Neutral Citation Number: [2023] EWHC 1860 (KB)

Case No: **KB-2022-004175**

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

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

Date: **18 July 2023**

Before :

Mr Justice Picken

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Between :

Verdi Law Group P.C.	**Applicant**
- and -	
BNP Paribas S.A. and others	**Respondent**

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- -

Richard Mott (instructed by **Bryan Cave Leighton Paisner (BCLP)**) for the **Applicant**
Philip Jones (instructed by **Mackrell Solicitors**) for the **Respondent**

Hearing dates: **18th July 2023**

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JUDGMENT

Mr Justice Picken **Tuesday, 18 July 2023**
(**12:28**pm)

Judgment by **MR JUSTICE PICKEN**

Introduction

1. I have before me an application made by the first defendant, Banque Paribas (strictly as described BNP Paribas SA, but I will refer to them as Banque Paribas) for summary judgment, alternatively for an order striking out the claim brought against it by the claimant, Verdi Law Group PC ('Verdi').
2. I should explain immediately, for a reason which will become more apparent later, that there are seven other defendants in these proceedings. Those defendants include some who have yet to be served with the proceedings. In that category are the second defendant (Sparx Asset Management Co Limited), the third defendant (Bank of Singapore Limited) and the seventh defendant (Mr Lawrence Lydell Elting).
3. As for the remaining defendants, the fourth (BVL Capital 2021 Limited), the sixth (Mr Stephen Charles Keating), and the eighth (Privet Capital LLP) have been served and, indeed, have themselves served a defence. Those defendants are represented by Rosenblatt solicitors in London.
4. The fifth defendant (Deroyce Limited) has also, as I am informed by Mr Philip Jones who appears for Verdi today before me, also been served with proceedings although it is unclear to me whether they have instructed solicitors as yet.

Background

5. It is Verdi's case that in early 2021 it introduced certain parties to a transaction which is said to have involved a provision by Banque Paribas of a stand-by letter of credit in the sum of 500 million euros backed by cash of over 500 million euros held by the second defendant in a Paris branch of Banque Paribas.

6. The case advanced is that that stand-by letter of credit would be used to obtain credit from another bank, which credit would, in turn, be used by a third party to conduct leverage trading in medium-term notes.
7. Pursuant to what is said to have been a non-recourse monetisation agreement (the 'NRMA') entered into between the fourth defendant and the fifth defendant, the fifth defendant is alleged to have agreed to remit certain sums to Verdi. Verdi asserts that, although it did not itself invest any money in the venture, it was nonetheless contractually entitled under the NRMA to over 1.4 billion euros, specifically 1,417,500,000.
8. The case of Banque Paribas in response to Verdi's claim entails the assertion that the transaction described by Verdi is, as it is put, a fiction. Specifically, Banque Paribas say that they and, indeed, the other financial institutions allegedly involved in the transaction, had no involvement in or knowledge of the transaction.
9. More specifically still, Banque Paribas say that the second defendant did not have the bank account with it which Verdi alleges it had and, indeed, that the second defendant was not a client of Banque Paribas. They say that the stand-by letter of credit is a forgery and that the various emails to which Verdi refers in support of its claim and purporting to come from Banque Paribas are fabrications which did not, in fact, come from Banque Paribas. The Banque Paribas position, in short, is that this is a scam, and as a result Verdi's claim is unsustainable.
10. It is appropriate that I say a little bit more by way of background beyond the relatively high-level description of the respective positions of the parties that I have so far given.

Background in more detail

11. Verdi is a law firm, a small law firm based in the US state of California, with offices in Malibu.
12. Banque Paribas, as will be well known, is a major international bank with its headquarters in Paris.
13. The second defendant is a company incorporated into Japan whose head office is in Tokyo.

14. The third defendant is a bank, again as will be well known, incorporated under the laws of Singapore with a head office, indeed, in Singapore.

15. The sixth defendant, Mr Keating, is alleged by Verdi to have been associated with the fourth defendant, BVL Capital 2021 Limited, which is a company incorporated in England and Wales with a registered office in London. The case advanced by Verdi is that BVL is a venture of Mr Keating and another person who is not named as a party to the proceedings.

16. As to the eighth defendant, Privet Capital Limited, this is a partnership registered in England and Wales, again with a registered office in London. Mr Keating is alleged to have been a designated member of that partnership.

17. This leaves the fifth defendant, Deroyce, another company incorporated in England and Wales with a registered office in London, and the seventh defendant, Mr Elting, who is alleged to have held himself out as acting on behalf of Deroyce.

18. Verdi's case is that it, together with representatives of another entity, HM Group International, acted in early 2021 as exclusive introducing parties in respect of the transaction.

19. Under that transaction, Verdi alleges that, first, BVL via Mr Keating was to obtain the stand-by letter of credit from Banque Paribas. The stand-by letter of credit was to be backed by over 500 million euros in cash held by Sparx, the second defendant, with Banque Paribas.

20. Deroyce, or an entity controlled by Deroyce, would, it is then alleged, use the stand-by letter of credit to obtain credit to carry out leveraged trading in medium-term notes.

21. Verdi goes on to maintain that, as soon as the stand-by letter of credit from Banque Paribas was delivered to Bank of Singapore, ultimately the bank from which credit was to be obtained having taken over from Deutsche Bank which was the initially intended source of funds, then, Verdi and BVL were entitled under the NRMA to very substantial payments from Deroyce. Specifically, Verdi's case is that Deroyce agreed to remit to the claimant and BVL an initial sum of 10 million

euros and then 40 weekly sums of over 78 million euros per week, amounting in total to some 3.15 million euros.

22. Of that amount, Verdi's case is that its contractual entitlement was to 45%, hence the claim for approximately 1.4 billion euros made in these proceedings.

23. So far as Banque Paribas are concerned, their involvement is alleged by Verdi to have been through various email and SWIFT communications. I will come on to the detail of those in a moment, however, to repeat, it is Banque Paribas' case that those communications were not actual communications but are fabrications. Who has engaged in the fabrication is a matter which, on Banque Paribas' case, is unknown, but their position is that it was nobody connected to Banque Paribas.

24. As to the communications, the allegation made by Verdi in the Particulars of Claim is that an employee of Banque Paribas, a Mr Joseph Ravisy, sent an email on 18 January 2021 to Mr Keating of Privet, confirming on Banque Paribas' behalf that, first, Sparx was a client of BNPP, and secondly, on instruction from Mr Keating, that Banque Paribas would issue the stand-by letter of credit in the sum of 500 million euros backed by cleared cash of over 500 million euros held by Sparx on deposit in an account with Banque Paribas in Paris. That is conveniently described for present purposes as the Sparx account. Verdi's case is that the 18 January email from Mr Ravisy was, then, forwarded by Mr Keating to Mr Elting on 19 January 2021, attaching a photograph of a computer screen showing a Banque Paribas account balance for the Sparx account.

25. Secondly, Verdi alleges in the Particulars of Claim that the NRMA was entered into. Specifically, the case advanced is that, under the provisions of the NRMA, BVL and Mr Keating represented the existence of the Sparx account and the cash within it and represented that Banque Paribas had confirmed, as Sparx's bankers, their willingness to issue the stand-by letter of credit and their acceptance of the key steps contemplated in the NRMA.

26. Thirdly, Verdi alleges that on 28 January 2021 Banque Paribas issued a SWIFT message in MT 799 format to Deutsche Bank (as I say, the initially intended source of the funds) indicating, in short, that, at Sparx's request, Banque Paribas were ready to issue the stand-by letter of credit with BVL as beneficiary and that, on 9 February 2021, Banque Paribas, in fact, issued and transmitted to Deutsche Bank by a SWIFT MT 760 message, a stand-by letter of credit with Deroyce named as beneficiary.
27. Fourthly, Verdi alleges that, at some unparticularised point prior to 4 March 2021, Deutsche Bank replied to Banque Paribas responding to the SWIFT message sent in January, together with the subsequent 9 February 2021 SWIFT message, and that, on 4 March 2021, Deutsche Bank sent a message to Banque Paribas by SWIFT indicating that Deutsche Bank could not credit the sum of 500 million euros to the relevant account and so the transaction could not proceed.
28. Fifthly, Verdi alleges that the NRMA was then varied to replace Deutsche Bank with Bank of Singapore, and to make the beneficiary of the stand-by letter of credit another company associated with Mr Elting by the name of PT Forza.
29. Mr Verdi's case, then, is that, on 19 April 2021, Banque Paribas transmitted a SWIFT MT 799 pre-advice message to Bank of Singapore, via Bank of Singapore's corresponding bank, namely Barclays Bank in Frankfurt, confirming Banque Paribas' readiness to issue the stand-by letter of credit via SWIFT MT 720 in favour of PT Forza at the request of Sparx.
30. Verdi goes on to assert that, on 21 April 2021, Mr Ravisy emailed a copy of the SWIFT MT 799 to a Bank of Singapore employee; that, on 30 April 2021, Barclays (on behalf of Bank of Singapore) issued a SWIFT MT 199 message to Banque Paribas authorising Banque Paribas to issue the stand-by letter of credit via SWIFT MT 760; that, on 10 May 2021, Banque Paribas issued and transmitted to Bank of Singapore the stand-by letter of credit in the form of SWIFT MT 760 message; and that, on an unspecified date, Banque Paribas, acting by Mr Ravisy as well as Mr Marc Carlos, signed or authenticated the stand-by letter of credit.

31. Verdi goes on in the Particulars of Claim to allege that, although Mr Keating confirmed that Bank of Singapore had accepted the stand-by letter of credit and that payments to Verdi would commence within three days, in fact, Verdi received no sums pursuant to the NRMA. That, it is said by Verdi, amounts to a breach of contract and leads, in consequence, to the claims brought against Banque Paribas, namely for, first, inducing breach of contract, secondly, unlawful means conspiracy and lawful means conspiracy and, thirdly, breach of a tortious duty of care said to be owed to Verdi.
32. Those claims (Verdi's primary claims, as it were) are based on the issuance and existence of the stand-by letter of credit as the trigger under the alleged NRMA for Verdi's entitlement to payment. Alternatively, Verdi alleges that, insofar as the stand-by letter of credit did not exist, then, it is entitled to succeed in a claim for fraudulent misrepresentation against Banque Paribas on the basis of the email purportedly sent by Mr Ravisy on 18 January 2021.
33. So much for the substance of the claims against Banque Paribas. There are, as will be obvious from my description of the other defendants, claims brought also against the fourth, sixth and eighth defendants. Those claims have been responded to in the form of a Defence settled by counsel instructed by Rosenblatt.
34. I say nothing about the detail of those claims for present purposes, but will return to the significance of those claims when considering a discrete submission made by Mr Jones concerning the application for summary judgment, namely that there is some other compelling reason why the case should be disposed of at trial, rather than at this interlocutory stage.

These proceedings

35. These English proceedings were preceded by certain proceedings in the United States. Those proceedings were commenced on 6 December 2021 against certain of the defendants which I have described in these English proceedings.

36. They led, over the course of several months, to Banque Paribas providing various documentation to Verdi and its US lawyers, MK Smith, in support of Banque Paribas' assertion that the relevant documentation relied upon by Verdi was lacking in authenticity.

37. Ultimately, the US proceedings were discontinued by a notice of voluntary dismissal filed by Verdi on 28 September 2022. It is not suggested that that discontinuance was because of any recognition on the part of Verdi that its claim was invalid. Indeed, there is some suggestion in the correspondence which I have looked at that the discontinuance was based on procedural aspects specifically concerned with whether the US is the appropriate jurisdiction.

38. Be that as it may, the English proceedings, which came to be issued by a claim form dated 23 October 2022, were preceded by a pre-action letter dated 7 September 2022, sent by Verdi's English solicitors, namely Mackrell. It is those proceedings which I am currently considering.

39. The present application for summary judgment, alternatively for an order striking the proceedings out, was issued by Banque Paribas on 28 February 2023. It was preceded by several months during which Banque Paribas' solicitors, BCLP, sought to engage with Mackrell (and Verdi) on the merits of the underlying claim. Specifically, efforts were made to set up a meeting between principals in which it seems the intention of Banque Paribas was to explain to Verdi the difficulties which the claim advanced by Verdi faces.

40. Those efforts seem to have come to nought and that appears to be why the present application was issued.

41. The lead-up to this hearing, taking place on 18 July 2023, has seen a degree of delay on the part of Verdi in advancing its response to the application. Specifically, the matter came before Master Sullivan on 21 June 2023 in order to consider the question of when Verdi should serve a response and, indeed, when the various steps required for this hearing to take place should happen.

42. In the immediate lead-up to that hearing, on 20 June 2023, Verdi served some evidence in the form of a witness statement from Mr Verdi, the principal of Verdi. Attached to that witness statement

was something described as a report, specifically an "email forensic report" dated 12 June 2023 from a Mr Darryl Morning of Morning Computer Services who described himself on page 2 of the report as an IT expert.

43. Notwithstanding that description, in paragraph 12 of the witness statement from Mr Verdi, it was made clear that that report was not being relied upon or proffered, to use Mr Verdi's language, as an expert's report. Indeed, Mr Verdi frankly acknowledged that the report, as he put it, "may not conform completely to English Court rules".

44. Be that as it may, the agreement made and reflected in the order of Master Sullivan dated 26 June 2023, was that Banque Paribas should be permitted to serve reply evidence by Friday 14 July without prejudice to whether that evidence constituted expert evidence and, indeed, whether permission for such evidence should be given.

45. It is immediately apparent, therefore, that the timing of evidence in this case has been somewhat less than optimum.

46. On 14 July 2023, last Friday, an expert's report from a Mr Phil Beckett of Alvarez & Marsal Disputes and Investigations LLP was lodged by BCLP on behalf of Banque Paribas. That is a report which has been put forward avowedly and expressly as an expert report. It is a report which is compliant, and Mr Jones did not take issue with this, with the requirements of CPR Part 35.

47. Again, this is a matter, namely the status of Mr Morning's report and the substantive disputes between that report and the report of Mr Beckett, to which I shall shortly refer.

Appropriate approach to summary judgment applications

48. Before doing so, however, I should very briefly set out the relevant approach to be adopted in respect of a summary judgment application such as this.

49. In doing so, I should indicate that I am not proposing in this judgment to go on to consider the alternative strike out application because, as will become apparent and for reasons which I will seek

to give, I have concluded that this is, indeed, an appropriate case in which to grant summary judgment to Banque Paribas.

50. That is a conclusion, again for reasons which I will set out shortly, which I have arrived at bearing in mind the guidance given in the very well known case of Easyair Ltd, v Opal Telecom Limited [2009] EWHC 339 (Ch) at [15]. There, Lewison J (as he then was) explained that, although the court may not conduct a mini-trial:

"... that does not mean that the court has to accept without analysis everything said by a party in his statements before the court."

He went on to say that:

"In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporary documents."

He continued:

"If so, issues which are dependent upon those factual assertions may be susceptible of disposal at an early stage so as to save the cost and delay of trying an issue, the outcome of which is inevitable."

51. As Mr Jones highlighted in his submission before me today, in Easyair it was also pointed out that the court is required to evaluate the prospects of success for the claimant, on the balance of probabilities, on the evidence presented on the summary judgment application, but is required also to consider the evidence that could be reasonably be expected to be available at trial. In that respect, Mr Jones referred me also to the observations made by Cockerill J in Foglia v The Family Officer Limited and Others [2021] EWHC 650 (Comm) at [18].

52. The further submission made by Mr Jones is that the court should hesitate before making a summary disposal where reasonable grounds exist to believe that a full investigation into the facts of the case would add to or alter the evidence available to the trial judge.

53. Mr Jones also pointed out that, although it is accepted that there is no bar to summary judgment where there are allegations of fraud involved, the court is nonetheless required to be very cautious

and should bear in mind the need for cogent evidence commensurate with the seriousness of the allegation: see King v Steifel [2021] EWHC 1045 (Comm) at [24].

54. Those principles, as will be obvious, are principles which are referable to the primary consideration which arises in the context of an application for summary judgment, namely whether, in the language of CPR 24(2)(a), the court considers that the claimant has no real prospect of succeeding on the claim or issue. However, as I have previously intimated, Mr Jones also seeks to invoke CPR 24.2(b), namely whether there is "no other compelling reason why the case or issue should be disposed of at a trial".

55. My initial focus is on the question of whether there is a real prospect of succeeding on the claim. I will come on separately to deal with the compelling reason aspect.

Real prospects

56. Focusing, then, on that first question (whether there are real prospects), it was essentially common ground between Mr Mott, who appears on behalf of Banque Paribas before me, and Mr Jones that the fate of the application for summary judgment turns on whether the court should approach matters on the basis that it is appropriate that the authenticity of various documentation in this case should be resolved at trial, rather than at this stage.

57. Putting that point a little bit more simply, Mr Jones acknowledged that, whilst the points made by Mr Beckett are points which appear to support Banque Paribas' position that the relevant emails were fake, nonetheless ultimately that is an issue which it is only appropriate should be determined at trial because it may be that, by the point that a trial takes place, the court will be better placed to determine the issue with more confidence.

58. The report of Mr Morning and the report of Mr Beckett have as their focus the various emails said to have been sent by Mr Ravisy from an email address at Banque Paribas. What neither report does is address, however, the prior question as to the authenticity of the suggested Sparx account and the various SWIFT messages which Verdi's claim, at least as primarily put, also relies upon.

59. I propose, in those circumstances and in the first instance, to say nothing further about either Mr Morning's report or Mr Beckett's report. I propose instead to turn my attention to the authenticity or otherwise of the Sparx account and the SWIFT messages.

Commercial implausibility

60. Before doing so, however, it is right to record Mr Mott's initial submission concerning what he describes as the inherently implausible nature of the transaction on which Verdi's claim rests. He notes, rightly in my view, that the alleged profits that the transaction would have generated are so vast as to at least give pause for thought as to whether the transaction can ever truly have been entered into.

61. The aggregate entitlement of Verdi and BVL would have been to some 3.15 billion euros corresponding to an annualised yield for BVL and Verdi of over 600% of the original stand-by letter of credit sum of 500 million euros. In those circumstances, the return for Verdi and BVL was nothing short of astounding. I agree with Mr Mott, in the circumstances, that it is inherently implausible that the transaction was authentic.

62. Secondly, as Mr Mott also puts it, the generation of the profits which I have described, was essentially guaranteed since, under the terms of the NRMA, as alleged by Verdi, the payments to Verdi and BVL are not dependent upon any trading being profit or, indeed, it seems on any trading taking place at all. They are payments which Verdi and BVL are, apparently, so it is alleged, entitled to receive on a periodic basis and in liquidated amounts which fall due unconditionally once the stand-by letter of credit was provided.

63. Thirdly but related to that second point, the payments were to commence very shortly after the stand-by letter of credit was provided. The implication is that the trading would have to be, as Mr Mott put it, vastly profitable within a very short timeframe in order to create the profits from which the suggested contractual entitlements got Verdi and BVL could be paid. Again, this seems most unlikely.

64. Fourthly, the number of steps and parties involved in the transaction was, again I agree with Mr Mott, neither necessary nor, indeed, an effective way for Deroyce or PT Forza to engage in trading using the benefit of the 500 million euros held by Sparx. The complication of the transaction in short seems, again, somewhat odd.

65. Fifthly, Verdi's alleged entitlement to over 1.4 billion euros is, again I agree with Mr Mott, out of all proportion to its alleged role in the transaction. Verdi did not itself contribute any cash or assets. Its entitlement instead arose solely, so it is suggested, because along with HMGroup and over only a short period of time, it introduced the other parties to each other. Again, this seems, from a commercial perspective, somewhat implausible.

66. These, however, are not points which had they stood alone would have caused me to accede to the summary judgment application. They would have been points which no doubt would have been powerfully made at trial, but I do not consider them to be points which, in and of themselves, would have justified a conclusion that this is a case where there is no real prospect of success for Verdi. They are not, however, points that stand alone. They represent the context in which more substantive points fall to be considered. The first of these, as I have indicated, concerns the Sparx account.

The Sparx account

67. The position here, first, is that Banque Paribas have confirmed, without contradiction in evidential form from Verdi, that the Sparx account does not exist and, indeed, has never existed. That is what was stated in the witness statement of Mr Francesco Ferretti dated 28 February 2023, which was lodged in support of the summary judgment application.

68. Specifically, Sparx is not and has never been a client of Banque Paribas. Secondly, the purported account number of the Sparx account does not exist, and indeed has never existed. The five digits at the start of the number denote, in fact, a defunct branch or agency of Banque Paribas which does not exist and did not exist in 2021. Secondly, Sparx itself (Sparx being, as I have pointed out, the

second defendant on whom proceedings have yet to be served0 has denied that the Sparx account ever existed.

69. Thirdly, the photograph of a computer screen, which appears to have been attached by Mr Keating when forwarding the 18 January email from Mr Ravisy to Mr Elting, is a photograph which is somewhat suspicious. As Mr Ferretti pointed out in his 28 February 2023 witness statement, the photograph shows a number of strange things. In the first instance, on the right-hand side of the page, there is an address saying "Bonjour M". There is no name other than "M", which I take to mean a reference to monsieur. That is apparently not a normal thing. Indeed, I can see that it is strange.

70. Furthermore, to the right of the page at the bottom, there is a reference to a figure of 507,788,881.09, and then the euro sign. Under that, the words "provisionelle" and the same figure appear, but, when that same figure is entered, the euro sign is, then, in a different box, a box which has a plus next to it, presumably indicating that another line can, if necessary, be utilised. The fact that the euro sign is in a different box does suggest, as Mr Ferretti pointed out, that this is not a document that is authentic, indeed, rather that it is a document that has been doctored.

71. In addition, again as Mr Ferretti pointed out, the photograph is a photograph of a screen which would be used if the account was a personal account. Mr Ferretti exhibits later to his witness statement a page in use in respect of companies rather than individuals, and it is a very different document altogether.

72. The conclusion that this is a photograph which has been doctored is, in short, unanswerable. Indeed, Mr Verdi in response to Mr Ferretti's witness statement, has not answered the points made, and, Mr Jones, when I asked him this morning whether he had anything to say on the matters, was himself unable to say anything. The conclusion that I reach is that the photograph has, therefore, been doctored.

73. The notion that, were the matter to go to trial, this is an aspect which would improve from Verdi's perspective is, in my clear view, fanciful. If there were anything that could be said about it, I would expect it to have been said already. There is not anything. There will not be anything. That, it seems to me, is the end of this particular aspect.

The SWIFT messages

74. However, it is not only the Sparx account that falls to be considered. There are also the various SWIFT messages to which I have made reference and which Verdi's claim relies upon.

75. Those SWIFT messages are messages which, again, it is quite clear are inauthentic. Again, Mr Jones and Mr Verdi have not sought to join issue with any of the points that have been made by Mr Ferretti either in his first witness statement or in his second witness statement when addressing these matters, Mr Ferretti's second witness statement being dated 11 July 2023.

76. The first point to make is that the SWIFT organisation itself confirms that the relevant SWIFT messages are not their messages. The General Counsel of SWIFT has provided two letters confirming, in short, that, although the SWIFT organisation's message retention policy is limited to 124 days and so it is no longer possible to check SWIFT's records in order to confirm whether the alleged SWIFT messages were, in fact, sent, SWIFT has reviewed the stand-by letter of credit and the other SWIFT messages and has confirmed that they could never have been transmitted over the SWIFT network.

77. This is because the alleged SWIFT messages failed in a number of ways to meet the mandatory operation of the message requirements imposed by the SWIFT organisation prior to accepting any message for transmission. It is unnecessary for me to set out the detail in respect of this because, as I have indicated, again neither Mr Verdi nor Mr Jones has sought to take issue with what has been said. The most that Mr Jones has done today is to pray in aid the General Counsel's reference to the fact that messages are not retained after 124 days, but, with respect, that is an observation which does not meet the detail of the evidence obtained from SWIFT's General Counsel.

78. That detail is set out in the exhibit to Mr Ferretti's first witness statement. However, to take but one example, the fact that the relevant SWIFT messages relied upon by Verdi have at the top the logo and then the words "BNP Paribas" is itself an indication that they are not SWIFT messages since the General Counsel confirms that SWIFT messages do not contain the logo or name of the relevant banks at their top.

79. The other aspects set out in Mr Ferretti's first witness statement are contained in paragraphs 41 to 47, and I have taken all those aspects into account. I need not set them out again here.

80. Thirdly, in this respect, it is significant that both Barclays (the alleged correspondent bank of the Bank of Singapore), which is said to have received the stand-by letter of credit, and Deutsche Bank, which is said to have received the first stand-by letter of credit, have confirmed in the context of Verdi's US proceedings that they did not send or receive the SWIFT messages as alleged, including the alleged stand-by letter of credit itself; and Deutsche Bank has reiterated this confirmation in the context of the current English proceedings.

81. In short, the SWIFT messages, it is quite clear, are fake and I see no prospect at all of Verdi being able to establish the contrary were the matter to be permitted to go to trial. The consequence is that the primary way in which the claim is put by Verdi cannot succeed.

The emails; the alternative misrepresentation case

82. I turn, then, to the alternative misrepresentation case based, as I have previously indicated, on the 18 January 2021 email sent allegedly by Mr Ravisy from his alleged Banque Paribas email address.

83. It is in this respect that the reports of Mr Morning and Mr Beckett are relevant.

84. I need to say something briefly about Mr Morning's report. I have indicated previously how, when it was introduced as an exhibit to Mr Verdi's witness statement of 20 June 2023, Mr Verdi was clear that it was not being proffered as an expert report. In those circumstances, Mr Mott's invitation to me is that I should, in effect, disregard the report altogether on the basis that it is, in truth, an

impermissible attempt to rely upon expert evidence without following the appropriate procedures as set out in CPR Part 35.

85. In this respect, Mr Mott has taken me to a decision of Marcus Smith J, namely New Media Distribution Company SEZC Ltd v Konstantin Kagalovsky [2018] EWHC 2742 (Ch) at [10] and [11] where the judge said this:

"10. But the short point that is these statements are or purport to be expert opinion and this is the second problem with these paragraphs in Kagalovsky 4. It is not right for a factual statement, that is Kagalovsky 4, to be used to adduce expert, when there are clear procedural rules of this court that no party may call an expert or put in evidence an expert's report without the court's permission. It's not right for these provisions in CPR 35 to be circumvented simply by attaching the expert statements to a statement of fact.

11. Indeed, there are a number of problems with this course. One loses in their entirety the safeguards that exist regarding the adduction of expert evidence. I have in mind, for example, an expert's duty to the court, the expert declarations that one normally sees and the fact that experts will be cross-examined. Here, the statements of Professor Butler and Mr Reedman(?) contain none of the requirements and provisions that expert evidence ought to have."

86. In those circumstances, Mr Mott suggests that I should pay no attention to Mr Morning's report at all. He makes the point that Verdi has had more than ample time, as he puts it, to obtain expert evidence and apply for permission under CPR Part 35, and Verdi has not done so despite, through its solicitors in March 2023, indicating that it may wish to do so. He submits that this is a factor which supports his submission that I should not have regard to what Mr Morning has to say.

87. I prefer to adopt a slightly more nuanced approach. This is a case in which, quite clearly, I do now have expert evidence in the form of Mr Beckett's report, which is CPR Part 35 compliant. That report itself offers a detailed critique of what Mr Morning has to say in his report. In those circumstances, it seems to me artificial and unrealistic for me to proceed on the basis that what Mr

Morning has to say should be disregarded altogether. Whilst, like Marcus Smith J, also deprecating any attempt (although I am not suggesting there was here) to sidestep CPR Part 35, I prefer instead to focus on the substantive issues as they arise between Mr Morning, on the one hand, and Mr Beckett, on the other.

88. Having focused on those substantive matters, again I have reached the very clear conclusion that what Mr Beckett has to say is, in effect, unanswerable. I reach that conclusion conscious that Mr Morning has, for reasons which Mr Beckett has sought to explain in considerable detail, in effect and for whatever reason, not embarked upon the necessary exercise which would enable him to conclude that the relevant email, specifically the 18 January 2021 email, was authentic.

89. Mr Morning, in his report, concludes that five emails, including the 18 January email to which I have referred, originate from within the BNP Paribas network or domain. That involves a conclusion that two emails, including the 18 January email, were sent from an email address, namely jravisy@bnpparibas.com, which does not exist and has, on the evidence, the clear evidence given by Mr Ferretti, never existed. In those circumstances, I agree with Mr Mott (and indirectly Mr Beckett) that Mr Morning's analysis simply cannot be correct.

90. The point goes further, however, because Mr Morning's analysis purports to conclude that three emails were sent from a Banque Paribas server when Mr Morning has not been provided with those particular emails. He has instead only been provided with later dated emails which purport to have included the relevant email from Mr Ravisy earlier in a chain. However, as Mr Beckett and, indeed, also Mr Pierre-Augustin Tillit, in a witness statement of 28 February 2023, point out, it is impossible to reach a conclusion such as this based on the material which Mr Morning must have been provided with. Specifically, Mr Beckett explains in paragraphs 5.2.1.9 and 5.2.1.13 that, when considering an email chain, it is not possible to determine the origin of an earlier email in the chain from the email header. In those circumstances, what Mr Morning has purported to have done in relation to those emails (and there are three of them in total) simply makes no sense.

91. Mr Beckett's conclusion, set out in detail in paragraph 6.2.1 and summarised at 6.3.2 of his report, is that the relevant emails have, as he describes it and in technical terms, been spoofed so as to appear as though they have come from a legitimate Banque Paribas email address when, in fact, they have not. Again, I need not set out the detail, but the paragraphs to which I have referred in his report represent, in my clear view, unanswerable evidence as to what in this case has happened, namely that there has been spoofing.

92. I might add that this conclusion of Mr Beckett (which, as I say, I find completely persuasive) is a conclusion which is somewhat underlined by the conclusions which I have reached concerning the Sparx account and the SWIFT messages. I say this for a straightforward reason which ought not to be overlooked. This is that the 18 January 2021 email from Mr Ravisy supposedly at Banque Paribas to Mr Keating was, then, forwarded by Mr Keating on 19 January 2021 to Mr Elting in an email which stated as follows:

    "In relation to the BVL Capital 2021 Limited transaction, please find below the RWA email from BNP Paribas together with the following attachments: [first] bank account screenshot, business card for the bank officer, some background on the account holder."

    That first reference to the bank account screenshot is a reference to the photograph or screenshot which I have previously described and which I have concluded was plainly fabricated. In those circumstances, it seems to me that the conclusion reached by Mr Morning based on the material which he had is all the more suspect.

93. His conclusion that the 18 January email from Mr Ravisy is genuine is inconsistent, in short, with the fact that the person who purported to forward on that email of 18 January chose to attach to his email, Mr Keating's email to Mr Elting, the Sparx account photograph.

94. In those circumstances, it seems to me that there is considerable force in Mr Mott's submission that the emails issue ties back in with, and likewise is itself influenced by, the conclusions which I have

reached concerning the Sparx account photograph and, indeed, for that matter, the SWIFT messages, although rather less directly.

95. In those circumstances, I have reached the conclusion that this is not a case where it would be appropriate to accede to Mr Jones' submission that the matter should be allowed to go forward to trial because it is only at trial that the issues which I have sought to address in this judgment can be properly and confidently resolved.

96. I have been careful not here to engage in a mini-trial but instead to focus on the evidence which has been adduced before me. The evidence adduced by Banque Paribas is, in my view, compelling. The evidence adduced by Verdi, in contrast, is far from compelling.

97. This is not a case where it is appropriate, in those circumstances, that the matter should be allowed to proceed to trial in the hope that, in the context of Verdi that is, issues might arise which allow it to succeed. On the contrary, I am clear that this is a case where Verdi, as the claimant, has no real prospect of succeeding on the claim and, in those circumstances, there should be summary judgment subject only to the further point which I now come on to address.

Other compelling reason

98. That further point, as I have mentioned previously, concerns Mr Jones' submission that there is here some other compelling reason why the case should proceed to trial.

99. This is a submission which has not previously been foreshadowed in the many months leading up to the hearing before me. On the contrary, it is a submission which was raised for the first time in Mr Jones' skeleton argument submitted to the court at about 9.15 this morning, so less than an hour before this hearing commenced.

100. Be that as it may, the submission made is that the court should take account of the fact that it is not just Verdi, as Mr Jones puts it, which is contending that the emails from Mr Ravisy relied upon by Verdi are genuine. On the contrary, Mr Jones observes by reference to detailed aspects of the

Defence submitted by the BVL defendants, that the BVL defendants also assert positively, as he puts it, that various emails were sent by Mr Ravisy.

101. In those circumstances, Mr Jones submits that it would be inappropriate for the issue to be determined once and for all as between Verdi and Banque Paribas since there are other defendants, namely the BVL defendants, who will be affected by that determination and who, therefore, are entitled, in effect, to be heard on the issue.

102. I reject that submission for various reasons. First, it is unsatisfactory that it is a point that has only just been raised. If it was a good point one might have expected it to have been raised sooner. But more substantively, secondly, the BVL defendants are represented by Rosenblatt, as I have previously indicated, and they have had notice of this application for some considerable time. They were, indeed, sent a copy of the order which was made by Master Sullivan on 26 June 2023. In those circumstances, it is clear that the BVL defendants know what it is that Banque Paribas are saying and if they, represented by a well known firm of solicitors, had the type of concern which Mr Jones suggests the court should have, then, it is fanciful that they would not have raised that concern themselves and, if necessary, sought to appear before me today. They have not, and I conclude that this is because they are not concerned.

103. Thirdly, although Mr Jones sought to suggest that some type of res judicata would operate in the event that I were to reach the conclusion which I have indicated that I am inclined to reach, as between not just Verdi and Banque Paribas, but also as between Verdi and the BVL defendants, I am far from convinced that that can be right.

104. In this respect, I was taken to certain extracts from Spencer Bower & Handley on Res Judicata, namely paragraphs 9.07 and 9.10. In particular, at paragraph 9.7, the editors of that book say as follows:

"Res judicata estoppels may operate between defendants. The principles were developed by the Privy Council in the Indian appeals in Munni Bibi v Triloki Nath, 1931, LR 58 Ind App 158, Sir George Lowndes said:

"... Three conditions are requisite: (1) there must be a conflict of interest between the defendants ...: (2) it must be necessary to decide the conflict ... to give the plaintiff the relief he claims, and (3) the question between the defendants must have been judicially decided."

105. I do not accept that those conditions are apposite in the present case. I do not see how there is here a conflict of interest between Banque Paribas and the BVL defendants. On the contrary, on an analysis of the Defence submitted by the BVL defendants, it is tolerably clear that their position is not that the various emails are authentic, but instead that, in effect, those matters are not admitted.

106. It is true to say that in the Defence, there is a variety of approach. In some places the BVL defendants appear to assert positively that certain emails were sent, whereas in other cases they caveat their acceptance of the allegation made against them by Verdi. In some cases, also, they positively assert, bearing in mind that the BVL defendants include Mr Keating, that Mr Keating himself sent emails to others, including Mr Elting. However, it is worth noting that at the very outset of the Defence, this is stated in paragraph 1(b):

"The BVL defendants make no admission in relation to matter which they are unable to admit or deny because such matters lie outside their knowledge. The claimant, Verdi, is required to prove all such matters."

107. The Defence goes on in paragraph 76 to state as follows:

"Paragraphs 28 and 29 are admitted in so far as they record communication sent on behalf of BNP Paribas and Sparx and clarify the above is repeated. No admissions are made as to the accuracy of those statements by Sparx and/or BNP Paribas. At all times the BVL defendants were reliant on: (a) information provided to them in relation to the SBLC by either Ming or Joseph Ravisy, or at least the person purporting to be Joseph Ravisy whom the BVL defendants genuinely and reasonably

believed to be Joseph Ravisy acting on behalf of BNP Paribas, and/or (b) their understanding that the SBLC had been validated by the due diligence carried out by HNG, Mr Elting and/or Deroyce ... ."

108. It is clear, in my assessment, that what the BVL defendants are effectively saying in their Defence is that, if the emails from Mr Ravisy were, indeed, emails from Mr Ravisy, as opposed to forgeries, then, their position is as stated in the Defence. They are not positively asserting, in my assessment, that the emails were authentic.

109. In those circumstances, I struggle to see how there is, applying the approach adopted by Sir George Lowndes, a conflict of interest between Banque Paribas and the BVL defendants. In any event, even if there were such a conflict, I am not satisfied either that the second prerequisite identified by Sir George Lowndes is satisfied in this case, namely that it is necessary to decide the conflict in order to give the plaintiff, here Verdi, the relief he claims.

110. The other aspect relied upon, and this is my fourth reason for rejecting Mr Jones' submission based on some other compelling reason, is paragraph 9.10 of Spencer Bower, specifically the reference there to this under the heading "Third and subsequent parties, Part 20 parties":
"There cannot be inconsistent judgments in the same proceeding. The judgment between the claimant and the defendant must be consistent with that between the defendant and any Part 20 party ...".

111. The short answer to this is that, on any view, the BVL defendants are not third or subsequent parties, or Part 20 parties in modern parlance. This is not a claim, as contemplated by paragraph 9.10, where Banque Paribas are saying that they are not liable to Verdi but, if they are, then, the BVL parties are liable to Banque Paribas.

112. Mr Jones, in fairness, recognised that that is not the situation but sought to suggest that, in fact, the current case is a fortiori covered by the principle described in paragraph 9.10. Again, I do not agree. The cases are entirely different , but, in any event, the answer is the one which I have

previously offered, namely that the BVL defendants are not positively, contrary to Mr Jones' submission, asserting the authenticity of the various documents which Verdi seeks to rely upon.

113. In those circumstances, it seems to me that the concerns identified by Mr Jones do not arise. As I say, if they did, then, I would have expected Rosenblatt, in any event, to have identified them themselves and, indeed, for those concerns to have been identified somewhat sooner by Verdi, rather than only very, very shortly before this hearing commenced.

114. I conclude that the further reason why the court is permitted not to grant summary judgment, namely compelling reason, is not a reason which operates here.

Conclusion

115. In those circumstances I grant summary judgment and I do not, as I have previously indicated, need to get into the alternative strike out application and I do not do so.