defined as:

"*all loan receivables … and together with related accrued interest and Related Security**),** as recorded in the books of the Seller or any of the Subsidiaries on 15 March 2013, as well as all shipping and other loans of the Seller or any of the Subsidiaries which were originated by and are managed in Greece and currently booked in the Cypriot loan book, all as identified in the files named "CYPRUS POPULAR BANK" and "subsidiaries Laiki" on the CD signed for the purposes of identification by the parties*."

(3) As a matter of construction, the Greek Loans encompassed the loan receivables and related securities recorded in the books of Cyprus Popular Bank as at 15 March 2013 which were originated and managed in Greece. The definition of "**Related Security**" included a guarantee or indemnity "*given or provided by a customer or any other person in relation to the Greek Loans*". As a matter of construction this implemented the transfer of the rights under all of these agreements.

(4) Each of Ms Manolatou's evidence, the Cyprus Popular Bank records (including the account statements as well as a Memorandum to the Board dated 2 November 2012) and the 1 March 2013 Demand for payment all demonstrate that prior to 15 March 2013, the Loan Agreement and the Indemnities were treated as due to and held by Cyprus Popular Bank.

(5) The "*loan receivables*" under the Loan Agreement were recorded in the books of Cyprus Popular Bank because that entity held the loan accounts related to the debt.

(6) Ms Kourkoumeli confirmed that this document demonstrates that the Loan Agreement was recorded in the books of Cyprus Popular Bank at the material time (15 March 2013). She explained how the document identifies the previous account number for the Grand Anemi facility (LD1210200509) within the Cyprus Popular Bank's system and then the new account number once the facility was moved into a "final delay" account (100/66106/24350002).

(7) Accordingly, the Loan Agreement and the Indemnities fell within the definition of Greek Loans.

(8) Moreover, after the STA was executed the loan was continuously recorded in the Bank's own records as being due. This is confirmed by the account records at the Bank from 17 October 2013 onwards as well the evidence of Ms Manolatou and Ms Kourkoumeli.

(9) It is right to note that the Loan Agreement is not listed individually on the CD referred to in the definition of the "Greek Loans". However, it is part of the global debt of some $86m for which there appears an entry on the CD entitled "loans out of system" (Ms Kourkoumeli explained that the reason for this was that the Loan Agreement was one of ten shipping loans treated as an "out-of-system loan" because it was in US$ and so was a non-Euro facility. These loans were monitored manually by Cyprus Popular Bank because the system it used for denounced loans did not support the monitoring of non-Euro facilities). In any event, this does not matter: what matters is to identify what assets were recorded in Cyprus Popular Bank's books prior to the transfer – since those are the assets the parties agreed were to be transferred to the Bank. The reference to a list on a CD is evidentiary but is not determinative as to what loans were transferred and accordingly what rights have been assigned. To determine that, one must look at the books (or records) of the seller, where the Anemi loan does indeed appear. As Ms Kourkoumeli explained: "*as far as the Bank is concerned, that was not a matter of any significance because the loan was always recorded in the books of the Seller entity and then on the books of the Bank after the acquisition*."

(10) Professor Gortsos confirms that if the factual position is as set out by Ms Kourkoumeli, then in his opinion the loans were undoubtedly transferred under the STA as a matter of Greek law.

61. Professor Gortsos also indicates that in his view there were effective assignments on the facts as presented to him, including as regards the manner in which notice was given to Mr Zolotas. I agree. Such a finding is consistent with the regular meetings and discussions about restructuring between the Bank representatives and Mr Zolotas. Given such interactions over the course of some two years (2014-2016), Mr Zolotas can have been in no doubt that the Loan Agreement and the Indemnities formed part of the parties' discussions. He is not recorded as having challenged or denied liability on any grounds. There is no doubt that Mr. Zolotas knew from his discussions with the Bank throughout 2014 onwards that the loans had been transferred to the Bank.

62. I therefore find as a fact that Mr. Zolotas would have been aware of this fact at the time. This fact is reinforced by the fact that Mr. Zolotas then attempted to restructure the debts which the Bank had taken over, without suggesting that the Bank had no entitlement to claim the sums from the Zolotas Group (including the Defendants).

(vi) Transfer of the loan to a denouncement account: continued discussions between the Bank and Mr. Zolotas

63. The evidence of both Ms Manolatou and Mr Kiosklidis demonstrated that since the STA, the Bank has continuously overseen the recovery process in relation to the Loan Agreement and has consistently treated the debts as due and owing.

64. After the debt under the Loan Agreement was transferred to the Bank, it was held in a "Denouncement" Account. Ms Manolatou and Mr. Kiosklidis explained that this reflected the practice applicable to loans once there has been a default and the facility is terminated and recoveries are pursued.

65. The Grand Anemi contemporaneous account record held at Cyprus Popular Bank – Dispute Resolution Division shows that as at 1 March 2013 the sum due under the Loan Agreement amounted to $59,110,738 and by 15 March 2013 the sum due was recorded as being $54,942,002.

66. After the sale to the (Piraeus) Bank, it can further be seen from the contemporaneous Denouncement Account of the Bank for Grand Anemi (Account ending in 716) that as at 17 October 2013 the sum outstanding remained at £54,942,002 but in addition further interest had accrued over the additional 6 month period in the further sum of $2,859,285.

67. By 28 June 2019 the sum outstanding had increased to $86,192,894 at which point in time for accounting reasons a negative balance of $42m was transferred to a separate account with the Bank (ending in 332) and the negative balance of the remaining $44m remained on the account ending in 716.

68. The contemporaneous documents to which I have referred sufficiently prove that the sums continued to be owed to the Bank by Grand Anemi after the restructuring of the Cyprus Popular Bank and the sale of its assets to the (Piraeus) Bank.

69. Importantly, as I have already explained, it is clear on the evidence (both of the factual witnesses and by reference to the Memorandum to the Bank's Risk Management Committee in 2015 referred to below) that Mr Zolotas was personally involved in continuous discussions with the Bank from 2014 onwards to try and restructure the debts that he and the related companies owed to the Bank. Up to early 2016 these discussions which also included his lawyer, Ms Giannara) occurred on an almost daily basis. The interactions began with high level talks between Mr Zolotas and management within the Bank. Ms Manolatou became involved since the subject matter fell within her area of responsibility. She remembers Mr Zolotas stating "*that he was trying to pay money back to the Bank to clear his debts*" and putting forward various proposals to try and reduce the indebtedness.

70. A contemporaneous snapshot is recorded in the internal memorandum to the Bank's Risk Management Committee dated 13 October 2015. The Loan Agreement (and the Indemnities) are referred to under the heading "Grand Anemi" in the list of the claims against the Zolotas Group. Consistently with the Bank's witnesses' evidence, the

document records that since the transfer of the Group's liabilities to the Bank, "*many meetings were held with Mr Zolotas in order to explore any possible solutions…In the said meetings, Mr Zolotas focused his interest in settling only the maritime loan in the name of GRAND VENETICO…For the remaining loans a proposal was never submitted as a result of which the legal actions for adjudication and execution were initiated*." The document expressly refers to the debt owed by Grand Anelmi, secured by the Grandunion and Zolotoas indemnities, as amounting to Euros 57.902m, but as Ms Manolatou explained, Mr. Zolotas could not offer any means of repayment of this debt and only offered to repay the Grand Venetico debt. He did not suggest however that the Grand Anemi debt was not due and owing; indeed, I find that he plainly accepted and recognised that it was.

71. On 28 January 2016, Mr Zolotas' representative Ms Giannara wrote on his behalf to the Bank with a further settlement proposal. This included an offer in relation to Newlead Holdings and a separate offer "*concerning debts of other companies*". That must have included Grand Anemi.

72. Mr Zolotas' personal meetings largely ceased in early 2016. Ms Manolatou recalls one further in-person meeting in 2018 after the Bank served a foreclosure notice on Mr Zolotas' residence in Attica, Greece. After the Bank rejected proposals to stop the sale of that property, it appears that Mr Zolotas decided to stop dealing with the Bank himself. Ms Giannara remained in contact until October 2020. She did not respond, however, to the Bank's letter dated 17 November 2020 asking for contact details for Mr Zolotas.

73. These discussions accordingly demonstrate, and I find as a fact that (i) Mr Zolotas had been informed and was well aware that the debts incurred originally by the various loan contracts with Marfin Egnatia Bank had been properly transferred to the Claimant; and (ii) Mr Zolotas recognised and acknowledged that the debts under the Loan Agreement and the Grandunion and Zolotas Indemnities were indeed due to the Claimant – and was trying to reach a restructuring arrangement in respect thereof; and (iii) that recognition and acknowledgment on the part of Mr. Zolotas included the Grand Anemi liabilities now sued upon by the Bank in respect of the Loan Agreement.

(vii) Grand Anemi and Grandunion cease trading

74. The Bank believes that the corporate defendants are no longer trading. In particular, Grand Anemi's corporate shipping agent informed the Maltese Financial Services Authority that it wished to be disassociated with Grand Anemi and indicated that the registered office was no longer actively located at the relevant address. Grandunion was dissolved on 11 August 2016. Mr McCaffrey explains this was an administrative process further to a proclamation issued by the Marshall Islands Registrar of Companies.

C. THE ISSUES

75. The Bank's claim for damages is made up of two elements: (i) US$ 53,718,984,79 due on acceleration of the "Indebtedness" further to the notice and demand of 1 March 2013 (per Cl 24.1); and (ii) US$ 42,553,139.25 being interest due at the contractual rate further to Cl 8.1.[4]

76. The calculation of interest actually applied in each year following the demand was as follows (the contractual rate under the Loan Agreement was defined as the aggregate of 2.5%, the applicable margin (being 3.75%) and the rate at which the lender is offered deposits in dollars in the London Interbank Market for such period as the Lender may select).

Year	**Interest (US$)**	**Interest rate applied**
2013	3,810,000.34	6.49%
2014	3,891,150.94	6.48% 30/06/2014 and 6.51% 31/12/2014
2015	4,171,691.31	6.53% 30/06/2015 and 6.86% 31/12/2015
2016	4,747,438.63	6.9% 30/06/2016 and 7.25% 30/12/2016
2017	5,460,998.06	7.55% 30/06/2017 and 7.94% 29/12/2017
2018	6,721,948.91	8.59% 29/06/2018 and 9.06% 31/12/2018
2019	7,333,240.80	8.57% 28/06/2019 and 8.16% 31/12/2019
2020	6,416,670.26	6.55% 30/06/2020 and 6.49% 31/12/2020

77. The total sum due is **US $96,272,124.04**. That is the sum which the Bank claims as due under the Loan Agreement. It is also the sum that the Bank claims that each of Grandunion and Mr Zolotas are liable to pay as primary debtors under their respective indemnity obligations.

78. To succeed in its claim, the Bank must establish (a) that Grandunion may be sued notwithstanding it has been dissolved under Marshall Islands law; (b) that there is an

[4] The principal due was calculated as at the date of the claim and reduced from the date of the Demand (i.e. in the debtor's favour); the interest figure is that applied over time.

obligation owed to the Bank under each of the Loan Agreement and contracts of Indemnity; and (c) that the Bank has the right to claim on the contracts in the sums claimed.

(a) Status of Grandunion

79. The Bank is entitled to sue Grandunion in this action notwithstanding the fact that it was dissolved on 11 August 2016 by an annulment issued by the Marshall Islands Registrar of Corporations.

80. This entitlement arises because under *section 105(1) of the Marshall Islands Business Corporations Act* (**BCA**), Grandunion continues to exist, for the purposes of defending any action suit or proceedings brought against it within three years of the dissolution. Section 105(1) provides in relevant part:

> *"All corporations, whether they expire by their own limitations or are otherwise dissolved, shall nevertheless be continued for the term of three (3) years from such expiration or dissolution as bodies corporate for the purpose of prosecuting and defending suits by or against them….With respect to any action, suit or proceeding begun by or against the corporation either prior to or within three (3) years after the date of its expiration or dissolution, and not concluded within such period, the corporation shall be continued as a body corporate beyond that period for the purpose of concluding such action, suit or proceedings and until any judgment, order, or decree therein shall be fully executed."*

81. This point turns on the interpretation of this section in the Marshall Islands BCA. Mr McCaffrey explains that the starting point on this section is "*an analysis of the ordinary meaning of language used in the relevant provisions read in the context of the legislation*" and that "*there is nothing that would influence the straight-forward reading of the statute.*"

82. The claim which forms the subject matter of this action was issued on 27 February 2019. That was within three years of 11 August 2016. Accordingly, I find that Grandunion is still in existence by operation of section 105(1) Marshall Islands BCA and will remain in existence until the conclusion of this action and full execution of any judgment.[5]

[5] I note that this section was also considered by Moulder J in *Chung v Silver Dry Bulk Co Ltd* [2019] EWHC 1147 (Comm) and the Court reached the same conclusion at [81].

(b) Liability under each contract

83. The contracts contain express choice of law clauses.[6] The Loan Agreement and the Grandunion Indemnity are governed by English law. The Zolotas Indemnity is governed by Greek law.

(i) Grand Anemi's liability under the Loan Agreement

84. The relevant terms of the Loan Agreement are set out above.

85. The Loan Agreement bound Grand Anemi by its terms to make repayments under Clauses 7.1 (interest), 26.1 (renewal fee) and 11.1 (repayment). Marfin Egnatia Bank advanced monies to Grand Anemi under the Loan Agreement which were drawn down in two tranches by Grand Anemi, in the sums of $109.195m and $11.229m. This is shown in the relevant account statement from the Marfin Egnatia Bank records as I have described.

86. In the course of 2012, Grand Anemi failed to make payment of interest under Cl 7.1 and a renewal fee under Cl 26.1. Those non-payments were breaches of contract. In light of those breaches (which constituted events of default), by notice and demand under Cl 24.1 dated 1 March 2013, Marfin Egnatia Bank declared the cancellation of the Facility under the Loan Agreement. That meant the entire outstanding amount ("the Indebtedness") was *immediately* due and payable. Marfin Egnatia Bank demanded payment of almost US$60 million on 1 March 2013. That notice was sent to the contractually stipulated address for notices under Cl 36.2 but no payment was made. Grand Anemi is accordingly liable for the sums claimed by the Bank.

87. It should be added that the Loan Agreement also contains, at clause 13.2, a certification of evidence clause further to which in "*any legal action or proceedings arising out of or connection with the Loan Agreement*", the Loan Accounts kept by the lender (originally Marfin Egnatia Bank and now the Bank) "*shall be conclusive evidence (save in the case of manifest error) of the existence and amounts of the liabilities of the Borrowers therein recorded*."

88. Since the Defendants have failed to take any part in the trial and since they failed to serve a Defence, they have not raised any case that any of the claims against them are time-barred. It is well established that it is for the defendant to plead and prove a limitation defence and if it fails to raise a limitation defence that the Claimant need not rebut it. As a result, I shall only deal briefly with limitation issues in this judgment, although as Mr. Pillai QC explained, the Bank would have had good answers to any limitation arguments had they been raised by the Defendants in any event.

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6 These determine the question of governing law further to the Rome Convention. The contracts pre-date the Rome I Regulation, which applies to contracts concluded after 17 December 2009: *The Conflict of Laws – Dicey, Morris & Collins 15th Edn,* 32-002.

89. So far as limitation is concerned in respect of the Bank's claim against Grand Anemi, English law applies to this question[7] and the starting point is that a claim must be brought within 6 years of the cause of action accruing: *s.5 of the Limitation Act 1980*. The test for these purposes may be summarised as follows:[8]

> *"The date when a cause of action accrues may be said to be the date on which the plaintiff would be able to issue a statement of claim capable of stating every existing fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to judgment."*

90. The Bank's claim is for repayment of all sums due pursuant to a declaration of cancellation and indebtedness under Cl 24.1; that claim only arose once the lender made the declaration and the indebtedness then became immediately due and payable. By the express terms of the Loan Agreement, under Cl 24.1 the lender could make that declaration at the time of the event of default "*and at any time thereafter*". But the cause of action in respect of the event of default did not arise until the declaration under Cl 24.1.

91. It follows that the cause of action accrued on 1 March 2013 when the demand was made. The Claim form was issued just within the 6 year limitation period on 27 February 2019 and accordingly the claim is not time barred.

92. Finally so far as Grand Anemi is concerned, the fact that Grand Rodosi was released by the Bank does not adversely affect the Bank's claim against it because (i) Grand Anemi agreed to that release and thereafter the facts show it continued to make payments until July 2012 as if bound under the Loan Agreement; (ii) under Cl 3.3 Grand Anemi's liability was joint and several and it further agreed in broad terms that its liabilities and obligations would not be impaired by any discharge of the other borrower (or any other matter or event that might impair the other borrower's liability/obligations); (iii) under Cl 3.4 Grand Anemi confirmed it remained a principal debtor for all amounts owing under the Loan Agreement.

(ii) *Grandunion's liability under the Grandunion Indemnity*

93. I have already explained that as a matter of English law, Grandunion assumed a *primary* obligation to repay the loan together with interest (under clause 7).

94. Where the obligation is that of principal debtor, the cause of action does not require that a demand be made before Grandunion may be sued.[9]

95. As is stated in *The Law of Guarantees,* Andrews & Millett (7th Ed) at 7-006:

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7 Under Art 10(d) of the Rome Convention, the scope of the law applicable to a contract governs prescription and limitation of actions.

8 *PRA Group (UK) Ltd v Doyle* [2019] 1 WLR 3783 at [20] citing earlier authority.

9 See *TS&S Global Ltd v Fithian-Franks* [2008] 1 BCLC 277 at [22]-[26] applying *MS Fashions Ltd v BCCI* [1993] Ch 425. The position would be otherwise if the only liability arose under Cl 4.1(b) since that clause does require a demand.

"*It follows from the effect that a "principal debtor" clause may have on a true contract of guarantee that if the contract of suretyship is properly classified as an indemnity, even an express statement in the contract that the indemnifier is liable to pay "on demand" is unlikely to be construed as requiring the creditor to make a demand on the surety before suing him, for exactly the same reason that the words do not require a demand to be made on the principal*."

96. But in any event, a demand *was* made on Grandunion dated 1 March 2013 and it failed to pay. Grandunion is accordingly liable for the sums claimed by the Bank.

97. English law again applies to any limitation argument. The debt for which Grandunion is liable as a primary debtor is that claimed further to the lender's written demand dated 1 March 2013. Even if one takes the date of demand as the relevant date for the purposes of the running of the limitation clock (which is generous to the Defendants), the Claim form was issued within the 6 year limitation period on 27 February 2019 and accordingly the claim is not time barred.

(iii) *Mr Zolotas' liability under the Zolotas Indemnity*

98. I have likewise already explained that Mr. Zolotas assumed a *primary* obligation to repay the loan together with interest (under clause 7).

99. The fact that the demand under the Loan Agreement was not served on Mr Zolotas does not alter the position. By the written notice the lender elected to declare an event of default *under the Loan Agreement* and the indebtedness became immediately due and payable under clause 24.1.

100. Given that Mr Zolotas' liability under the Indemnity was as principal debtor, as matter of construction there was no requirement that a demand be served under the Indemnity before the claim was issued. The principal debtor obligation at clause 7.1 makes no reference to the need for a demand.

101. In any event, I find as a fact that since the notice was sent to Grand Anemi and Grandunion and since these companies were Mr Zolotas' corporate vehicles, Mr Zolotas must have become aware of the event of default and the lenders claim against him. Indeed, this is demonstrated by the fact that Mr Zolotas entered into negotiations with the Bank in an attempt to restructure the debts of the Zolotas Group, including the Grand Anemi debts. He was fully aware of the Bank's claims.

102. The Zolotas Indemnity is governed by Greek law and so that law would have been relevant to any limitation issue had it arisen.

103. Under s.1(1)(a) of the Foreign Limitation Periods Act 1984 (**FLPA**) the starting point is that the Greek law of limitation will apply because it is the law of the contract.

104. That rule is displaced if under s.1(2), the matter is one where "*in the determination of which both the law of England and Wales and the law of some other country fall to be*

taken into account." I agree with Mr. Pillai QC that the claim under the Zolotas Indemnity is a matter to which s1(2) applies because determining Mr Zolotas' liability requires consideration of English law (which governs the debt under the Loan Agreement) and Greek law (which governs the obligations of Mr Zolotas as primary debtor in the Zolotas Indemnity).

105. The outcome where two sets of laws apply is that expiry of either limitation period would bar an action.[10] It follows that the question for the Court is whether the expiry of any Greek limitation period bars the claim. The answer is that it does not.

106. The general limitation period under Greek law for civil claims is 20 years: Article 249 GCC. That applies to the claim for the principal sum due under the Zolotas Indemnity, which is accordingly brought well within time.

107. The position on the claims under the Zolotas Indemnity in respect of interest is as follows.

108. A shorter 5 year limitation period applies to certain types of commercial claims, including claims to interest, including default interest: Article 250 GCC. However, time stops running if the defendant has recognised or acknowledged the liability within the limitation period. Recognition of a claim in this context will occur as a matter of Greek law if the defendant has acknowledged that a debt or claim exists in some way – and that can be by express statement or implied from the circumstances.

109. As the Court has already explained, Mr. Zolotas repeatedly recognised and accepted the debt in his negotiations with the bank from 2014 onwards. Interest claimed from 2014 onwards is accordingly not time barred.

110. This leaves only the claim for interest for 2013. So far as 2013 is concerned, default interest started accruing on the loan the day after the facility was cancelled (1 March 2013), i.e., from 2 March 2013 until 31 December 2013. Pursuant to Article 250 GCC, the limitation period for a claim for default interest is 5 years; but crucially that period starts running from the end of the calendar year that the interest accrued i.e., from 31 December 2013. This limitation period has also been interrupted from the day the claim was filed and served against the respondent, the latter being 19 September 2019. It follows that the claim in respect of interest which accrued in 2013 is also made within in time.

Conclusion

111. In all the circumstances I find the claim proved against each of the defendants in the sums claimed (both as to principal and interest) as described in this judgment.

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10 *Dicey* at 7-058.