Neutral Citation Number: [2023] EWHC 3036 (Comm)

Case No: CL-2023-000431

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

Date: 29/11/2023

Before :

MR JUSTICE FOXTON

- -

Between :

IRYNA GORDIY	**Claimant**
- and -	
(1) JEKATERINA DOROFEJEVA	
(2) TARGET GLOBAL EARLY STAGE FUND II LP	**Defendants**

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- -

Ms Gordiy in person at both hearings
Tim Matthewson (instructed by **Alston & Bird (City) LLP**) for **the Second Defendant** at the hearing on 17 November 2023.
Dermot Woolgar (instructed by **Latham & Watkins (London) LLP**) for **the First Defendant** at the hearing on 24 November 2023

Hearing dates: 17 November 2023 (the Second Defendant's application)
and 24 November 2023 (the First Defendant's application)

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Judgment Approved by the court for handing down (subject to editorial corrections)

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MR JUSTICE FOXTON

This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be Wednesday 29 November 2023 at 10:00am.

The Honourable Mr Justice Foxton:

1. This judgment deals with two sets of applications, heard separately but brought in the same case:

    i) The First Defendant's ("**D1**"'s) application to strike out the claim brought by the Claimant ("**Ms Gordiy**") against her, to strike out Ms Gordiy's reply on the ground that it has not been verified by a statement of truth and for a direction that "a document made by C and bearing many of the characteristics of a witness statement … is not admissible in evidence because it is not verified by a statement of truth", and Ms Gordiy's application to strike out D1's strike out application.

    ii) The Second Defendant's ("**Target**"'s) application for a declaration that it has not been validly served and that the court has no jurisdiction in respect of Ms Gordiy's claim (Target being a company incorporated in Grand Cayman in the Cayman Islands and served there), and Ms Gordiy's application to strike out that application.

2. The claim was issued by Ms Gordiy, who is acting in person, in the Commercial Court, even though the value of the claim is between £650,000 and £900,000. A claim in this amount should not have been commenced in the Commercial Court (as Mr Justice Andrew Baker J recently had cause to note in *Bailey Ahmad Holdings Limited v Bells Holdings Limited* [2023] EWHC 2829 (Comm), [31]-[32], another dispute worth less than £1m which was issued and the subject of a contested application in the Commercial Court). However, neither Defendant – both of whom do have legal representation – raised that issue with the court. Instead, they have issued applications in the Commercial Court which I heard over two half day hearings on consecutive Fridays, with time spent after the hearings preparing this judgment, and a further hearing to deal with (possibly substantial) consequential issues to come.

3. The Commercial Court faces formidable pressures on its time. It is important that its finite resources are deployed determining cases which have appropriately been commenced here, having regard to their subject-matter and value. It is as much the responsibility of defendants, as it is of those commencing proceedings, to ensure that the proceedings have been commenced in an appropriate court and, if they have not, to raise the issue of transfer with the court promptly. While there are some cases of lower value which it will nonetheless be appropriate to bring in the Commercial Court (e.g. because they raise an issue whose importance extends beyond the particular dispute), the decision that a case of that kind should remain in the Commercial Court should be a judicial one.

4. If this is not done, and instead hearings are listed in the Commercial Court in cases which should never have been commenced here, then in the future those cases will be transferred out, however close to the hearing the case might be, once the proceedings come to the attention of a judge. Parties who are keen to avoid the delay which might follow from having to re-fix a hearing in the court to which the claim has been transferred will only have themselves to blame, by failing to raise the issue of transfer at an appropriately early stage.

5. Finally, at the first hearing, I drew Ms Gordiy's attention to the Advocate "The Commercial Court and London Circuit Commercial Court Pro Bono Scheme", and recommended that she approach the scheme to seek representation for the second hearing. She told me that she had been unable to make an accurate note of their contact details, and was without legal assistance at the second hearing. I would strongly suggest she contacts them before any further hearing.

THE BACKGROUND

6. Ms Gordiy was the sole shareholder and director of Remeeta Ltd ("**Remeeta**"), which was authorised by the Financial Conduct Authority ("**FCA**") as a payment institution and which provided international payment services.

7. Part XII of the Financial Services and Markets Act 2000 ("**FSMA**") contains provisions which regulate the control of persons who are authorised by the FCA. Subject to modifications made by paragraph 5 of Schedule 6 of the Payment Services Regulations 2017 (SI 2017/752), s. 178(1) of FSMA provides that a person who decides to acquire or increase control over an authorised payment institution or a small payment institution must give a notice in writing ("**a section 178 notice**") to the FCA before making the acquisition. When served with a section 178 notice, the FCA must approve the acquisition (which it may do either conditionally or unconditionally) or object. There is an assessment period of 60 days for the FCA to reach its decision, with approval being deemed to have been given if the FCA does not respond within that period. There is a similar obligation on the part of a person proposing to transfer all or part of their holding in an authorised person to give notice to the FCA before making the transfer.

8. On 18 July 2022, Ms Gordiy entered into a contract ("**the SPA**") to sell her shares in Remeeta to Finadvant Ltd ("**Finadvant**"), a company of which D1 and Target were shareholders. Target is an exempt limited partnership registered in the Cayman Islands. As at July 2022, D1 held 9,989 ordinary shares in Finadvant, Target held 8,272 preference shares and the balance of shares were held by a number of investors. Finadvant is a financial services company which provides a banking platform for corporate customers to make cross-border payments.

9. Under the SPA, Ms Gordiy was to be paid £650,000 in cash, and shares in Finadvant which it was estimated would be worth an additional £50,000, or thereabouts, in return for her shares in Remeeta.

10. There was a Subscription and Shareholders Agreement relating to Finadvant ("**the Finadvant SHA**") dated 22 September 2021 which regulated the relationship of its shareholders. This contained:

    i) A restriction on the sale of shares, and provided that shares would not be transferred "without first obtaining from the transferee or subscriber a Deed of Adherence" in favour of Finadvant and the other shareholders.

    ii) The effect of a Deed of Adherence was that the subscriber assumed the benefit of the rights and obligations under the Finadvant SHA.

iii) The Finadvant SHA was subject to English law and jurisdiction.

11. Reverting to the SPA:

i) By clause 2.1, completion was conditional upon the FCA approving Finadvant or any other person who on completion would become a controller of Remeeta (or being deemed to have done so) ("**the FCA Condition**") within 7 months of the date of the SPA ("**the Longstop Date**").

ii) By clause 2.2, Ms Gordiy and Finadvant agreed to use all reasonable endeavours to satisfy or procure the satisfaction of the FCA Condition as soon as possible following signature of the SPA, and in any event on or before the Longstop Date.

iii) By clause 2.4, if the FCA Condition was not satisfied on or before the Longstop Date, the SPA would become null and void and no party was to have any liability to the others in connection with the SPA except in relation to any antecedent breach.

iv) By clause 5, at or prior to completion, Ms Gordiy would provide, amongst other documents:

a) a disclosure letter, by way of disclosure against various warranties in the SPA;

b) a signed option agreement ("**the IG Option Agreement**") under which she would have the right to acquire 1% of the share capital in Finadvant;

c) a signed employment agreement ("**the IG Employment Agreement**") under which she would be employed by Finadvant;

and Finadvant was also to provide signed copies of the IG Option Agreement and the IG Employment Agreement on completion.

v) By clause 8.1, Ms Gordiy was obliged to notify Finadvant promptly of any material adverse change in Remeeta's business and by clause 9.5, she undertook to ensure that the warranties were not breached between the date of the SPA and Completion, and immediately to disclose any breaches to Finadvant.

12. Target was not a party to the SPA. Clause 16.3 of the SPA provided that "a party who is not a party to this agreement shall have no rights … to rely upon or enforce any term of this agreement". Clause 19 provided for the application of English law and gave the courts of England and Wales exclusive jurisdiction.

13. On 22 August 2022, Finadvant, acting through D1, submitted a section 178 notice to the FCA together with supporting documents, notifying the FCA of its intention pursuant to the SPA to acquire all the issued share capital of Remeeta from Ms Gordiy.

14. On 14 September 2022, the FCA acknowledged receipt of that section 178 notice but contended that it was incomplete. The FCA further asked for section 178 notices to be given by D1 and Target, such information to be provided by 26 September 2022.

15. On 22 September 2022, Finadvant, acting through D1, submitted a revised section 178 notice to the FCA. In her covering email to the FCA, D1 stated that section 178 notices did not need to be given by either herself or Target because upon the completion of the SPA the main controller of Remeeta would be Finadvant.

16. While these exchanges with the FCA were underway, a transaction for the acquisition of Finadvant was in contemplation. On 30 September 2022, a Dutch company called PNL Fintech BV ("**Fintech BV**") entered into a subscription agreement ("**the Subscription Agreement**") with, inter alia, Ms Gordiy and both Defendants. While Ms Gordiy raised an issue at the first hearing as to whether Target had signed the Subscription Agreement, she did not dispute that she had signed it, and she herself had in fact exhibited a copy signed by Target.

17. Under the terms of the Subscription Agreement (which was governed by the laws of the Netherlands and subject to the exclusive jurisdiction of the Netherlands Commercial Court):

    i) Ms Gordiy (as an "SAR Subscriber") agreed on completion to cancel the options she would have in Finadvant under the IG Option Agreement, and to accept in exchange certain stock appreciation rights ("**SARs**") in Fintech BV.

    ii) The Defendants agreed on completion to transfer their shares in Finadvant to Fintech BV and to accept in exchange certain shares in Fintech BV.

18. On 17 October 2022:

    i) Ms Gordiy and Finadvant signed the IG Option Agreement, the transfer of shares to take place on completion of the SPA.

    ii) Ms Gordiy and Finadvant signed an agreement by which Ms Gordiy waived those options in exchange for the SARs to be acquired under the Subscription Agreement.

    There is also a document signed by Fintech, Ms Gordiy and the other SAR holders granting SARs in return for waiving options, the date of which is not clear.

19. It is said that on 20 October 2022, completion of the Subscription Agreement took place, with the result that Ms Gordiy surrendered her right to acquire shares in Finadvant. Material from the closing bible has been put in evidence to evidence closing on that date. On the material before me, I am satisfied that it is not realistically arguable that completion did not take place on that date. However, Ms Gordiy says she was not told about this.

20. On 3 November 2022, in response to the revised section 178 notice that had been sent under cover of D1's email of 22 September 2022, the FCA informed D1 that she and Target were required to give section 178 notices because they each held more than 20% of the shares in Finadvant. The FCA also asked for a fuller explanation of the reasons for the acquisition of Remeeta, seeking the additional section 178 notices and the fuller explanation by 17 November 2022.

21. There is a dispute as to what happened next:

    i) It is accepted that Ms Gordiy prepared revised section 178 notices to be served by herself, D1 and Target; that those notices were prepared on the basis that the Defendants were substantial shareholders in Finadvant, and without at that stage mentioning that Finadvant had been acquired by Fintech BV.

    ii) Similarly a structure chart was prepared by Ms Gordiy which showed the Defendants as the shareholders of Finadvant after the sale, and a covering email under which these documents were to be provided to the FCA.

    iii) However, there is a dispute as to why the section 178 notices took that form:

        (a) D1 alleges that this was a result of Ms Gordiy's independent decision, and specifically that Ms Gordiy instructed D1 that the FCA should not be told of the Fintech BV acquisition until after approval had been given for Finadvant's acquisition of Remeeta.

        (b) Ms Gordiy alleges that D1 had informed Ms Gordiy that the section 178 notices should be prepared on that basis, and that Ms Gordiy was not informed that completion under the Subscription Agreement had already taken place, so that she understood the section 178 notices were accurate.

    iv) It is agreed that Ms Gordiy sent the draft notices to D1 on 16 November 2022, having herself signed the notice which was to come from Remeeta.

22. On 17 November 2022, D1 sent the revised section 178 notices for Remeeta and both Defendants, and the structure chart, to the FCA, under cover of an email using the text Ms Gordiy had circulated. Corrections had been made by Target to its section 178 notice from the draft prepared by Ms Gordiy.

23. On 23 November 2022, Ms Gordiy had a WhatsApp exchange with D1. The exchange is before the court in Russian, but Ms Gordiy's (presently unchallenged) evidence is that in the exchange she enquired about "the deal with Finom" (a reference to Fintech) and whether "everything was proceeding as per our previous discussions", and that D1 "affirmed that things were looking positive and that the deal was moving forward". If that is correct, that provides support for the suggestion that Ms Gordiy was not told that the Subscription Agreement had already completed on 20 October 2022.

24. On 9 January 2023, the FCA sent a message to D1 seeking further information, including "documentary evidence for the source of the £650,000 required for the transaction" such as a bank statement. The FCA chased that information on 13 January 2023, asking that it be provided by 17 January 2023. D1 replied on 16 January 2023 stating that "the requested information will be emailed to you once the funds are cleared into our account by the 7th February 2023".

25. Ms Gordiy contends that in another untranslated WhatsApp exchange of 14 January 2023, D1 told her that she had received a letter from the FCA requesting proof that the £650,000 would be paid by 9 February 2023, that the FCA later abbreviated this

deadline to 17 January 2023, and that the only document Finadvant could provide was a loan agreement with Fintech "for the required amount". Ms Gordiy also says that on 16 January 2023, D1 informed her that the £650,000 of purchase funds would be cleared by 28 January 2023, later revised to 1 February 2023. Ms Gordiy alleges that during further untranslated WhatsApp exchanges on 18 January 2023, D1 responded to her requests for an advance on the £650,000 by lamenting the delay in payments from Finom (i.e. Fintech BV).

26. On 20 January 2023, Ms Gordiy asserts that in an untranslated WhatsApp message, D1 informed her that Finom (i.e. Fintech BV) had declined to proceed with the deal and that her efforts to persuade them to do so had been unsuccessful. It is unclear as to whether "the deal" being referred to is funding for the SPA price, or the Subscription Agreement. However, if the summary is accurate, this might provide some support for Ms Gordiy's case that she was not told that the Subscription Agreement had completed on 20 October 2022.

27. On 20 January 2023, the FCA wrote to D1 once again chasing the information as to the source of the £650,000, by 7 February 2023 or sooner if possible. The FCA also requested evidence of the source of funds, e.g. from an investment committee, by 25 January 2023.

28. Ms Gordiy says that she was informed by D1 at a meeting at Stansted Airport on 21 January 2023 that Fintech BV and Target had refused to release the funds necessary for D1 to satisfy the FCA that the £650,000 necessary to complete the SPA was available, and that the Fintech transaction could take several weeks to complete due to stamp duty funding requirements. She also says at that meeting that D1 agreed that Ms Gordiy would be paid £32,000 to compensate her for the non-completion of the SPA.

29. On 22 January 2023, Ms Gordiy wrote to Finadvant seeking compensation for the financial loss incurred "as a result of a breach" of the SPA. It referred to Finadvant not providing information which had been requested by the FCA and thereby complete the transaction, and sought £32,500 compensation. It is noteworthy that Ms Gordiy appears to have understood at this point, before the FCA had reverted on the November section 178 notices, that the SPA would not complete (an event which is omitted from the narrative of events presented by D1 on this strike-out application). This was sent under cover of an email which stated, "I have attached the letter compensation demand, as agreed, for your review".

30. On 25 January 2023, D1 replied to the FCA's letter of 20 January 2023, stating:

> "…we ought to inform you that, unfortunately, [the £650,000] became unavailable. The company was trying very hard to secure funds for several months and had positive indications all along until recently. It came to our recent knowledge that the potential investors changed their appetite for the UK market hence refused the funding".

When she became aware of this communication, Ms Gordiy challenged the account given to the FCA, stating that Fintech BV had acquired Finadvant based on a value of £7,500,000 and that Target had raised funds of £15,000,000.

31. At around this time, Finadvant appears to have prepared a deed to be entered into by Ms Gordiy, Finadvant and Fintech BV, which would have cancelled the SPA, and, through generally worded provisions, Ms Gordiy's rights under the Subscription Agreement, in return for a payment of £32,500. However, the document was not signed. The document was dated 27 January 2023, and records "the FCA Approval was not obtained", even before the February 2023 correspondence referred to below.

32. On 2 February 2023, Finadvant wrote to Ms Gordiy seeking the disclosure letter under the SPA, confirmation that the warranties were still accurate and that there were no matters notifiable to Finadvant under the SPA. It is arguable that, by this point, Finadvant was seeking means to avoid having to complete the SPA, particularly given what D1 had said to the FCA on 25 January 2023.

33. On 14 February 2023, at a meeting at the FCA, the FCA stated that the applications for approval had to be withdrawn because on 20 October 2022 Finadvant had been acquired by Fintech BV, which meant that it now had different controllers, and that a fresh application for FCA approval would need to be sent by the current controllers of Finadvant. The source of the FCA's knowledge is unclear.

34. On 15 February 2023 (by a letter misdated 15 January 2023), Finadvant told Ms Gordiy of the FCA's position, and said that it was now unlikely that the FCA Condition would be satisfied before the Longstop Date.

35. On 18 February 2023, the Longstop Date was reached and the SPA lapsed.

36. On 21 February 2023, Finadvant wrote to Ms Gordiy stating that, since the FCA Condition had not been satisfied by the Longstop Date, the SPA was now null and void. It also raised various complaints as to Ms Gordiy's compliance with the SPA, the merits of which cannot be determined at this hearing.

37. On 23 February 2023, a Confirmation Statement as at 21 October 2022 was filed with Companies House for Finadvant. This related to the position of Finadvant on the date after the Subscription Agreement was completed, and showed various shareholders listed on the previous Confirmation Statement having transferred their shares on 17 October 2022, including D1, a Mr Prujanski and Target, with 12,644 ordinary and 14,038 series seed (or preference) shares now held by Fintech BV.

38. On 31 March 2023, Ms Gordiy emailed D1 threatening legal proceedings relating to the non-completion of the SPA, and demanding £32,500 compensation, which she described as a payment "discussed and agreed with you during our meeting at Stansted Airport, UK on 21 January 2023 and over our telephone conversation on 22 January 2023".

39. D1 replied on 17 April 2023, in a letter with something of a legal flavour, suggesting that Remeeta was not entitled to bring a claim because it was not party to the SPA and denying any breach of the SPA. Ms Gordiy responded on 21 April 2023 challenging those assertions.

40. On 19 July 2023, Ms Gordiy obtained default judgment against Finadvant for the sum of £35,246.40, but the judgment has not been paid. There is a dispute as to whether those proceedings were properly served, which cannot be determined at this hearing.

MS GORDIY'S CLAIMS

41. The grievance underlying Ms Gordiy's claim is that the SPA did not close and she was not paid the £650,000 and did not receive the other benefits which she expected to flow from the SPA. That grievance finds expression in the Particulars of Claim as follows:

    i) The section 178 notices sent by the Defendants to the FCA on 17 November 2022 were untrue and fraudulently so (the purpose of concealing the true position being to avoid issues arising as to the involvement of Russian citizens in Fintech BV).

    ii) At a meeting in January 2023, D1 led her to believe that the necessary funds to complete the SPA were not available, and D1 made a similar statement to the FCA in January 2023, but this was untrue.

    iii) D1 made numerous false statements to Ms Gordiy, and made promises to Ms Gordiy which were not fulfilled (although the allegedly false statements and unfulfilled promises are not particularised, nor the loss said to flow from them).

    iv) D1 concealed information by failing to file information recording a change in Finadvant's controllers within 28 days of such a change, as required, "thereby impeding the lawful disclosure of relevant details to me, the official bodies and the public."

    v) D1 failed to comply with a promise made to Ms Gordiy on 23 January 2023 to compensate her for the loss suffered due to the non-completion of the SPA, and a default judgment entered against Finadvant in respect of a claim for that compensation has not been satisfied.

42. Unsurprisingly, the Particulars do not identify the causes of action advanced with the clarity which a document prepared with legal assistance would have provided. There are various other documents filed by Ms Gordiy which expand on those assertions. Given her status as a litigant in person, I have concluded that I should have regard to these documents when determining whether she has arguable claims.

43. There are a number of complaints about late, inaccurate or retrospective filings made to Companies House in relation to Finadvant. As to this:

    i) On 17 June 2022, cessation details were filed showing the resignation of Leonid Prujanski ceasing to be a person with significant control on 14 March 2022.

    ii) On 1 November 2022, a filing was made recording the termination of Mike Lobanov's appointment as a director with effect from 31 October 2022.

    iii) On 2 November 2022, a Confirmation Statement of the position as at 1 October 2022 was filed listing the shareholders, including D1 (9,989 ordinary shares, with

411 seed shares having been transferred on 13 October 2021), Leonid Prujanski (8,777 ordinary shares, with 823 seed shares having been transferred on 13 October 2021) and Target (holding 8,272 series seed shares and an associated company holding 459 series seed shares). Ms Gordiy raises the issue of whether Mr Prujanski's shareholding is compatible with his cessation as a person with significant control on 14 March 2022, but did not explain how this might give her a cause of action.

iv) As I have stated, on 23 February 2023, a Confirmation Statement as at 21 October 2022 was filed which showed various shareholders listed on the previous Confirmation Statement having transferred their shares on 17 October 2022. Ms Gordiy points to:

(a) the timing of the filing (not only being late, but coming after the Longstop Date had expired, such that it was only at that point that there was a publicly accessible record of completion of the Subscription Agreement); and

(b) its inconsistency with the terms of the section 178 notices filed by the Defendants after 21 October 2022.

44. There are complaints that Finadvant has failed to pay revenue it was agreed would be paid when Remeeta started transitioning clients to Finadvant and failed to pay her compensation it was agreed she would be paid.

45. Ms Gordiy complains that promises were made to her about her post-completion employment which have not been fulfilled.

46. The loss Ms Gordiy claims comprises:

i) £650,000 (the amount payable under the SPA);

ii) the value of SARs she was entitled to under the Subscription Agreement, said to be worth €70,000;

iii) the earnings she would have received through 2 years' employment with Finadvant post-completion, of £160,000; and

iv) the amount of the unpaid judgment debt of £35,246.40.

47. Identifying the causes of action to which these alleged facts might give rise is not straightforward and, understandably, Ms Gordiy has struggled to do so. The following questions inevitably arise:

i) By what route can alleged misstatements or mis-filings with Companies House give a cause of action to Ms Gordiy, and how is it said that these acts caused her loss?

ii) To the extent that Ms Gordiy relied on promises or assurances, why it is said that these were made by D1 and Target rather than the company who had agreed to buy the shares in Remeeta and employ her after the acquisition, Finadvant?

iii) On what basis can Ms Gordiy claim the price payable under the SPA when she has retained the shares in Remeeta, and on what basis it is said that the amount of the judgment obtained against Finadvant can be recovered from the Defendants?

D1'S APPLICATION

48. Ms Gordiy asks the court to strike out D1's application on the basis that it had not been validly served, it being said that there had been no valid personal service on her and no agreement to electronic service. As to this:

i) I am satisfied on the evidence that the application and associated documents have been served by delivery to the address in the claim form. Courier reports and photographs confirm delivery by post through letter box or in one case by leaving the package on the door step. Ms Gordiy's complaints in this regard are overly technical and impractical.

ii) This constitutes valid service under CPR 6.20(1)(c) and CPR 6.23.

iii) In any event, Ms Gordiy has had ample notice of the proceedings, a full opportunity to respond, and she has availed herself of that opportunity. Had I not been satisfied that valid service had been effected, I would have dispensed with service under CPR 6.28.

49. As I have noted, D1 has issued applications to strike out two documents filed by Ms Gordiy on the basis that they did not contain the required statement of truth. Ms Gordiy undertook to provide the court with a statement of truth in relation to both of these documents. She has included statements of truth on her two witness statements. On that basis, I do not propose to strike the documents out, but have made it clear that this deficiency must be rectified.

50. Turning to the merits, sensibly Mr Woolgar who appeared for D1 did not suggest that the court could resolve any of the disputed issues of fact at this hearing. Rather he submits that there is no "tenable legal foundation" for any personal liability on the part of D1. That is certainly true so far as any claims for breach of the SPA are concerned, D1 not being a party to that contract.

51. In relation to the complaints concerning the section 178 notices, Mr Woolgar makes a number of points:

i) He says that when the revised section 178 notices were served, neither D1 nor Target were shareholders in Finadvant because the Subscription Agreement had completed. However, that is Ms Gordiy's point (for whatever it may be worth) – her complaint is that they sent notices purporting to present themselves as the shareholders in Finadvant when they knew this was not true, and that the section 178 notices were inaccurate as a result.

ii) He submits that there can be no fraud against Ms Gordiy because the section 178 notices were known by Ms Gordiy to be untrue. However, as I understand Ms Gordiy's case (and as she confirmed at the hearing, as well as in her witness

statements), it is that she did not know that the section 178 notices were untrue because she had not been told about completion of the Subscription Agreement, whereas the Defendants did know about completion. Ms Gordiy also stated that she prepared the section 178 notices in accordance with D1's instructions.

iii) He makes the (correct) point that an untrue statement made by D1 to the FCA would not give Ms Gordiy a claim in the tort of deceit, because such a claim ordinarily requires a statement *to* the claimant on which *the claimant* relies (referring me to Jackson LJ in *Eco 3 Capital Ltd v Ludsin Overseas Ltd* [2013] EWCA Civ 413, [77]).

iv) However, there is authority which suggests that the tort of causing loss by unlawful means may be committed if A dishonestly makes an untrue statement to B with the intention of causing loss to C, and loss is thereby caused to C, even if B suffers no loss (see *Costa v Dissociadid Ltd* [2022] EWHC 1934 (IPEC), [104]-[111] and *Clerk & Lindsell on Torts* (24th), [23-81]). While Mr Woolgar is right to say that no tort in these terms is pleaded, Ms Gordiy does plead (i) that D1 made fraudulent statements to the FCA (paragraph 5 of the Particulars of Claim); and (ii) that as a result, Ms Gordiy suffered loss (paragraph 10). She does not plead that D1 acted with the intention of causing her loss, albeit her skeleton argument for this hearing alleges that D1 "deliberately delayed informing the FCA about the new controllers of Finadvant until the Longstop Date … intending to bring an end to Finadvant's obligations under the SPA", that "the intentional delays with FCA Notifications and Companies House filings were strategic, aimed at waiting until the Longstop Date of the SPA to leverage Finadvant's guarantee for the acquisition of shares in Remeeta" and that "the above parties postponed notifying the FCA about the new controllers of Finadvant until the Longstop Date specified in the SPA, with the aim of evading their obligation under the SPA …". It is clear, therefore, that it is Ms Gordiy's (unpleaded) case that D1 acted with the intention of procuring the lapsing of the SPA.

v) He suggests that Ms Gordiy is "the original author of the false representations". But Ms Gordiy contends (a) that she was not told that the Subscription Agreement had completed, so she did not know that Finadvant had ceased to be owned by the Defendants, and (b) she acted on D1's instructions. These are contested factual issues.

52. In relation to the unparticularised allegation that D1 "misrepresented the Company's operations and financial affairs to me on numerous occasions [and] made multiple promises she failed to fulfil", Mr Woolgar rightly submits that these assertions are simply too vague (and in any event, the Particulars fail to explain why any promises were made by D1 in a personal capacity rather than on behalf of Finadvant – an issue Ms Gordiy was unable to answer at the hearing). I am satisfied that these allegations do not disclose any arguable case and should be struck out.

53. In relation to the alleged late filing with Companies House, including of the change in the ownership of Finadvant said to have taken place on 20 October 2022, Mr Woolgar makes the following points:

i) That nothing was concealed from Ms Gordiy because she was party to Fintech BV's acquisition of Finadvant. However, Ms Gordiy's knowledge of when completion occurred is in dispute and there was no material before me which would permit me to reject Ms Gordiy's denial of knowledge at this hearing.

ii) It is said that (i) the breach is not actionable at the suit of Ms Gordiy, and (ii) is not a breach of an obligation owed by D1 but by Finadvant. However, (i) might be capable of being overcome if a claim for causing loss by unlawful means could be asserted (as to which I express no view; and (ii) a breach of s.790VA of the Companies Act 2006 involves an offence by "every officer of the company who is in default", and D1 was a director of Finadvant when the notification obligation arose (and from 31 October 2022, the sole director).

iii) In so far as Ms Gordiy points to other allegedly inaccurate filings, she was unable to explain how these alleged events gave her a cause of action, and I have been unable to discern even a potential candidate.

54. In relation to the alleged agreement to compensate Mrs Gordiy, Mr Woolgar notes that D1 denies making such a promise, but in any event submits that any promise was made on behalf of Finadvant, not by D1 personally. In my view, that is plainly right:

i) The context of the alleged promise was an alleged failure by Finadvant to perform the SPA.

ii) Mrs Gordiy wrote to Finadvant on 22 January 2023 seeking the compensation and, the following day, threatened legal proceedings against Finadvant if it was not paid.

iii) The unsigned settlement deed prepared to record a possible settlement was prepared on behalf of Finadvant and envisaged an agreement between Ms Gordiy and Finadvant.

iv) Ms Gordiy commenced proceedings against Finadvant alleging that the sum was due from Finadvant and entered judgment against Finadvant.

Accordingly this claim, and the claim to recover the default judgment debt against D1, are struck out.

55. Finally, Mr Woolgar takes a number of points about aspects of the loss claimed. These have force, but are not a "knockout blow" and I do not believe the overriding objective would be served by striking out parts of the claimed loss at this stage.

56. Where does that leave matters?

i) There is currently no sufficiently pleaded and viable claim which would survive a summary judgment application.

ii) There may be an arguable claim for the tort of causing loss by unlawful means but that would require (a) an amendment; and (b) a proper base for pleading the

relevant allegations, in particular that D1 acted with the intention of causing the SPA not to complete and thereby causing Ms Gordiy loss (and the amended pleading would need to set out the matters from which it is said it could be inferred that this was D1's intention).

iii) To the extent Ms Gordiy makes assertions in her other filings (as she does) that D1 made misleading statements to her (e.g. as to the progress of the Fintech BV acquisition of Finadvant), these are not pleaded. A proper pleading would need to set out (a) what D1 said to Ms Gordiy and when; (b) why the statement is said to be untrue; (c) why it is said D1 knew the statement was untrue, or made the statement not caring whether it was true or false; (d) how Ms Gordiy relied on the statement (e.g. by acting or not acting in a certain way); and (e) how that reliance caused loss.

iv) Subject to the issue of whether or not it is possible for Ms Gordiy to amend to plead a case on those lines, the Particulars of Claim in their current form should be struck out.

57. Against this background, Ms Gordiy needs to consider carefully whether she is in a position to, and wishes to, put forward an amended pleading reflecting my rulings. If she decides she wishes to do so, and formulates proposed amendments, there would then need to be an application to amend the pleading, at which hearing it would be open to D1 to argue that permission should be refused.

58. I am satisfied, however, that if it turns out that there are arguable claims of this kind, they sufficiently overlap with the factual matters "in play" at this hearing, that I should at least cater for the possibility of an application to amend in this action, rather than striking the entire claim out and requiring Ms Gordiy to try and start again (with the risk of D1 arguing that the striking out of this claim precludes any further claim).

59. I cannot emphasise too strongly that Ms Gordiy should seek pro bono legal assistance in relation to any application to amend.

TARGET'S APPLICATION

60. Ms Gordiy took a preliminary point that Target's jurisdictional challenge had been brought out of time, on the basis that its acknowledgment of service should have been served by 3 September 2023, but was served three days late. However, assuming the Claim Form was properly served on Target, the Table to PD6B provides that Target had 31 days from service to file its acknowledgment of service. On the evidence, the Claim Form and Particulars of Claim were delivered to Target's registered address on 29 August 2023. The acknowledgment of service was filed on 6 September 2023, which was well within time. CPR 6.14, on which MS Gordiy relies, only applies to service within the UK.

61. Ms Gordiy purported to serve Target out of the jurisdiction without the permission of the court under CPR 6.33 (2B)(b), contending that her claim is made "pursuant to or in respect of a contract which contains a term to the effect that the court shall have jurisdiction to determine that claim" or CPR 6.33(2B)(c), on the basis that the claim is

in respect of a contract which contains a term to the effect that the court shall have jurisdiction to determine the claim. Ms Gordiy suggests that the contract in question is the Finadvant SHA.

62. I am satisfied that it was not open to Ms Gordiy to serve the claim form out of the jurisdiction without the permission of the court:

i) Ms Gordiy contends that she can rely on the English jurisdiction clause in the Finadvant SHA, on the basis that the transfer of shares envisaged by the IG Option Agreement provided that she would enter into the Deed of Adherence.

ii) However, Ms Gordiy did not become a party to the Finadvant SHA:

a) She relinquished her options to acquire shares in Finadvant prior to the date when the transfer under the IG Share Option was to take place (i.e. on completion of the SPA).

b) In any event, the SPA never reached completion, and so the date for the transfer of shares never arrived and no transfer has taken place.

c) As a result, Ms Gordiy was not eligible to adhere to the SHA at any material time, nor is there any evidence that she executed a Deed of Adherence.

d) Ms Gordiy suggests that, by clause 4.1 of the IG Option Agreement, she had appointed Finadvant as her attorney and agent in respect of the transfer and authorised Finadvant to enter into any agreements necessary to give full effect to those transfers. However, that clause does not permit Finadvant to sign up to the Deed of Adherence in circumstances in which no share transfer is to take place (because that is not an agreement necessary "to give effect to those transfers").

e) In any event, I am not persuaded that this clause overrides the clear terms of the Finadvant SHA requiring the transferee to enter into the Deed of Adherence, or that it extends to an agreement of that kind.

f) Finally, Finadvant did not purport to enter into the Deed of Adherence on Ms Gordiy's behalf.

iii) In any event, the exclusive jurisdiction clause in the Finadvant SHA applies to claims which "may arise out of or in connection with" the Finadvant SHA. Ms Gordiy's complaints against the Defendants in relation to the filings made with the FCA in connection with the SPA do not arise out of or relate to the Finadvant SHA, but have an entirely separate subject-matter (which is no doubt the reason why the Finadvant SHA is not mentioned in the Particulars of Claim).

iv) That also answers the reliance on CPR 6.33(2B)(c). Further, this is not a case where someone who is not party to a contract seeks to assert a right arising under the contract, when the contract contains an English jurisdiction clause, and the claim would fall within that clause as between the contracting parties. Ms

Gordiy's claim is not in respect of the Finadvant SHA but in respect of the SPA (and D2 is not purporting to assert a right against Ms Gordiy originating under the Finadvant SHA).

63. However, Mr Matthewson accepted that if Ms Gordiy had an arguable claim against D1 and against Target, then the court would have jurisdiction over the claim against Target on the "necessary or proper party" ground, England and Wales clearly being the appropriate forum for a claim relating to the proposed purchase of one English company by another under an English law contract, and dealings with the FCA. With the court's encouragement, Ms Gordiy made an application for permission to serve out on this basis at the hearing.

64. I have reached the view that there is currently no viable case pleaded against D1, and left open the question of whether it might be possible to advance such a claim by amendment. In these circumstances, I have decided that the appropriate course so far as Target's application is concerned is to declare pursuant to CPR Part 11 that the Claim Form has not been duly served on Target on the basis that the permission of the Court was required to serve Target out of the jurisdiction but was not obtained.

65. As matters stand, any application for permission to serve out under the "necessary or proper party" ground would fail because of my conclusion as to the current state of Ms Gordiy's pleaded claim, which has the effect that Ms Gordiy has not advanced a claim with a good arguable case against either Defendant.

66. However, it will be open to Ms Gordiy, if she does seek permission to amend against D1, to seek permission to amend the claim against Target as well, and to seek permission to serve any amended claim on Target out of the jurisdiction. Were Ms Gordiy to decide to pursue that course, she will need to give careful consideration to the fact that she had no direct dealings with Target at the relevant time, in contrast to her extensive exchanges with D1.

67. If such an application is made, Target may wish to participate in the hearing subject to its jurisdictional reservation, treating it as an "on notice" application for permission to serve out.

68. I am not persuaded that any further declarations or orders are appropriate at this stage.