Neutral Citation Number: **[2022] EWHC 2871 (Comm)**

Case No: CL-2020-000738

IN THE HIGH COURT OF JUSTICE
THE BUSINESS AND PROPERTY COURTS OF ENGLAND & WALES
KING'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11 November 2022

Before :

THE HON MR JUSTICE ROBIN KNOWLES CBE

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Between :

CA INDOSUEZ (SWITZERLAND) SA	**Claimant**
- and -	
(1)AFRIQUIA GAZ SA	**Defendants/**
(2)MAGHREB GAZ SA	**Part 20**
	Claimants
-and-	
(1)GULF PETROCHEM FZC	**Part 20**
(2)UBS SWITZERLAND AG	**Defendants**

- -

James M. Turner KC (instructed by **Bird & Bird LLP**) for the Defendants/ Part 20 Claimants
Laura John KC and Daniel Schwennicke (instructed by **HFW**) for the Second Part 20 Defendant

Hearing dates: 15 and 16 February 2022

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JUDGMENT

Robin Knowles J:

Introduction

1. Gulf Petroleum FZC, the First Part 20 Defendant ("GP") had trade finance facilities with CA Indosuez (Switzerland) SA (the Claimant: "CAIS") and with UBS Switzerland AG (the Second Part 20 Defendant: "UBS").

2. Afriquia Gaz SA and Maghreb Gaz SA, the Defendants and Part 20 Claimants ("AG" and "MG"), purchased a cargo of butane from GP. GP assigned to CAIS the debt represented by the purchase price. GP issued its invoices to AG and MG on 23 July 2020 and CAIS sent notices of assignment on 27 and 28 July 2020.

3. However on 19 August 2020 AG and MG paid, by SWIFT, the sums due to GP's account with UBS. The funds were received into one of GP's accounts with UBS and then transferred to what appears to have been its loan or overdraft account.

4. GP instructed UBS to transfer the sums received to CAIS. UBS refused. It claimed to have been entitled to set off those sums against GP's liabilities to it.

5. By Rule 20.1 of the Civil Procedure Rules, the purpose of Part 20 of the CPR is "to enable counterclaims and other additional claims to be managed in the most convenient and effective manner". CAIS commenced this claim against AG and MG for the purchase price, a claim in debt. AG and MG denied liability but added (Part 20) claims against GP and UBS for the sums received, and in unjust enrichment and for liability as constructive trustee. Following the exchange of expert reports on Swiss law, AG and MG have accepted that their claim against UBS based on an alleged constructive trust must fail, and that the claim in unjust enrichment will only arise in certain circumstances.

6. GP is incorporated in the UAE. The sale contract with AG and MG contained an exclusive jurisdiction agreement in favour of the High Court in London. The Part 20 Claim Form was issued with the following indorsement:

> "[AG and MG] are permitted to serve the [Part 20] Claim on [GP] pursuant to CPR r.6.33(2)(b)(v) and Article 25 of the Judgments Regulation because [GP] is a party to an agreement … conferring exclusive jurisdiction within Article 25 of the Judgments Regulation. [AG and MG] are permitted to serve the [Part 20] Claim on [UBS] out of the jurisdiction pursuant to CPR r.6.33(1)(b)(i) and Article 6(3) of the Lugano Convention.

The reference to Article 6(3) was a mistake for Article 6(2).

7. The Part 20 Claim Form against GP and UBS was issued on 30 December 2020, before the end of the Brexit transition period. UBS declined to instruct solicitors to accept service in England. AG and MG meanwhile on 20 January 2021 obtained an order from Cockerill J extending the validity of the Part 20 Claim Form. The Part 20 Claim Form was served or purportedly served on UBS, out of the jurisdiction, on 9 March 2021.

8. The Court's permission for service out of the jurisdiction on UBS was not sought. Mr James M. Turner KC informed the Court that those representing AG and MG considered at the time that no permission would be needed, on the basis that jurisdiction under the Lugano Convention, which existed at the date of issue of the Claim Form, was preserved.

9. Mr Turner KC added the contention that even if permission to serve out was required and had been sought, it would inevitably have been granted, as questions of appropriate forum (considered in an application for permission to serve out) were not relevant in the context of the Lugano Convention. If it is necessary for it do so, AG and MG go on to seek an order under CPR 3.10.

10. UBS acknowledged service on 26 March 2021, indicating an intention to contest jurisdiction. An application to set aside service was issued and served by UBS on 21 April 2021. AG and MG responded on 7 May 2021 with their application under CPR 3.10. On 5 July 2021 UBS brought an application challenging the Court's jurisdiction and also bringing what it described as a "contingent strike-out application".

11. AG and MG raised the point that the application of 5 July 2021 was out of time for challenging jurisdiction. This was said to give rise to a question of relief from sanctions (see generally Denton v TH White [2014] EWCA Civ 906, [2014] 1 WLR 3926 at [24]), but nothing turns on the episode in this particular case in my view. In particular, seen in the context both of UBS's earlier application to set aside service and AG and MG's mistake in referring to Article 6(3) and the fact that there was no consequence for the efficient conduct of the proceedings, the delay was neither serious nor significant and it is just to deal with the application of 5 July 2021 without regard to the delay.

12. On 8 July 2021, for reasons then given, I ordered the main claim (CAIS's claim against AG and MG) to proceed ahead of the Part 20 claims. AG and MG have now settled the main claim with CAIS, but on terms which do not reduce the level of their (Part 20) claim against UBS.

13. GP is not defending the claim against it, but no default judgment has been sought. There is evidence before the Court to the effect that an application for default judgment is not likely to be made because it will make enforcing a

judgment more difficult. As was pointed out in argument, that does not mean that summary judgment would not be sought.

14. At this hearing UBS asks the Court to set aside service of the Part 20 Claim Form on it, challenges the Court's jurisdiction, and asks the Court to strike out the Part 20 claim against it.

A requirement for the permission of the Court to serve out of the jurisdiction

15. UBS is incorporated in Switzerland. Switzerland is a state bound by the Lugano Convention (the Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters, between the European Community and the Republic of Iceland, the Kingdom of Norway, the Swiss Confederation and the Kingdom of Denmark, signed on behalf of the Community on 30 October 2007).

16. While the United Kingdom was a member of the European Community, the Lugano Convention applied to it by reason of the European Community's membership of the Convention. That position no longer obtains. The United Kingdom has applied for individual membership of the Convention.

17. Ms Laura John KC advances for UBS the argument that, under the Brexit transitional arrangements, permission to serve the Part 20 Claim Form out of the jurisdiction and in Switzerland was required after 31 December 2020. She argues that CPR 6.33 makes an exception from the requirement for permission in a case where the Judgments Regulation (Regulation (EU) No 1215/2012) applies and not in a case where the Lugano Convention applies. Under the architecture for seeking permission set out at paragraph 3.1 of Practice Direction 6B her argument is that the ground at paragraph (20)(a), at least, applies to a claim to which the Lugano Convention applied at the point of issue: the claim is "made under an enactment which allows proceedings to be brought and those proceedings are not covered by any of the other grounds referred to in this paragraph". Ms John KC accepts that the Court would be astute to ensure that in dealing with the question of permission, and especially the question of appropriate jurisdiction, it had regard to the nature and purpose of the Lugano Convention.

18. In broad, but material, summary under the European Union Withdrawal Act 2018, implementing the EU Withdrawal Treaty (Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community) an implementation period was established. The implementation period came to an end at 23:00 GMT on 31 December 2020 (also known as "IP completion

day"). During the implementation period, obligations stemming from international agreements to which the EU was party continued to apply.

19. CPR 6.33 is entitled "Service of the claim form where the permission of the court is not required – out of the United Kingdom". Prior to the end of the implementation period, CPR 6.33(1) provided that a claimant:

> "may serve the claim form on the defendant out of the United Kingdom where each claim against the defendant to be served and concluded in the claim form is a claim which the court has power to determine under…the Lugano Convention…"

Regulation 4(16)(a) of the Civil Procedure Rules 1998 (Amendment) (EU Exit) Regulations 2019 (SI 2019/521) deleted CPR r. 6.33(1), with effect from the end of the implementation period.

20. Regulation 4(16)(d) of SI 2019/521 also deleted the following words from CPR 6.33(3):

> "the 1982 Act, the Lugano Convention," and ", the Judgments Regulation".

The result was that CPR 6.33(3) now read:

> "6.33(3) The claimant may serve the claim form on a defendant out of the United Kingdom where each claim made against the defendant to be served and included in the claim form is a claim which the court has power to determine other than under [the Convention on Choice of Court Agreements concluded on 30th June 2005 at the Hague], notwithstanding that
>
> (a) the person against whom the claim is made is not within the jurisdiction; or
>
> (b) the facts giving rise to the claim did not occur within the jurisdiction."

21. The Regulations at 2019/521 were themselves later amended by the Civil, Criminal and Family Justice (Amendment) (EU Exit) Regulations 2020 (SI 2020/1493), at paragraph 9, to insert regulation 18(3A)):

> "(3A) Where a claim to which rule 6.33(2) applies is issued before IP completion day but the claim form has not been served by IP completion day, rules 6.33 and 6.35 apply on and after IP completion day in relation to service of the claim form and to the period for responding to the claim form as if the changes made by these Regulations had not been made.".

22. After the conclusion of argument in the present proceedings, the decision of Ms Julia Dias QC, sitting as a Deputy High Court Judge in the London Circuit Commercial Court, in Naftiran Intertrade Company (Nico) Limited and Anor v G.L. Greenland Limited and Anor [2022] EWHC 896 (Comm) became available and a copy was kindly provided to me by the parties. Ms Dias QC provides this valuable treatment of the issue:

> "Permission required or not?
>
> 41. … Claim 1 was issued during the post-Brexit transition period. Prior to Brexit, jurisdiction over Ferland as a Cypriot company was governed by the Recast Judgments Regulation (EU) No. 1215/2012 ("Brussels Recast") while jurisdiction over Mr Sokolenko, who is domiciled in Switzerland, was governed by the Lugano Convention. Pursuant to CPR Part 6.33(1) and (2), claims falling within the scope of either of these conventions could be served out of the jurisdiction without permission.
>
> 42. With effect from 31 December 2020 (the final Brexit withdrawal date), the Civil Jurisdiction and Judgments (Amendment) (EU Exit) Regulations 2019 (SI 2019/479) came into force. Regulations 92 and 93A expressly preserved the pre-existing jurisdictional regime in respect of proceedings issued but not concluded prior to that date. Jurisdiction in relation to Claim 1 accordingly continues to be assessed by reference to Brussels Recast and the Lugano Convention as appropriate.
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> 43. Amendments to the CPR were introduced with effect from the same date by the Civil Procedure Rules 1998 (Amendment) (EU Exit) Regulations (SI 2019/521). These included transitional provisions in relation to service out of the jurisdiction, including Regulation 18(3A), which specifically maintains the pre-existing position that permission is not required for a claim form issued prior to withdrawal where jurisdiction is based on Brussels Recast. However, there is no equivalent saving for claim forms where jurisdiction exists under the Lugano Convention.
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> 44. This is, on the face of it, surprising. Given that claims falling within both the Lugano Convention and Brussels Recast could have been served pre-Brexit without permission, there is no obvious reason why permission should still be required for the former but not the latter. …"

23. It was not necessary for Ms Dias QC to reach a conclusion in the case before her. The Learned Judge observed that the answer may lie in CPR 6.33(3) as amended. She recognised the availability of the argument that the amended wording of CPR 6.33(3):

> " … is now wide enough to permit service where the court has expressly "preserved" jurisdiction under the Lugano Convention and Judgments Regulation in respect of claim forms issued but not served prior to withdrawal."

Ms Dias QC was left with this concern, however:

> "… if that is right it does not explain why an express saving provision was nonetheless felt necessary for claims falling within the Judgments Regulation as recast by Brussels Recast."

24. The reference here is to regulation 18(3A) inserted by SI 2020/1493 and referred to above. The concern is to my mind sufficiently met by Mr Turner KC's point that regulation 18(3A) was introduced to ensure that the UK met its obligations under Article 67 of the Treaty. Article 67.1(a) of the Treaty requires material provisions of (among other things) the Judgments Regulation to continue to apply in respect of proceedings instituted before the end of the implementation period. Article 67 did not, at least explicitly, address the Lugano Convention which (as noted above) has a different membership structure.

25. The question is whether the language of CPR 6.33(3) includes the circumstances of the Part 20 Claim Form. In my view it plainly does. The important point is that at the same time CPR 6.33(1) was removed, CPR 6.33(3) was widened. True, the words "Lugano Convention" were deleted from CPR 6.33(3), but that was to delete the exclusion of the Lugano Convention. The technique allowed CPR 6.33 to embrace claims which engaged jurisdiction under the Lugano Convention at implementation date without providing enduring reference to the Lugano Convention or the Judgments Regulation as a basis of jurisdiction after the United Kingdom's membership of the European Union ceased.

26. I appreciate that this would mean that regulation 18(3A) may not strictly have been necessary, because the language of CPR 6.33(3) was also wide enough to embrace claims which engaged jurisdiction under the Lugano Convention. But there is little to favour an argument that the addition of regulation 18(3A) by a later Statutory Instrument and without disturbing the language of CPR 6.33(3) should alter the meaning CPR 6.33 had borne in the period before the addition was made.

27. There is also no reason of policy why the Court's permission should start to be required for the service abroad of Claim Forms issued on the basis of jurisdiction under the Lugano Convention and awaiting service. As Mr Turner

KC asked rhetorically in his oral argument, why should a requirement for judicial oversight be introduced here for the first time after many years without it? Ms John KC's answer that oversight has a purpose or value does not quite meet Mr Turner KC's point which is, why now, at this point in history?

28. The regulations under SI 2019/521 were concerned with the cessation of the United Kingdom's membership of the European Union. Requiring the Court's permission to serve out of the jurisdiction would have no bearing on that subject. It is one thing to unwind the Lugano Convention from the Court's procedures; it is another to introduce a different and more elaborate procedure for a limited number of Lugano Convention claims remaining as the Convention was unwound.

Relief under CPR 3.10

29. Under the heading "General power of the court to rectify matters where there has been an error of procedure", CPR 3.10 provides:

> "3.10 Where there has been an error of procedure such as a failure to comply with a rule or practice direction –
>
> (a) the error does not invalidate any step taken in the proceedings unless the court so orders; and
>
> (b) the court may make an order to remedy the error."

30. I record that Ms John KC says that CPR 3.10 does not apply where a specific provision, here CPR 6.37, applies. She observes that still no CPR 6.37 application has been made.

31. Of course in light of my decision above, AG and MG do not need relief under CPR 3.10 or to make a CPR 6.37 application. In that light I do not think this is the right case to embark on Ms John KC's argument about the applicability of CPR 3.10 where there is a failure to apply for permission to serve out. The arguments of Ms John KC and Mr Turner KC showed the point to be one that is not straightforward. The point is capable of having some wider application. It is better that it is decided in a case where the outcome depends on it and there is a full opportunity for a decision on it to be considered at appellate level if appropriate.

Article 6(2) of the Lugano Convention

32. Article 6(2) of the Lugano Convention provides that a person domiciled in the state bound by the Convention may be sued:

> "as a third party in an action on a warranty or guarantee, or in any other third party proceedings, in the court seised of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case;"

33. There is no suggestion that the exception commencing with the word "unless" applies in the present case.

34. The parties did not dispute a number of propositions from the decision in Barton v Golden Sun Holidays [2007] EWHC 3455 (QB) (Wynn Williams J, after a review of the authorities). The first agreed proposition was that compliance with the English procedural rules will not necessarily provide a sufficient nexus for jurisdiction under Article 6(2) (see at [40]). The second was that the purpose behind the special jurisdiction conferred by Article 6(2) is to secure the rational and efficient disposal of trials and in particular to avoid the risk of irreconcilable judgments (see at [44]).

35. The third proposition that was not disputed by the parties in the present case was put in these terms by Wynn Williams J in Barton at [46]:

> "… a connection must exist between the proceedings commenced by the Claimant and the proceedings commenced by the Defendant against a Part 20 Defendant before the Part 20 proceedings can be considered to fall within Article 6(2). It is not possible to define the nature of that connection notwithstanding the understandable desire that Article 6(2) is understood and applied by all contracting states in the same way. It seems clear, however, that the connecting factor must be a close one … and there must be good reason to conclude that the efficacious conduct of proceedings is best promoted by both the claim between Claimant and Defendant and claim between Defendant and Part 20 Defendant being considered by one Court."

36. For UBS, Ms John KC argues that there is no jurisdiction because there is not a sufficient connection between the main claim and the Part 20 claim against UBS, and further because there is now no longer a main claim. Even if there is jurisdiction, Ms John KC argues the Court should in its discretion decline to exercise it.

37. The main claim has now been settled, and even before that development it was, as a result of case management decisions that I reached in the particular circumstances of the case, due to be tried before the Part 20 claim would be tried. Ms John KC further contrasts the issues of contract and assignment in the main claim with those of restitution and unjust enrichment in the Part 20 claim. She emphasises the common ground that the issues in the main claim are governed by English Law and those in the Part 20 claim by Swiss Law.

38. Ms John KC contends that the authorities show that where the main proceedings have been settled exceptional circumstances must be shown before claims can be pursued by way of third party proceedings under Article 6(2).

39. The reference to "exceptional circumstances" is taken from Waterford Wedgwood plc v David Nagli Ltd [1999] I.L.Pr. 9, a decision of Charles Aldous QC, dealing with the Judgments Regulation. More categoric was the approach of HHJ Seymour QC in British Sugar v Fratelli Babbini di Lionallo Babbini & CO SAS [2004] EWHC 2560 who concluded:

> "… as the main action is no longer live there is no discretion to be exercised. If the Part 20 claim were to continue in England, it would be as a separate claim, simply because there is no main action to be carried forward. Thus the requirements of Article 6(2) of the regulation are simply not met as matters have turned out."

40. With respect, the conclusion that the requirements of Article 6(2) are not met is one that I cannot accept. But further, even the reference to "exceptional circumstances" is one for which I cannot find support, on earlier authority or by reference to principle.

41. The question is one of sufficiency of connection. The context is that of admissibility as discussed by the Court of Justice of the European Communities (1st Chamber) in Kongress Agentur Hagen GmBH v Zeehaghe BV (C-365/88) [1990] ECR I - 1845.

42. A truly important consideration in the exercise of discretion is the desirability of certainty. As Lord Steyn described the Lugano Convention, it is a "Convention which aims at legal certainty" (Canada Trust v Stolzenberg (No 2) [2002] 1 AC 1 at 12D). A change in conclusion on jurisdiction or admissibility as and when and if developments occur in the course of the particular litigation may lead to uncertainty. I am ready to accept that in some cases it may not. But it is in principle desirable that the parties, and the Court, should have appropriate certainty. In the context under consideration, predictability and continuity are aspects of certainty.

43. Although as Ms John KC points out, this hearing, of an application contesting jurisdiction at which both parties are heard, is the first time that the Court reviews the question of whether Article 6 provides jurisdiction, that should not prevent the Court from looking at the position at the start of proceedings as well as at the position now. That is not to "back-date" (to use her term in oral argument) questions that have not been tested before this stage. It is to allow a view of all the circumstances.

44. In my view there was sufficiency of connection at the point of issue of the Part 20 Claim Form. This is for the reasons explained by Mr Turner KC in these terms:

> "… on the facts, the relevant connection between the main and the Part 20 claims in the present case is that the latter were contingent upon the success of the main claim. If that claim succeeded, so that the Part 20 claims then had to go ahead,

there would be nothing to prevent UBS and GP taking all the same points that we had taken, unless of course they were party to the proceedings in which judgment in CAIS's favour had been given. And this jurisdiction is the only one in which these disputes could be heard in order to prevent the risk of irreconcilable judgments.

… The fact that the juridical nature of the main proceedings differed from that of the Part 20 proceedings is irrelevant, as is the fact that different laws govern the claims against GP and UBS. At the very least, each of those last two claims would have to take account of the other, in quantum terms, and the two would undoubtedly be part of the same overall factual investigation."

Mr Turner KC later accepted there was no "trump card", but added:

"But in a case where there is not only a common investigation but also an inevitable interrelationship between the main and the Part 20 claims and between the quantum of each Part 20 claim [the Court] should accept that it carries the day."

"[England & Wales] was the only forum which could house all the claims, CAIS's claims against AG and MG, and AG and MG's claims against GP and UBS."

45. Strictly, there was no evidence either way on the question whether the Swiss Court would take jurisdiction over the main claim ("in the teeth of an exclusive jurisdiction clause in favour of [the English Court]" as Mr Turner KC put it). However, the evidential burden resting in the particular context with UBS, it was for UBS to show that the Swiss Court would.

46. If there is sufficiency of connection at the point of issue of the Part 20 claims, should the facts that GP is now not defending the claim against it, and that the claim by CAIS has now been settled, change that conclusion? In my view, no, at least in the present case. This is because of the consideration of certainty, as described above.

47. Again in the period since the hearing I was referred to the thoughtful decision of Stephen Houseman QC, sitting as a Deputy High Court Judge, in HC Trading Malta Limited v K.I. (International) Limited and others [2022] EWHC 1387 (Comm). The case before him did not concern the Lugano Convention; it was a case where permission to serve out of the jurisdiction had been sought and granted. The judge noted "as an aside" that on the authorities in that type of case the court might be required to ignore material changes of circumstances post-dating the relevant permission order. He observed at [13]:

"The underlying legal policy is one of certainty in jurisdictional matters so that litigating parties know where they stand on the preliminary (and often strategic or

decisive) question of jurisdiction."

Practice Direction 6B: permission to serve out of the jurisdiction under gateway 3.1(3) or (4)

48. I had the benefit of argument on the question of the grant of permission to serve out of the jurisdiction under gateway 3.1(3) or (4) of Practice Direction 6B. In light of the conclusions I have reached in this judgment the question does not arise.

The application to strike out

49. The Joint Expert Memorandum of the Swiss Law experts includes this:

> "Article 470(2) [of the Swiss Code of Obligations] determines the time up to which a payment instruction can be revoked by the payor. A payment instruction cannot be revoked from the moment the paying agent (UBS in the present case) has expressly or impliedly indicated to the payee (GP in this case) that it has unconditionally accepted the instruction and acknowledged its own obligation to the payee in the amount of the payment. A credit made to the payee's account is deemed to be the paying agent's acceptance and acknowledges the paying agent's obligation to the payee, provided the payee received notice of the credit. Notice is deemed to be received, inter alia, in the following circumstances:
> a) the payee can remotely access the account by electronic means such as e-banking (whether or not the payee has effectively accessed its account), unless according to the terms and conditions governing the e-banking services, the entries shown in the e-banking application are not deemed to be a true and correct reflection of the payee's accounts; or
> b) the payee has physically or electronically received an account statement or a transaction notice from the paying agent."

50. In this light, Ms John KC says the critical question is whether AG and MG revoked their payment instructions before GP, the account holder, received notice of the credit to its account.

51. The experts disagree on this issue, although it depends in material part on the facts. Ms John KC responds that it does not follow from the experts' disagreement that there is a serious issue to be tried or that the Part 20 Claim against UBS has a real prospect of succeeding in an English court.

52. AG and MG rely, as revoking the payment instructions, on a letter sent on 21 August 2020 from GP to UBS referring to the assignment, stating that "the payments are the property of CAIS and have been paid to UBS by mistake". Ms John KC challenges the relevance of the letter of 21 August as it was from GP not from AG and MG. AG and MG contend, as I understood it, that it should be treated as sent on their behalf. Mr Turner KC adds that a further, even earlier, possibility for revocation is offered by communication, not presently available, preceding an email from GP of 20 August 2020.

53. Ms John KC argues it is clear from UBS' records and from the letter of 21 August (which attaches a screenshot of the e-banking interface) that GP accessed its accounts via e-banking on 20 August 2020, so that GP was notified of the credit before the letter was sent on 21 August. Mr Turner KC refers to the argument squarely advanced before the hearing by AG and MG's solicitors that no explanation or evidence had been provided as to the source of the screenshots, in circumstances where it is necessary to establish a physical or electronic account statement or transaction notice was received from UBS. He also points to UBS' terms which state information and notifications displayed through e-banking "shall be regarded as provisional and shall not be legally binding unless certain information is explicitly stipulated as such within the framework of a specific service".

54. I have read and listened to the argument of both Leading Counsel, and reviewed the individual documents made available to the Court. But I consider the issue is one that should be determined at a trial. In particular I would wish to have evidence, and argument, that would allow me to know and understand the full context and circumstances of the pieces of correspondence available.

Conclusion

55. In my view the Court has and should retain jurisdiction, permission was not required to serve UBS out of the jurisdiction, and the Part 20 claim against it should not be struck out but should proceed to trial unless compromised. It is clear that the trial should be short and concise.

56. I am grateful to Counsel for argument of the highest adversarial quality but also enabled and enhanced by a high level of professional cooperation. On rare occasions where, as understandably happens in a case where the points can be complex and interconnected, one realised he or she had misstated a point then most often he or she was the first to correct it, openly and frankly, before his or her opponent had to. I was impressed in all these respects at the time of oral delivery; my admiration increased further when studying the transcript after the hearing.