Forward Group Ltd v Balfour Investments Ltd

Jurisdiction:	Jersey
Judge:	Sir William Bailhache, Jurats Le Cornu, Le Heuzé, William Bailhache
Judgment Date:	15 May 2023
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Court:	Royal Court

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Text

Between
Forward Group Limited
Plaintiff
and
(1) Balfour Investments Limited
(2) Beavron Investments Limited
(3) Berkeley Square Investments Limited
(4) Buckingham Corporations Limited
(5) Cheddington Lodge Limited
(6) Chermonx Limited
(7) Chesterhill Properties Limited
(8) Cobra Group Holdings Limited
(9) Cobra Investments Limited
(10) Hemel Holdings Limited
(11) Staznet Trust Company Limited as trustee of The Ironzar VI Trust
(12) Staznet Family Office Ltd (formerly Mayfair Holdings Limited)
(13) Mentmore Greenland Limited
(14) Roxmar Investments Limited
(15) Samja Marine Holdings Limited
(16) Samuel Holdings Limited
(17) Staznet Trust Company Limited
(18) Stone Lodge Limited

(19) The Mentmore Estate Limited
(20) Simon Halabi
Defendants

[2023] JRC 77

Before:

Sir William Bailhache, Commissioner, and Jurats Le Cornu and Le Heuzé

ROYAL COURT

(Samedi)

Debt

Authorities

Petty Debts Court (Miscellaneous Provisions) (Jersey) Law 2000.

Financial Services (Jersey) Law 1998.

Financial Services (Trust Company Business (Exemptions)) (Jersey) Order 2000.

Selby v Romeril [1996] JLR 210.

Supply of Goods and Services (Jersey) Law 2009.

Taxation (Exchange of Information with Third Countries) (Jersey) Regulations 2008

Advocate K. O. Dixon **for the Plaintiff**.

Advocate L. A. Ingram **for the Defendants**.

THE COMMISSIONER:

Introduction

1 On 18 May 2021, the Plaintiff brought respectively nineteen actions in the Petty Debts Court against the First to Nineteenth Defendants (as the First Defendant) and the Twentieth Defendant (as the Second Defendant). The actions were contested and on 30 June 2021, Mrs B L Shaw, Judge, ordered that the actions be consolidated and transferred to the Royal Court under Article 2(1) of the Petty Debts Court (Miscellaneous Provisions) (Jersey) Law 2000. Subsequently, pleadings were filed in the Royal Court and the Plaintiff's claim was heard on 19 and 20 December 2022. Albeit there were some important gaps in what was

provided to us by the parties, there was a considerable amount of documentary evidence before the Court, and oral evidence was taken from Mr Simon Peter Voisin on behalf of the Plaintiff and Mr Simon Halabi, the Twentieth Defendant.

The nature of the claims

2 The Plaintiff is a Jersey company which holds a licence from the Jersey Financial Services Commission to provide trust company business services. It operates with four wholly owned subsidiaries, Forward Secretaries Limited, Forward Directors Limited, Forward Trustees Limited and Forward Nominees Limited, which all provide different trust company business services to the Plaintiff's clients. All of the corporate defendants had been incorporated in Jersey except the Fifth and Fifteenth Defendants which were incorporated in the British Virgin Islands. The Twentieth Defendant ("Mr Halabi") is a director of the Seventeenth Defendant and of each of the other corporate defendants. Staznet Trust Company Limited ("Staznet") is actioned both as Trustee of the Ironzar VI Trust (as the Eleventh Defendant) and in its personal capacity (as Seventeenth Defendant). The issued shares in the First to Tenth Defendants, the Twelfth to Sixteenth Defendants and the Eighteenth and Nineteenth Defendants (together the "individual corporate defendants") all form part of the Ironzar VI Trust.

3 In January 2020, the Plaintiff entered into negotiations with Mr Halabi with a view to becoming the business services provider to him, to each of the individual corporate defendants and to Sijar Trust Company Limited but subsequently Staznet in the place of the previous service providers. The Plaintiff claims that it entered a series of contracts with each of the Defendants to provide those services. The contracts were either created or alternatively evidenced in writing by the following documents:

(i) A letter dated 23 April 2020 from the Plaintiff to Mr Halabi ("the Client Letter");

(ii) A letter dated 23 April 2020 ("the Staznet Letter") from the Plaintiff to Staznet;

(iii) A private trust company administration agreement between Staznet, the Plaintiff and Mr Halabi ("the PTC Agreement"), which contained a fee schedule setting out a breakdown of the services to be provided in exchange for the annual responsibility fee of £80,000;

(iv) The Plaintiff's terms and conditions of business as at 14 February 2020 (the "Terms") which were expressly referred to in and it is said formed part of each of the Client Letter, the Staznet Letter and the PTC Agreement.

4 We shall refer to different extracts from these documents later in this judgment.

5 Relying upon the contractual obligations set out in those documents, the Plaintiff claims that it provided trust company business services to each of the Defendants between 23

April 2020 and 27 April 2021. In particular these included:

(i) the Plaintiff or its affiliate Forward Directors Limited becoming a director of, and its affiliate Forward Secretaries Limited becoming the secretary of, each of the individual corporate defendants and Staznet on various dates, and discharging their respective duties as officers of those companies;

(ii) permitting each of the Jersey incorporated individual corporate defendants and Staznet to use the Plaintiff's place of business as its registered office;

(iii) undertaking various book-keeping and administration work for each of the individual corporate defendants and Staznet respectively;

(iv) preparing annual accounts for each of the individual corporate defendants and Staznet respectively for various financial years up to and including the year ended 31 December 2020; and / or

(v) accepting instructions to carry out specific items of book-keeping and administration work and acting on those instructions which it received from Mr Halabi both in his personal capacity as the client, as defined in the Terms, and as an officer of each of the individual corporate defendants and Staznet respectively; and

(vi) although not raised on the pleadings, responding to a tax notice served on the Plaintiff by Revenue Jersey after the termination of the contracts.

6 In accordance with its standard practice, the Plaintiff issued separate invoices addressed to each of the Defendants respectively itemising the cost of the services provided in each calendar month on a monthly basis.

7 The Plaintiff claims that invoices for work done for the periods ended 28 February 2021, 31 March 2021, 14 April 2021 and 14 May 2021 respectively remain outstanding. As a result, the Plaintiff claims against the First to Nineteenth Defendants a total sum, broken down in different amounts according to the different Defendants, of £112,019.29, which is also claimed against Mr Halabi pursuant to his guarantee of the various corporate defendants' indebtedness. In addition, the Plaintiff claims interest at 2% over the Bank of England base rate, calculated monthly on the fees outstanding until payment and costs.

The defences

8 The First to Sixteenth, Eighteenth and Nineteenth Defendants deny making any contract with the Plaintiff. Furthermore, they deny that the documents in question evidence any contractual obligations involving them as alleged, notwithstanding that it is admitted that the Plaintiff did in fact provide services to each of those Defendants. Because there is the denial of any amount due pursuant to contract, there is a consequent denial of the claim for interest and / or costs.

9 Staznet as Seventeenth Defendant and Mr Halabi take a different approach. They admit entering into agreements with the Plaintiff for the provision of trust company services. They assert that, to the extent that the Terms do not contain such express terms, it was an implied term that all fees charged by the Plaintiff would be for work reasonably and properly incurred, having regard to all relevant facts and circumstances, and that any time spent by officers or employees of the Plaintiff in carrying out that work would be reasonably spent. Mr Halabi and the Seventeenth Defendant admit that they had respectively accepted the content of the Client Letter and its terms and the Staznet Letter and its terms. In his pleading, Mr Halabi denied receiving the Terms as an officer of the separate Defendants, and denied that any contractual obligations existed between the Plaintiff and the separate Defendants other than Staznet as the Seventeenth Defendant. Mr Halabi admitted that he agreed with the Plaintiff that he would arrange for payment of fees due to the Plaintiff for services properly provided to the separate Defendants by the Plaintiff: this was a consequence of the Client Letter, the Terms, the PTC Agreement and subsequent discussions and communications between Mr Halabi and the Plaintiff.

10 The defence from Mr Halabi and Staznet as Seventeenth Defendant is that from about September 2020, the level of fees charged was too high and not sustainable. It is contended that notice was given to the Plaintiff that no further work was required from the Plaintiff until the fee disagreement had been resolved, and in particular, it was said that Mr Halabi had not accepted any additional or time spent fees from January 2021.

11 Mr Halabi and Staznet as Seventeenth Defendant also plead that the Plaintiff had agreed that all accounts for the period ended 5 April 2019 would be completed by 31 December 2020. Accordingly, no fees or charges could be raised by the Plaintiff for book-keeping or accounting works after 31 December 2020 as all work would have been completed. They also assert that the annual fee was for the year ending June 2021, and as the Plaintiff resigned from its obligations on 23 April 2021 before the annual period had concluded, the annual fee should be pro-rated and a sum should be reimbursed by the Plaintiff. Accordingly the claim was denied.

The oral evidence

12 Mr Simon Voisin is a director of the Plaintiff company and has spent thirty years in the financial services industry. He was the lead director of the Plaintiff in respect of the business conducted for the Defendants and he told us that he oversaw every aspect of that business.

13 The Plaintiff records time on six minute units, with monthly billing. Mr Voisin told us that the company maintained meticulous records which contained an extraordinary amount of detail in them. The Plaintiff had been entirely transparent with the Defendant as to how much was being charged and for what work. It was the Plaintiff's practice to ensure that timesheets were input daily, and those were then transposed on to spreadsheets. According to Mr

Voisin, he would personally review on a line-by-line basis with every entity the chargeable and non-chargeable time which was posted on the system. He confirmed that the invoices which had been rendered in this case matched the fee proposal. We have not been provided with copies or printouts of all the time sheets or spreadsheets, although we have seen the timesheets for February, March and April 2021.

14 Staznet was not licenced by the Jersey Financial Services Commission (the "Commission") to operate as a trustee, and it therefore did so under exemption in that it was administered by a financial services company which did hold the necessary licence. Mr Halabi was not a personal beneficiary in his own name of any of the trusts involved – we heard that there were seven trusts namely Ironzar IV, Ironzar V, Ironzar VI, Ironzar VII, Ironzar VIII, The Intizar Trust and The Jara Trust. Ironzar VI held an array of companies including the company Grand Cru which held most of the cash. Mr Halabi is not only the protector of The Initzar Trust but also the sole beneficial owner of Staznet and a director of that company.

15 According to Mr Voisin, Mr Halabi lives in France and is absolutely acquainted with every aspect of the structure. He was " *the eyes and ears of each entity*". He was also described as the " *beating heart*" of each entity. As an example of his influence, it was said that he, Mr Halabi, was the lead director on the refitting of a yacht owned by the Ironzar IV Trust.

16 In the preliminary discussions before the contracts were made, Mr Voisin told us that the Plaintiff had been asked to provide financial services to all the Jersey companies, and the Plaintiff took on that business on the basis that such services would be offered to the overall structure. A Mr Hodges of GTC in Geneva had contacted Mr Voisin in November 2019 to ask if the Plaintiff would take over administration of the overall structure from the previous service provider and this eventually came to pass.

17 Mr Voisin considered there were a number of risk factors. He made contact with the Commission. As far as he was concerned, this was a good commercial business opportunity even though the Plaintiff considered that Mr Halabi was litigious and liable to fall out over fees. Part of the protection which the Plaintiff insisted upon was a condition that no directors' meetings would be treated as quorate unless a director of the Plaintiff was present – and, emphasising the eyes and ears point, Mr Halabi insisted that the same rule would apply for him, and there would be an inquorate meeting unless he was present.

18 There would be always be an agenda prior to meetings that were called and the board meetings and all telephone calls were tape recorded. Mr Voisin told us that he wanted to be sure that he had recorded decisions accurately.

19 The original plan was to have engagement letters sent to each of the Defendant companies; unfortunately that did not happen as there was a " *tsunami*" of work to be done. However, the practice was that invoices to the different companies would be collated. Mr

Halabi was clear that he would have to approve every single payment before it was made. Accordingly the draft payment instructions would be transposed onto Grand Cru notepaper (as the cash rich company) and emailed to Mr Halabi who would sign the authority and then send it on to the bank. The procedure adopted was that the relevant company would take a loan from Grand Cru in order to settle the fees which were invoiced. Amongst the papers filed in Court were a number of such invoices.

20 We were shown a debtor's summary as of 14 May 2021 [J570] which is a compilation of all the debts claimed to be due. The total is £112,019.29. It is apparent that an amount of work totalling £22,603.16 was invoiced in the period 14 April to 14 May. This work was done notwithstanding that the relationship between the Plaintiff and the Defendant companies (and Mr Halabi) terminated on 23 April 2021. The reason that the time charges continued to be incurred lies in the work necessary to be done for an orderly exit by the Plaintiff from the business of administering the corporate Defendants.

21 Mr Voisin confirmed that all invoices to the different companies up to 21 October 2020 had been paid.

22 It appears that there were various problems which led to the breakdown of the relationship between the Plaintiff and Mr Halabi. The primary problem was that the Plaintiff found, when taking on the administration of the different companies, that book-keeping was considerably out of date and there were a number of defects which needed to be remedied, in particular the preparation of accounts for all entities prior to April 2020 and the increase in the Plaintiff's charges which this entailed. Mr Voisin took us to the PTC Agreement which made it plain that there was a fixed annual charge for some of the work which was to be done, but additional services such as the preparation of accounts for the underlying companies would be charged on a time spent basis.

23 All the previous records for the various entities were collected by Mr Voisin on 1 June 2020 from the previous administrator. There were some thirty boxes, and the previous administrator ensured that a meeting of each entity was held on 31 May 2020 to appoint new directors, a new corporate secretary and a change in registered office. On 3 June 2020, Mr Voisin ensured that a meeting of each entity was held appointing Mr Halabi and Mr Deflorenne as directors to each company. These acts gave effect, according to Mr Voisin, to the contractual arrangement as between the Plaintiff and each Defendant company which he had agreed with Mr Halabi.

24 There was an important board meeting held on 19 October 2020 [I71] and we had the opportunity of reviewing a transcript of that meeting, which had been recorded as previously indicated. It is clear that there was a detailed discussion about the fees being incurred for the preparation of accounts for the companies [I96 and following]. It is clear that Mr Halabi wanted to establish and agree a fixed cost. On behalf of the Plaintiff, it was said that this was not something that could be agreed – Alun Griffiths, a colleague of Mr Voisin, said [at line 719, page I98]:

> *"This is not something that we can agree a fixed fee on, because like I said, it's a big ball of string and it's just, it is taking time, whereas we can say, yes, if we had decent accounting records, that we feel are reasonable, then I could give you a cost and having had that experience and once things are up to date we can probably do that.* As it is at the moment that's not something we can do but, like I said if I'm and to put an estimate on it, I would say we are looking at another two months of similar level of fees."

25 Mr Halabi asked how much had been charged so far on those various entities, to which the answer was "About 47[000]". This prompted the comment from Mr Halabi that the discussion was about the payment of a total of £100,000 for what Mr Halabi regarded as negligence of the previous administrators who did not do their book-keeping properly. After a lengthy discussion on the subject, Mr Halabi said that he would reflect upon it and get back to Mr Voisin. Mr Griffiths responded that the Plaintiff required to have some resolution on the outstanding fee notes because the work had been done in the best interests of the structure and should be paid. At that point, Mr Halabi indicated:

> *"Right. I mean, I am happy to pay it, but I don't want to have a dispute with you."*

26 The transcript reveals Mr Voisin reminding Mr Halabi of their discussions as to bringing the accounting records up to date at a time when the original negotiations were taking place and, according to the transcript, Mr Voisin informed Mr Halabi at that time that the work would have to be done on a time spent basis because accounts were only in draft, had not been signed for many years and it had transpired that there were reconciliation issues.

27 Mr Griffiths pressed Mr Halabi for agreement on payment of the outstanding fees. There was then the following exchange:

> *"Halabi: I am not asking to put on hold forever.* I am just saying it came to me as a shock today. I need to reflect on it and I will come back to you.
>
> *Griffiths: I understand that, but we are pressed for time in that these accounts need to be filed by the end of the year and that needs to be done*.
>
> *Halabi: Provide me with a report of what's been done so far and the anticipated, the work for the next two months, at least I have something to look at*.
>
> *Griffiths: Very good*.
>
> *Halabi: Alright then, add these outstanding payments to the list, Matthew.* So, it can to be all paid today as well.
>
> *Griffiths: Thank you very much*.
>
> *Voisin: Thank you."*

28 In cross-examination, it was put to Mr Voisin that this conversation evidenced an agreement that the historic work would all be concluded by 31 December 2020 – and in fact it was not so concluded. Mr Voisin denied that. In his mind there had never been a deadline agreed for the completion of this work. It was an aspiration, but it was no more than that. He contended that that understanding was consistent with his email to Mr Halabi on 6 November 2020, timed at 10.48 [J622] in which he confirmed the amounts outstanding for administration invoicing, book-keeping / accounting and accounts preparation, pointed out a number of errors that they had found in the records received from the previous administrator and then went on:

> *"I am very pleased to advise that we are now actually preparing accounts for certain of the entities but still piecing together historic ledgers for others.* We feel we have another month of book-keeping but are firmly on track to complete the project by the December deadline as previously discussed."

29 In that context we note Mr Voisin's witness statement at paragraph 10.20 [G26] where he said:

> *"It is also worth noting that the deadline of 31 December 2020 was the original deadline imposed by the States of Jersey taxes office for the filing of 2019 tax returns and that throughout 2020 my colleagues and had been working [sic] towards that end date.* This deadline was subsequently extended by one further month to 31 January 2021."

30 Again in cross-examination, Mr Voisin said that he was not confirming any agreement with Mr Halabi – this was, as he put it, poor use of English. The Plaintiff was aspiring to meet the tax deadline but with massively incomplete records. When it was put to him that the only explanation he could offer, to the suggestion that his own email revealed the agreement about a December deadline, was a poor choice of English, Mr Voisin said he could not answer that question.

31 There were clearly other communications between Mr Halabi and the Plaintiff but we reflect next on an email from Mr Halabi dated 31 March 2021 [G64]. In this email Mr Halabi wrote as follows:

> *"I do not like to be threatened and I have given you a fair proposition, and once again you seem to not have comprehended the facts and reality of the matter, and I would like to confirm the following:*
>
> *(1) When your firm made its proposal to bring the accounts up to date, I requested a fixed fee which you refused.* I reluctantly agreed to proceed on the clear understanding and your agreement that this would be all completed by 31 December 2020 therefore there will be no other charges from that date.
>
> *(2) I have made it categorically clear to Simon Voisin on many occasions that I would not accept additional or time spent fees from January 1st 2021.* This was

noted in the minutes of our conference call in January when the December fees were discussed and reluctantly accepted.

(3) My offer to pay £10,000 per month as a fixed fee was very generous especially given that various fundamental tasks and important matters were not dealt with or completed in a timely fashion.

(4) I hereby put you on notice that no further work is required from your firm until we resolve this matter. I have made it very clear that I no longer accept these charges from the 1st January 2021, therefore do not think you are going to be charging me on a time spent basis.

I suggest for you to consider the above in a constructive manner which is in the interest of all parties. I have made the utmost effort to ensure continuing good relationships despite my concerns on the level of historic fees and having clearly put Simon Voisin on notice of the issues on several occasions."

32 This email was clearly not acceptable to the Plaintiff because on 9 April Mr Voisin wrote by email to Mr Halabi to give notice that Forward Directors Limited resigned from all the boards as director and Forward Secretaries resigned as company secretary with effect from fourteen days after that date. Also attached was the resignation as directors of Staznet, which had the result that as Staznet was unlicenced under the Financial Services (Jersey) Law 1998, it would no longer meet the criteria set out in the Financial Services (Trust Company Business (Exemptions)) (Jersey) Order 2000 and would be unable to continue as trustee of the Ironzar VI and other trusts. Mr Voisin confirmed that with effect from 23 April, forms would be lodged with the Jersey Registrar of Companies withdrawing Forward's consent to the use of its address as the registered office address for all Jersey entities. It was put to Mr Voisin in cross-examination that this email, sent at 17.01 on 23 April did not even give forty-five minutes notice of resignation, which was to take effect that day, but that question gave a false picture. In fact the resignation letters made it clear that the resignations were to be effective from 23 April. Mr Voisin also said that the Plaintiff had, before 9 April, given Mr Halabi warning that resignation would take place as they did not agree his proposals in his email of 31 March. Indeed it is clear from an email in February from Mr Halabi that he anticipated the end of the contractual relationship. However, the notice referred to by Mr Voisin, if given in writing, does not seem to appear in any other documents in the bundle before us.

33 It was put to Mr Voisin that the PTC Agreement provided at Clause 9.1 [J203] that the administrator would have to give not less than three months written notice before termination of the agreement. Mr Voisin's response to that was that the PTC Agreement enabled the Plaintiff to terminate immediately if its fees were not paid.

34 An extract from the timesheets for April 2021 [J482] was also put to Mr Voisin in cross-examination. It transpires that twenty-five resignation letters took six hours to draft and execute. Mr Voisin said there was a lot of work involved. When questioned as to whether there really was much work involved in preparing identical letters, Mr Voisin's response

was that he did not load the time personally. The timesheets are the timesheets and he was entirely comfortable that his staff worked appropriately. It was not as quick a job as one might expect. It might be thought that this response was inconsistent with Mr Voisin's earlier statement that the company maintained meticulous records and that he would personally review on a line by line basis with every entity the chargeable and non-chargeable time which was posted on the system.

35 We also heard evidence from Mr Halabi. He accepted that the signatures on a number of relevant documents such as the PTC Agreement were his. He also accepted that he had received many of the emails which were evidence of the negotiations between him and the Plaintiff in April 2020.

36 Given the pleading which he had entered, it came as a surprise when he accepted in evidence in chief that although he did not take legal advice before signing any of the relevant documents, he was aware that he was signing both for himself and Staznet. He added that he did indeed think that he was binding all the other Defendant companies. In his words " *Staznet represented the other companies so for me it's all the same*".

37 Under cross-examination from Advocate Dixon, Mr Halabi accepted that some of the records for the individual corporate Defendants were well kept. He was aware that telephone calls were recorded but he was not aware that all the board meetings were recorded and he thought he should have been informed of that practice.

38 He confirmed that his defence was that the book-keeping work was agreed on the basis that it would be completed by 31 December 2020. He kept attempting to reach agreement for a fixed price but the Plaintiff would not agree. However it is the date that is the important date as far as he was concerned. It was put to him by Advocate Dixon that the Plaintiff never committed to complete that work by 31 December 2020 and Mr Halabi's response was that he instructed the Plaintiff to do the work by then.

39 Mr Halabi agreed that he wanted effective control over the structure. He was the sole beneficial owner of Staznet, albeit not a beneficiary of any of the Trusts. The economic wealth in those Trusts had been settled by Madame Nouri. He was not the settlor. His dealings with the Plaintiff were as ultimate beneficial owner of Staznet or as co-director of the different companies. All communications came through him in one of those capacities.

40 He did not object to the proposal for individual contracts between the Plaintiff and the individual corporate Defendants and if they had been produced, he would have signed them. With regard to his email of 5 May 2020 [J152] to Mr Voisin, in which he said he had reviewed the Engagement Letters and agreements and had no further comments, he agreed that he had the documents but he said that he only read the Engagement Letter. He accepts that he read the Indemnity Agreement because he changed it and sent his own version back.

41 He also said that he agreed that the books of the structure were in a poor state when the Plaintiff took on the administration, although to be fair to the previous administrators, this is what they inherited. They had been administering the structure for only a short time. Pressed on the question of the deadline, he said it was a matter that was regularly discussed. The Plaintiff is a professional trustee company and he considered they knew that accounts had to be ready by a particular date.

42 He also told us that as far as he was concerned the engagement of the Plaintiff started on 1 June 2020, the day on which all the books were collected from the previous administrators. It followed that there ought to be some pro-rata apportionment of the annual fee, the Plaintiff having given notice of termination as of 23 April.

43 He was pressed about the Terms of the Plaintiff company. He said that he signed the Engagement Letter but he had never read the terms and conditions, which he assumed would be in standard form. If he had read them, he would not have agreed to them. He thought the terms and conditions should have been scheduled to the Engagement Letter so that each page could be initialled.

44 Later in cross-examination he was taken back to the obligation to prepare the accounts. In his view, there was an obligation on each company to have the accounts prepared by 31 December. He went on to say that the companies were almost dormant. There was not a great deal of activity, many of the companies holding empty properties in London without rental or other income. In his view the book-keeping arrangements should have been straightforward – and yet the total sums claimed were some £340,000 over a six month period.

45 He was asked about correspondence [I108] and why he did not mention the alleged agreement there that the accounts had to be done by the end of the year. His answer was that he did mention that requirement on a regular basis – he pointed to Mr Voisin's email of 6 November 2020 [J622] in which Mr Voisin wrote "…We feel we have another month of bookkeeping but are firmly on track to complete the project by the December deadline as previously discussed", the expression " *as previously discussed*" referring, he said, to the agreement he, Mr Halabi, described and was a follow up of the discussion at the October board meeting when he had authorised payment of the then outstanding invoice against the assurance that there would be a subsequent report from the Plaintiff as to how much historical book keeping and accounting work was left to do, [I108].

46 Pressed to explain the contents of his email [J697] to Mr Griffiths and Mr Voisin of 26 March 2021, in which he said that he would reluctantly pay all the outstanding invoices for the period up to the end of February in order to keep a good relationship with the Plaintiff after the transfer of Staznet and all the individual corporate Defendants to a new registered office, he said that he was trying to reach a compromise, a deal, but that did not mean that they were entitled to the fees that they claimed.

47 In his witness statement, Mr Halabi said this;

> *"I believe that I have been reasonable throughout the dialogue with Forward over the additional unpaid fees.* By way of example, I understand that the fees incurred for administration alone for January, February and March (which totals £50,766.79 plus the Jersey tax return fees (£5,600) and disbursements (£1,657.29) giving a total of £58,034.08)(sic) could be deemed as payable. However, given that the defendants made a payment in advance for annual fees until 31 May 2021 in June 2020. Forward must give a pro-rata credit for this advance payment in any settlement. This will have the effect of reducing those fees, thus respectfully leaving a sum around £48,950.75."

48 In his evidence, he said the sum of £48,950.75 had to be netted off from the pro-rating of the £80,000 annual fee. This is not the natural reading of the witness statement, which he had earlier affirmed to be true.

Our assessment of the evidence

49 We consider that both the witnesses before us were trying to tell the truth, albeit the accuracy of the evidence which they both gave is sometimes open to question. Where there was disagreement between them, we have reached our conclusions primarily on the written evidence.

Discussion

50 The major points at issue on the pleadings and in the case as it was developed before us were:

(i) the detail of the contractual arrangements

(ii) the alleged agreement that the accounting work on the different companies be completed by 31 December 2020

(iii) whether the Plaintiff was entitled to terminate the contract and what effect if any that had on the agreed annual fee [see J700 & 701]

(iv) the reasonableness of the quantum of fees claimed

(v) the work done responding to the tax notice after the contractual relationship had ended.

The contractual arrangements

51 We referred at paragraph 3 above to the different contractual documents which were alleged by the Plaintiff to form the basis of the contracts which it had entered with the different Defendants. There was no dispute between the parties on the law of this island as to the formation of contracts, reliance being placed on *Selby v Romeril* [1996] JLR 210 for the four requirements for the creation of a valid contract:

(i) The consent of the party undertaking an obligation;

(ii) His legal capacity to enter into a contract;

(iii) An 'objet', or subject matter of the contract; and

(iv) A legitimate 'cause' or reason for the obligation to be performed.

52 On the pleadings, it appeared as though there might be an issue as to the identity of the contracting parties. That issue was resolved by the evidence. Mr Halabi accepted that not only he but also Staznet and all the individual corporate Defendants were bound by the terms of the contracts. That disposes of one of the major points of issue on the pleadings.

53 We add that the contractual arrangements were in fact extremely complicated – far more complicated than they should have been – because they are said to be found in the five contractual documents, namely the Client Letter, the Staznet Letter, the fee proposal, the PTC Agreement and the Terms, some of which cover similar ground. The possibility of conflict between the five different documents is obvious although none has been raised with us, and we have therefore not been required to consider which of the documents might be the lead document in the case of any such conflict. As a contractual structure, we consider it to be unnecessarily confusing.

54 Given the nature of the claims, we examine the contract in more detail.

The Client Letter [J 84]

55 The Client Letter was signed on behalf of the Plaintiff but apparently not ever signed by Mr Halabi. It describes the obligation of the Plaintiff to provide various services to Mr Halabi namely the establishment of a new private trust company to take on six existing trust and company structures and to provide services to other entities. The services to be provided are those set out in the fee proposal which is attached. The Client Letter opens with this language:

> *"This Letter of Engagement and the Terms and Conditions of Business referred to in paragraph 2.1, as varied from time to time, (the "Terms of Business"] set out the terms on which Forward Group Limited ("Forward") will provide Services to the Client.* Each annexure to this Letter of Engagement (an "Entity Annexure") relating to an Entity (as defined below) and the Terms of Business sets out the

terms on which Forward will provide services to the Entity to which such Entity Annexure is addressed. This Letter of Engagement also sets out the terms in respect of or upon which the Client guarantees the obligations of the Entity and indemnifies Forward in respect thereof."

56 No Entity Annexures were attached, nor have any apparently ever been completed. From time to time in the Client Letter there is reference to the "Agreement" as if that is a defined term; but that is never in fact defined. We take it to be the agreement embodied in the Client Letter. As the evidence of Mr Voisin confirmed it had been the intention to have separate engagement letters for each Entity but that was never accomplished.

57 The Client Letter provides for a guarantee in these terms:

> *"11. Guarantee*
>
> *11.1 As an independent obligation, without prejudice to clause 11.2, and at the request of each relevant Entity, the Client unconditionally and irrevocably guarantees to Forward all of the obligations and the discharge of all the liabilities of each relevant Entity under the Agreement*.
>
> *11.2 Further, at the request of each relevant Entity the Client unconditionally and irrevocably guarantees to Forward, the due and punctual payment by each Entity of all monies payable by it under the Agreement or arising from any termination of the Agreement or the termination of any particular agreement with any Entity"*.

58 There is no evidence that any Entity in fact requested Mr Halabi to give a guarantee of its obligations to the Plaintiff. However, Mr Halabi does not challenge the assertion that he carries personal liability under his guarantee of the different obligations of the corporate Defendants.

59 The agreement embodied in the Client Letter, whatever it was, is said to come into force on the earliest of three dates – the date Mr Halabi signed it (he never did); 21 days after the date of the letter unless Mr Halabi objected to its terms (he never did); any instruction to the Plaintiff to establish a private trust company or arrange for the transfer to it of any entities. In our judgment, the agreement embodied in the Client Letter, whatever it comprised, came into force 21 days after its date or on the establishment of Staznet, whichever was the sooner.

60 We do not place much reliance on the Client Letter and because no objection has been raised to the existence of the guarantees, it is not necessary to consider it in more detail. In our judgment, the right way to approach it is that it represents an intention on the part of the parties to it that a number of services will be provided by the Plaintiff at the request of Mr Halabi which he guarantees will be paid for. It is particularly unnecessary to consider the Client Letter further because the PTC Agreement takes precedence over it as we shall see.

The Terms [J 9]

61 The Terms were incorporated by reference in all the contractual documents referred to by Advocate Dixon. We have no doubt that the contract included the Terms, but from our assessment of him in the witness box we were unsurprised that Mr Halabi gave evidence that he did not read them. He may well have thought any issue arising on them could be negotiated later. He may, as he said, have simply assumed they were in standard terms and were unimportant., At all events, he should have read them. He is an experienced businessman who undoubtedly was aware that the Terms were incorporated in the contractual arrangements which he made. He knew they were there and broadly what they were, and accepted the contract on that basis. Thus he is bound by them. It is not open to a contracting party to assert later in circumstances like this that he was unaware of the nature of the deal. His will or volonté to make the contract incorporating the Terms is not in doubt. We find that subjectively he was aware that there were terms and conditions attached to the contractual documents, and it is his fault if he did not read them.

62 The Terms include, inter alia the following:

(i) Clause 5.1 provides

"The client hereby undertakes that…it shall procure that any entity complies with all filing requirements in any applicable jurisdiction and that all taxes and governmental dues payable by any entity are discharged;"

….

"It shall provide such information as the service provider or any member of the Forward Group may, in its discretion, require in order to comply with all applicable anti-money laundering laws, bribery and corruption, terrorist financing, disclosure obligations, laws and regulations (including 'know your customer' requirements) and to provide the services."

(ii) Clause 5.8 provides " *all obligations owed to Forward under the Agreement shall be joint and several where there are one or more persons constituting the entity or the client*".

(iii) Clause 14.1 of the Terms provides: " *Forward's standard charges are detailed in the schedule of fees and charges published by Forward from time to time.* These charges may differ if the Services are particularly complex or involve high value assets or are deemed by Forward to be non-routine and wherever possible such charges will be agreed in advance with the client or entity involved".

(iv) Clause 14.4 provides: " *Annual responsibility / management fees will be apportioned in the year of incorporation / take on but thereafter are payable in full, in advance, regardless of whether the services are provided for the whole or part of the*

year".

(v) Clause 14.6 provides: " *Forward's time will be charged as units of six minutes.* These rates are subject to review and will reflect the complexity, difficulty or novelty of the issues, the priority level, the expertise or specialist knowledge required, the place and time at which any work required to be done was carried out and, if appropriate, the value of the property or subject matter involved".

(vi) Clause 14.7 provides: " *Unless otherwise agreed, where Forward is required to carry out other services additional to the Services (including supporting any regulatory, tax or governmental investigation) additional time will be charged separately at Forward's prevailing standard daily or hourly rate*".

(vii) Clause 15.1 provides: " *Fee invoices will be delivered at regular intervals and must be settled within fifteen days of delivery*".

(viii) Clause 15.5 provides: " *Forward reserves the right to charge interest at a rate of 2% over the base rate published at that time by the Bank of England calculated per month on fees outstanding beyond the fifteen day period until payment is made (after as well as before judgment)*".

(ix) Clause 15.7 provides: " *If the client has a query about a fee invoice the client should contact Forward without undue delay.* Where any fees remain outstanding for more than ninety days beyond their invoice date, Forward reserves the right to cease providing the Services until all outstanding fees have been settled or, if deemed appropriate, an amount has been received on account for these fees….".

(x) Clause 15.9 provides: " *Time spend [sic] by Forward in pursuing unpaid debts will be chargeable to the client at the prevalent time charge rates"*.

(xi) Clause 28 of the Terms provide that Forward can terminate the provision of the services to the entity at any time in any of the following circumstances:

> (a) upon giving one month's notice to the client by Forward; or
>
> (b) immediately upon notice to the entity and where appropriate the client by Forward that there is an event of default as stipulated in the Terms and Conditions. In the event of termination, all time costs and disbursements in connection with the transfer of administration of any entity as a result of a notice to terminate services will be chargeable in accordance with the usual rates for work done by Forward.

(xii) Finally, at Clause 46.1, there is provision that the agreement (which means any agreement entered into by the Plaintiff with the client and / or any entity in relation to the provision of services) embodies the entire contractual understanding between the parties, and in the event of inconsistency between the terms of business and the terms of a letter of engagement issued by Forward, the engagement letter issued by the Plaintiff prevails to the extent of any such inconsistency. It might be thought that this was intended to refer to the Client Letter or the Staznet Letter to the extent that the

latter was effective, those being respectively the “engagement letter”, but we have reached the conclusion that to make sense of the contractual documents in this case, it is to be construed as a reference to the PTC Agreement.

The Fee Proposal [J109]

63 Advocate Dixon contended on behalf of the Plaintiff that this document was one of the contractual documents, incorporated as it was by reference in the Client Letter and the Staznet Letter. Although this was not a point urged upon us by either party, we have come to the conclusion that the fee proposal was no more than a proposal and ultimately did not form part of the contract for the provision of ongoing services after the incorporation of Staznet. This is because it is simply inconsistent with the PTC Agreement. The proposal is dated 23 April 2020: it has a number of important features the detail of which appear below:

> *“Scope of Work*
>
> *Further to your telephone call with Simon Voisin, we are pleased to submit for your consideration a proposal in relation to our incorporating and then administering of the Staznet Trust Company (“the PTC”) and associated entities, presently under the trusteeship of the Sijar Trust Company Ltd (as noted at page 9) to be administered for the benefit of Simon Halabi's family*.
>
> *Professional tax and legal advice has been taken historically which you undertake to share with Forward Group as part of our onboarding process*.
>
> *On an ongoing basis, we would provide the following services: Provision of a Corporate Director, Company Secretary and registered office to the PTC — to fulfil the Jersey requirement of having a licenced administrator.* Full administration services in *accordance with Forward Group's internal policies and procedures; in adherence to Jersey regulatory requirements and professional standards.* Bookkeeping, reconciliation and accounting services including the production of annual accounts for the entities in the PTC structure. Maintenance of appropriate statutory records
>
> > *FEES Incorporation of a new Jersey Private Trust Company, to include:*
> >
> > *£3,500*
> >
> > • *Reservation of Company Name (capped)*
> >
> > • *Liaising with Dickinson Gleeson re new M & A thereof*
> >
> > • *Set-up in Forward Group's in-house systems*
> >
> > • *Annual Responsibility Fee to include: £80,000*
> >
> > • *Provision of a Corporate Director, Company*

Secretary and registered office to the PTC — to fulfil the Jersey requirement of having a licenced administrator

• *Provision of Directors, registered office (Jersey entities only) and Company Secretary to all non-French entities in structure chart at page 9*

• *Preparation of annual accounts **

• *Annual compliance monitoring fee ***

"The Seven Entities": Cobra Inv Ltd, Hemel Inv Ltd, Mayfair Hlds Ltd, Charleston Inv Ltd, Roxmar Inv Ltd, Samuel Hids Ltd, The Palmerton Holdings SARL

All administration work will be charged on a time-spent basis. For example; remedying any deficiencies identified, investigating the potential breach of fiduciary duty in respect of the sale of Chateau Cantenac in France and all resultant work will be charged on a time-spent basis / Negotiating the transfer of the six existing trusts from Sijar to Staznet but excluding loading onto Forward's system as covered by Take-on Fee.

All bookkeeping and accounting work in respect of: The Seven Entities

Hourly charge-out rates: (6-minute units) Director £300

Manager £250

Trust Officer £200

Administrator £175

Client Accounting £125" (emphasis added)

64 The difficulty is that these charging arrangements are inconsistent with the PTC Agreement. The Fee proposal envisages an annual responsibility fee for particular services – it is not well drafted as it is not entirely clear what services would fall within the annual fee and what services would not and indeed we have had that difficulty in our analysis of the sums properly due. However, we think that properly construed, the proposal means that there is covered within the annual fee the preparation of annual accounts for the years commencing 6 April 2019 for all the corporate entities other than the French entities and the "seven entities" which included the Ninth, Twelfth, Fourteenth and Sixteenth Defendants. By contrast, Section E of the PTC Agreement is in these terms:

"Section E — Additional Services

21. Preparing and maintaining the accounting records of the PTC and each of the Companies and preparing accounts for each financial period of the PTC and each of the Companies in accordance with the Companies Law"

65 By Schedule 2 of the PTC Agreement, the provision of the Additional Services is charged on a time basis which would not fall within the annual fee but be charged at the Plaintiff's standard hourly rates.

66 We do not see how it is possible to reconcile these conflicting provisions other than by deciding that one of them has precedence. The possibility of conflict is indeed contemplated by clause 18 of the PTC Agreement which sets out that " *this agreement sets out the entire agreement and understanding between the parties in respect of the subject matter of this agreement*". Thus, although we were told by Advocate Dixon that there were four other contractual documents which were relevant, we have concluded that whatever was the position before the PTC Agreement was executed, that document novated the previous agreement and represents the basis on which the charges were thenceforth agreed. We are reinforced in that by the fact that the PTC Agreement was a document which Mr Halabi signed so he must be taken to have agreed it.

67 For these reasons, we have concluded that the fee proposal is a relevant document only to the extent that it covers work done before the coming into force of the PTC Agreement, and it is not a document that assists us in the present dispute.

The Staznet Letter [J 98]

68 The Staznet Letter, also dated 23 April 2020, is a letter of engagement setting out the terms on which the Plaintiff would provide services to that entity. The Terms are incorporated by reference. As an appendix to that letter there is the fee proposal prepared by the Plaintiff. The Staznet Letter provides that Staznet has requested the Plaintiff to provide it with various services and that it agrees to be bound by the Terms. The agreement is said to commence on the signature of the Letter of Engagement by Staznet or 21 days after 23 April 2020 unless Staznet or Mr Halabi objected to it. As Staznet had not been incorporated as at the date of this letter, we have difficulty in finding that it created any contractual relationship between that company and the Plaintiff until it was signed on behalf of the company. In fact it was signed by Mr Halabi on behalf of Staznet on 1 June 2020. We accordingly take this as being the operative date for the commencement of the contractual relationship between Staznet and the Plaintiff.

The PTC Agreement [J 124]

69 Finally, the PTC Agreement which was executed by Staznet and the Plaintiff and Mr Halabi but is undated, provides for the management of Staznet by the Plaintiff. Because we have found that the Staznet Letter meant that the contractual arrangements between

Staznet and the Plaintiff came into force on 1 June 2020, we think the PTC Agreement must be considered as effective from that date. Indeed, the attestation sections of the two documents look to be so similar that it is likely they were signed on the same occasion.

70 The PTC Agreement contains detailed provision for the administration by the Plaintiff of not only Staznet as a private trust company, but also all the other companies within the structure; and for guarantees by Mr Halabi of all the obligations owed to the Plaintiff by all the entities in question.

71 Under the contract, it was the Plaintiff's responsibility to ensure that the work was done in a timely and efficient manner – see clause 4.2.3 of the PTC Agreement. [J132]

72 Schedule 1 sets out the obligations of the Plaintiff, which at Clause 21 provides as an additional service for the Plaintiff to prepare and maintain the accounting records of Staznet and each of the companies within the Trust structure, including preparing accounts for each financial period in accordance with the Companies Law. Schedule 2 provides for the fees chargeable for the provision of Sections A to D services as follows — £12,500 payable annually in advance on 1 January for the provision of directors, the administration of Staznet on a time spent basis monthly in arrears, the administration of the companies for the sum of £49,500 payable annually in advance on 1 January each year and the provision of trustee services for £18,000 payable annually in advance on 1 January in each year. Although it is effective as of 1 June 2020 and provides for the annual charges to be paid in advance on 1 January in each year, the PTC Agreement is silent as to the charges for those services for the second half of 2020. We assume that there is no dispute about those charges because none has been raised before us.

73 Schedule 2 provides for additional fees under Section E in these terms:

> *"In the event that the administrator agrees to provide Additional Services to [Staznet], in the absence of any specific agreement in writing, [Staznet] shall pay to the administrator a fee (an 'additional fee') on a time cost basis representing the time spent by the administrator's personnel in performing such additional services and taking into account their respective charge out rates from time to time.* A copy of the current hourly charge out rates of the personnel involved will be made available to [Staznet] on request. The additional fee shall be accrued and recovered on a quarterly basis for each quarter or part thereof that the administrator provides such additional services and shall be payable no later than [30] days following delivery to [Staznet] of the administrator's invoice therefore."

74 There appears to be no dispute that for a period of some months following the assumption of the administration of the individual corporate defendants the Plaintiff did in fact provide administrative services and did in fact bill each individual corporate defendant for those services: and in accordance with the arrangements for the payment of bills, Mr Halabi, who

was also a director of each of those entities, did authorise payment of them. Furthermore, in his evidence Mr Halabi accepted that each individual company was bound by the contracts. In the circumstances, the defence that there was no contractual relationship between the Plaintiff and each of the individual corporate defendants appears to us no longer to be maintained. To the extent that it remains in issue, we find that there was a contractual relationship between the Plaintiff and each of the individual corporate defendants as well as with Staznet and Mr Halabi and that all the Defendants are thus bound by the contract reflected in the PTC Agreement. No doubt as a result of his client's evidence, Advocate Ingram wisely did not pursue the point either in evidence or in closing that there was no contractual relationship between the individual corporate defendants and the Plaintiff.

75 In our judgment, the effect of the PTC Agreement means that the annual charges payable on 1 January in advance for the year are not liable to apportionment and Mr Halabi is not entitled to any rebate because the contractual arrangements came to an end in April 2021. That is the consequence of Schedule 2 of the PTC Agreement coupled with clause 14.4 of the Terms (see [56(iv) above].

The alleged agreement that the accounting work had to be completed by 31 December 2020

76 On this point, we do not consider on all the evidence that Mr Halabi has satisfied us on the balance of probabilities that there was any firm commitment by the Plaintiff to get the accounting work done by 31 December 2020. We have reached that conclusion for the most part from the evidence of Mr Voisin and the transcript of the board meeting of 19 October 2020, but also from the email from Mr Voisin to Mr Halabi on 31 October 2020 [J622] where he gives notice of monthly billing for October of approximately £37,000 for administrative and bookkeeping work explaining why that sum was due. This email refers to a deadline of 31 December for the preparation of accounts or financial statements, but it contains no undertaking that the work will be completed by that date. Indeed, we have been shown no document which sets out definitively that that agreement was made although the email correspondence does show reference by Mr Halabi from time to time to his requirement that the accounts be completed by that date. The absence of any confirmation by Mr Voisin or Mr Griffiths in the email correspondence that the alleged agreement exists is on the other hand significant and supports the evidence of Mr Voisin in this respect.

77 Mr Griffiths set out the Plaintiff's position in his email to Mr Halabi of 21 April 2021 [J471]:

> *"Accounting Works & Fees:*
>
> *As we have discussed on numerous occasions, the December deadline was a clear aspiration on our part and our cost estimate of £100,000, only an estimate rather than a fee promise, but ultimately roughly correct*.
>
> *We were unable to meet the December target due to a lack of information from GTC, Zedra and Matthew.* Draft accounts were actually prepared for all the

structure excluding Hemel and Samja by 19 December 2020, although Chermonx, Samja and Hemel had outstanding queries and significant gaps in earlier accounting records. Information to rectify those gaps had been requested from the previous administrators. Absent this information it was not possible to complete the accounting work until it was received, as the earlier accounting would affect the later years.

Every effort was made to bring the accounts up to date. Zedra were emailed on 14 December 2020, again on the 18 December 2020 and again on 11 January to provide this information. A response was only received on 14 January 2021. Matthew Bees was emailed requesting payment schedules and accounting support for Samja and Chermonx on 16 November and chased again on 14 December before he advised that he would be unable to provide that information. GTC were emailed numerous times from 14 September over a period of 2 months and only provided ledgers for the Ironzar IV Trust subsidiaries on 16 November 2020. Further information required from GTC was chased at least on 14 December, 18 December, 21 December 2020, 5 January 2021, 11 January, 12 January and a response was only received on 20 January 2021. The missing ledgers were only provided to us on 25 January 2021. Only at this point could the accounts be finalised. In order to mitigate costs, the senior/director review of the draft accounts did not take place until all the accounts were ready.

In the end the accounts were prepared in time to meet the Jersey tax filling [sic] requirement of 31 January 2020 for the 2019 tax returns, and the entire structure now has up to date accounting records available for the first time in a decade. I do not accept that a fixed fee was ever provided to you.

I do not accept that a deadline for the work was ever promised. I do not uphold any complaint in respect of the accounting and bookkeeping fees." [J47]

78 The fact that we have found that there was no agreement that the additional bookkeeping and accounting work would be completed by 31 December 2020 means that under the contracts some fees could be properly charged for this work after that date. However, as will be apparent under the review below of the quantum of fees claimed, that is not the end of the story.

The termination of the agreements

79 The PTC Agreement required at Clause 9.1 that the agreement would continue unless and until terminated by Staznet or the Plaintiff giving not less than three months written notice to the other, or such shorter period of notice as the recipient of the notice might agree to accept. In fact, the amount of notice given by the Plaintiff was two weeks. However, the shorter period of notice appears to have been accepted, as is obvious from Mr Halabi's pleading that there should be some pro-rata apportionment of the annual fee. In addition it is clear from the oral and written evidence that well before the Plaintiff's formal notice of 9

April, there was an understanding that arrangements were to be made for bringing the contract to an end – see for example Mr Halabi's email of 26 March 2021.

80 Clause 9.2 of the same agreement provided for termination with immediate effect by notice in writing if, *inter alia*, the other party should commit any material breach of the agreement and not have remedied that breach to the reasonable satisfaction of the relevant party within seven business days of written notice being given requiring the same to be remedied. No document has been placed before us as far as we are aware to the effect that seven business days written notice was given requiring any breach to be remedied. In the context of the present case, the breach would clearly be the payment of outstanding fees. In our judgment, the Plaintiff did not give notice to Staznet and Mr Halabi in accordance with the PTC Administration Agreement and to the extent that the Plaintiff terminated the agreement on that basis, such termination was wrongful. It was open to the Plaintiff to give written notice of seven days that if the outstanding fees were not paid, the Plaintiff would resign, but no such notice appears to have been provided.

81 Notwithstanding that the termination of the PTC Administration Agreement was a breach of that agreement by the Plaintiff, no complaint in that respect is raised on the pleadings by any of the Defendants, and indeed we consider that the breach has been waived by Staznet and Mr Halabi.

82 Mr Halabi's email of 31 March – see [31] – was responded to by Mr Griffiths on 6 April [J331]. He did not accept the points which Mr Halabi had made, but rather he emphasised that he was simply asking that the Plaintiff be paid for the work which they had carried out in good faith. In his email, Mr Griffiths said that:

> *"We have made a generous offer to complete the accounts for the whole structure to APR 2020, including for the entities that were introduced or disclosed subsequent to the initial take on discussions, and for which no fee has been raised, together with an offer to attend to all the Jersey tax work for 2020, again at no cost, subject to clearing the fee arrears.* Again we have agreed not to charge an exit fee which is usually £1,500 per entity (so an additional £45,000).
>
> *To summarise we have offered a revised fee proposal being:*
>
> - *settlement of all outstanding fees;*
> - *£10k a month for March, April and May;*
> - *completion of the 2020 accounts and Jersey tax work;*
> - *our resignation to be effective 1 June 2021 and;*
> - *no additional exit fees*.
>
> *Like you, we wish to part on amicable terms and assist with an orderly handover*

to the new administrators or family office and would, again, ask that all our outstanding fees are settled in full. As we already stated, we are prepared to agree a fixed fee of £10,000 per month from 1 March until 1 June. Please advise by close of business on Thursday 8th April 2021, if our proposal is acceptable to you. If not, we will have no other choice than to give fourteen days notice of our intention to resign from all boards and the withdrawal of all services, to include provision of registered office address to all entities. This notice will be delivered to you to take effect from 9am on Friday 11th April 2021. Our resignation in respect of all services therefore to be effective at 9am on 23rd April 2021.

Despite our right to terminate those services with immediate effect, as per the terms of our engagement, in order to allow for an amicable, efficient and orderly transition, we are extending a period of fourteen days for you to facilitate the transition and allow the structure to operate in the interim in the interests of the beneficiaries.

…"

83 Mr Halabi responded on 9 April at 16:14 hours [J344] indicating that with regret he did not agree the contents of the email. He considered he had made a very fair offer in his email of 26 March 2021 despite the issues that he claimed he had encountered with the services provided since December. Mr Halabi's email concluded:

"I have always hoped to continue and maintain a good relationship with yourself and Simon in order that we could work together in the future as the structure's circumstances change. I would ask you to reconsider your position on the basis of the following:

- *settlement of disputed fees for January and February in the sum of £55,488.25 (£38,227 for January and £17,261.25 for February) as previously advised by Simon Voisin;*
- *£10k a month for March, April and May (possibly June);*
- *completion of the 2020 accounts and Jersey tax work;*
- *completion of the 2021 accounts;*
- *your resignation to be effective 1 June 2021 (or 1 July 2021) in order that a smooth transition of the structure can be arranged*.

The alternative is, as you state, that you provide immediate notice and we commence a legal dispute in relation to the disputed fees. This would only result in lawyers racking up fees and rule out a constructive relationship for the future."

84 This email from Mr Halabi was unacceptable to the Plaintiff and on 9 April 2021, [J 347] the Plaintiff gave notice of its resignation, effective 9 a.m. on 23 April 2021 as company

secretary of Staznet and as director of all the relevant companies.

85 On 15 April 2021, [J 392] Mr Voisin sent an email to Mr Halabi with respect to outstanding invoices, with a sum claimed of £67,091.13. In addition there was shown a time recorded as billable for March in the sum of £22,325, making a total of £89.416.13.

86 On 21 April 2021, Mr Griffiths rejected the various complaints Mr Halabi had apparently made on 19 April (although we do not have a copy of that document and in the light of some of the entries which show consideration prior to 14 April of his complaints one suspects that there was no such later complaint) in respect of the service given to him and indicated that formal legal proceedings would be commenced.

87 On 14 May 2021 [J,480] a further invoice was raised by the Plaintiff for work done in April in respect of administrative time spent in relation to the individual corporate Defendants and Staznet mostly before 23 April, but with some time spent thereafter. It is clear from the timesheets attached to these invoices that most of the chargeable time was spent prior to 23 April and is thus covered by the PTC Agreement. To the extent that the time charged involves time spent between 23 April and the end of that month, it appears to us that the time costs are justified by clause 9.3 of the PTC Agreement, which is in these terms:

> *"9.3 The administrator shall not be entitled to compensation in respect of the termination of its appointment under this Agreement, but shall remain entitled to receive all fees and other monies accrued and due to the date of such termination and to an amount equal to any additional expenses which the administrator reasonably incurs in terminating the appointment and any losses necessarily realised in settling or concluding outstanding obligations in relation to the Services.* The termination of this agreement shall be without prejudice to any claims or rights arising to any of the parties hereto by reason of any breach of any other party's obligations." (emphasis added)

88 Later on the 14 May 2021 [J570] a further correcting invoice was sent to the Defendants to include sundry disbursements which had been omitted. This resulted in the total sum claimed under the summons of £112,019.29.

89 Other than that i) Staznet and Mr Halabi are not entitled to a pro rata rebate of the annual responsibility fee for the period 23 April 2021 to 31 May 2021 for the reasons given at [66] above, and ii) no further fees can be claimed by the Plaintiff under the contract for work done after the termination of the contract save to the extent that the contract provides for the same, we do not consider that anything further arises from the termination arrangements.

Quantum

90 There remains the question as to whether there is any implied term that the charges would

be for work reasonably and properly incurred and whether the overall charges are in fact reasonable for the work which was done. That is put in issue by the evidence and on the pleadings, but unfortunately very little evidence or submission was addressed to the issue. That it clearly is an issue is demonstrated by the six hours charged for the preparation of identical resignation letters which appears to us to be completely impossible to justify. The charge becomes slightly more comprehensible, though no more justifiable, when one sees that the resignation letters, which on the face of it would be routine standard documents, were amended at least twice and charges entered on the time sheets on each occasion. These were then reviewed by a more senior staff member.

91 For the lack of evidence, we mention that there is no sign of a significant number of paid invoices in the bundles of documents put before us, and although Mr Halabi did say in evidence – unchallenged – that the Defendants had paid £340,000 for 6 months work, no breakdown of that figure was provided; nor indeed in cross examination was there any indication that that figure was disputed.

92 Some of the documentary evidence does suggest that the financial books of the individual companies had been neglected in the past and required a good deal of work to be put in order. On the other hand, Mr Halabi told us that many of the companies held properties in London which were unoccupied and thus one would have anticipated that the financial records should have been reasonably easy to put together. There is plenty of written evidence of dispute, but not much evidence of the actual position.

93 What is clear from both the fee proposal and the PTC Agreement is that it was both envisaged and agreed that the work done in preparing the historical accounts would be charged as an additional fee and did not fall within the annual charge. There was on the evidence a clear indication that the preparation of historical accounts was a substantial exercise – there were a large number of companies and in the case of some of them, accounts had not been prepared for up to ten years, and where there were accounting records, there were inconsistencies which meant that reconciliation of the accounts of the different companies was not always straightforward. It is also clear from clause 4.2.3 of the PTC Agreement that it was the Plaintiff's responsibility to ensure the work was done in a timely and efficient manner.

94 We turn next to the position at law outwith the contract. We have found that there was no express agreement that the historic bookkeeping would be complete by the end of December 2020, but that is not the end of the matter as a result of Article 29 of the Supply of Goods and Services (Jersey) Law 2009 (the "2009 Law") which is in these terms:

> *"Warranty about time for performance*
>
> *If, under a contract for the supply of a service by a supplier acting in the course of a business, the time for the service to be carried out is not –*
>
> *(a) fixed by the contract;*

(b) left to be fixed in a manner agreed by the parties to the contract; or

(c) determined by the course of dealing between the parties,

the supplier warrants that he or she will carry out the service within a reasonable time."

95 Here there was agreement for the supply of a service by a supplier acting in the course of its business, where the time for carrying it out was not fixed, nor was there agreement as to how it should be fixed, nor was there any course of dealing. Accordingly, there was a warranty by the Plaintiff that it would be carried out within a reasonable time. That operates as a matter of law, even though the parties have not raised it.

96 Our difficulty is that we have no real information with which we can assess what a reasonable time would be, and we accordingly have to make our best estimate on the basis of the evidence that is before us. In connection with the completion of the historic bookkeeping and preparation of accounts, we treat as relevant:

• the accepted understanding that the historical work had to be done in order that the accounts for year to April 2020 could be completed;

• the extension of the period until 31 January 2021 for the filing of the accounts agreed by the Plaintiff with the authorities;

• the accepted aspiration that every effort would be made to have the work done by 31 December 2020;

• the reference in the documents to the Plaintiff's apparent inability to complete some of the historical bookkeeping and accounting work because it was awaiting information from the corporate Defendants or Mr Halabi's agents;

• the Plaintiff's actual completion of the work by 31 January 2021 thus meeting the extended filing date referred to above. This seems to suggest that historic bookkeeping or accounts preparation should not have been charged after that date and should not appear in the February and March timesheets.

97 We therefore conclude that the work on the historical accounts was or should have been completed by 31 January 2021 at the latest. There may or may not be a question as to whether the statutory warranty is such that it can be asserted that there was a breach of it in respect of work done before 31 January 2021.

98 Because Mr Halabi raises the reasonableness of the overall charges in his pleading, this is one of the key points at issue remaining between the parties. In our view there was insufficient attention given to the issue by either counsel in summing up. Accordingly we invite counsel to make written submissions within the next 21 days following the handing

down of this interim judgment on the quantum which can be justified on the evidence, having regard to the comments we have made about the effect of Article 29 of the 2009 Law and the charges levied both before and after 31 January 2021 in respect of both historic bookkeeping and the preparation of accounts and the administration charges generally which are in issue on the pleadings.

The work done responding to the Notice from Revenue Jersey

99 The Plaintiff included within the papers put before the court – and Mr Voisin gave evidence about — an account of its time costs in the sum of £17,115.00 incurred in responding to a notice to produce tax information received pursuant to a request by an unidentified foreign country to Revenue Jersey under the Taxation (Exchange of Information with Third Countries) (Jersey) Regulations 2008. Annexed to that invoice was an Instrument of Indemnity made on 11 May 2020 between Mr Halabi and Forward Group Limited, and we will refer to that below. Mr Halabi responded to that particular email by denying any liability and complaining that reference should have been made to him before the disclosure of any information to Jersey's Comptroller of Taxes.

100 This work was said to have been done after the termination of the contract between the Plaintiff and the Defendants and therefore cannot be charged under any of those contracts. The invoice is dated 17 May 2022 and is unpaid. Although there was reference to a dispute about it during the course of the evidence, no reference is made to it on the pleadings and no claim has been formally made. Indeed, Advocate Dixon expressly disavowed any desire to amend the pleaded claim in his closing address. We have accordingly not addressed the issue in this judgment in detail, but we do add these preliminary comments in case the matter should come back before a court.

101 The sum is claimed by the Plaintiff to be due pursuant to a Deed of Indemnity given by Mr Halabi in April 2020. However, on a preliminary reading, it is not obvious to us that any “actions proceedings accounts, claims or demands have been brought or threatened to be brought against any of the Forward entities or associated persons” have been brought or threatened as the indemnity might be thought to require before it becomes effective, or that a TIEA Notice issued by Revenue Jersey falls into this category where the Tax Indemnity might be claimed to apply. This would require evidence and submission before it could be considered by a court.

Time costs claimed

102 The Plaintiff claims for the time costs incurred by it in pursuing the Defendants to pay the sums claimed. Although the amount is not quantified on the pleadings, there is a claim for damages in respect of this head of claim. As shown by a spreadsheet before us, the amount of those costs is £50,935 for the period from May 2021 to 12 December 2022. Advocate Dixon told us in opening that the amount was £56,935 as of 18 December 2022,

the date of the hearing. However, although there was provided a spreadsheet indicating the managerial time spent, the quantum of which was confirmed by Mr Voisin in his evidence, no sufficient detail was supplied to justify this latter figure.

103 The basis of this claim is clause 15.9 of the Terms – see [54(x) above]. Time spend by Forward in pursuing unpaid debts will be chargeable to the Client at the prevalent time charge rates. The Terms are within the PTC Agreement by virtue of clause 22 of that agreement, but it is clear from clause 9.6.3 of that agreement that clauses 9 and 10 survive the termination of the agreement. By implication, the remaining clauses do not. The PTC Agreement also provides that if there is any inconsistency between the Terms and the PTC Agreement, the PTC Agreement shall prevail.

104 Once again, we have had no argument about the construction of the Terms, and in particular clause 15.9. That might be thought to lead to a conclusion that we should not consider any objection to the legitimacy of the claim for loss of management time in pursuing the Defendants for the sums claimed and simply award judgment. We reject that approach. The Court has an obligation to ensure that any judgment which it hands down affords justice to the parties, and it is certainly not obliged to hand down a judgment which in its view does not provide a just result.

105 The primary obligation under the Terms is to pay management charges incurred in pursuing a debt. On the application of the ordinary use of English, the monies claimed must be due before they become a debt, and to the extent that the sums claimed are found not to be due, they are not “debts” and therefore fall outside the contractual provision. The second point to make about the obligation is that, as we construe it, the Plaintiff must have spent the management time reasonably and efficiently in pursuing the debt. The provision is not an excuse which legitimates the profligate use of time in litigation on the basis that the recalcitrant defendant has to pay for the management time lost regardless of the good sense with which that management time is applied in the litigation. We construe clause 15.9 of the Terms to carry these qualifications. In our judgment, applying a rough and ready assessment of the management time lost in connection with this litigation, we think that giving instructions (10 hours), considering correspondence and pleadings (2 hours) providing discovery (10 hours) and attending trial (10 hours) is an adequate allowance. The time spent on discovery can be apportioned between senior management and a junior employee on a ratio of 2 to 8. Thus we assess a proper sum for the loss of management time as 22 hours of senior management at £300 per hour and 8 hours of junior employee time at £175 per hour making a total of £8,000.

Interest

106 The Plaintiff claims contractual interest on the sums due at 2% over Base rate until payment. It is obviously impossible to calculate the amount of interest until one has calculated the total sum due. In principle we allow the claim for interest and will quantify it at a later date if the parties cannot agree it after the quantum has been settled by agreement

or judgment.

* *All non-French entities only; commencing with the year end 5 April 2020 accounts but excluding "the seven entities" which will be prepared on a time-spent basis.* All outstanding historical accounts to be prepared on a time-spent basis.

** *Excludes dealing with points arising in annual review process*.