



Neutral Citation Number: [2024] EWHC 1273 (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

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

Date: 24/05/2024

Before :

MR JUSTICE FOXTON

Between :

IRYNA GORDIY

Claimant

- and -

(1) JEKATERINA DOROFJEVA

(2) TARGET GLOBAL EARLY STAGE FUND II LP

Defendants

Andrew Fulton KC and Howard Kennedy LLP (acting on a pro bono basis) for **Ms Gordiy**
Oliver Hyams (instructed by **Madison Legal**) for **the First Defendant**
Tim Matthewson (instructed by **Alston & Bird (City) LLP**) for **the Second Defendant**

Hearing dates: 10 May 2024

Draft Judgment Circulated: 21 May 2024

Approved Judgment

This judgment was handed down remotely at 10.30pm on 24 May 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

The Honourable Mr Justice Foxton:

Introduction

1. This judgment deals with two applications:
 - i) The Claimant's (**Ms Gordiy's**) application to amend her claim against the First Defendant (**Ms Dorofejeva**).
 - ii) Ms Gordiy's on notice application for permission to serve the amended claim against the Second Defendant (**Target**) out of the jurisdiction.
2. The claim was issued by Ms Gordiy when she was acting in person, and the basis and nature of the claim was very difficult to discern. The initial claim was the subject of two separate hearings: a challenge by Target to the purported service of proceedings upon it, and by Ms Dorofejeva on the basis that the claim against her had no realistic prospect of success. I essentially upheld both of those applications, but was concerned on the basis of such material as was available to me (which was incomplete and in many cases not translated), it might turn out on further enquiry that Ms Gordiy could advance an arguable claim, were she able to access legal support. Accordingly, I gave Ms Gordiy the opportunity to seek pro bono legal representation, and to explore the possibility that, with the benefit of that assistance, she might be able to formulate a viable claim. My judgment is reported at [2023] EWHC 3036 (Comm) (**the November 2023 Judgment**).
3. In the event, Mr Andrew Fulton KC, who helps administer the COMBAR Pro Bono scheme, very generously agreed to represent Ms Gordiy at the hearings before me on a pro bono basis, preparing a draft pleading and appearing at two further hearings. In addition, Howard Kennedy LLP agreed to represent Ms Gordiy in the run up to and at the second of the hearings, also on a pro bono basis. I would like to express the court's gratitude to both Mr Fulton KC and Howard Kennedy LLP for their work. It has very materially assisted the court, and placed Ms Gordiy on a level playing field in a case in which she faces two legally represented defendants.
4. Since the November 2023 Judgment:
 - i) A draft pleading has been prepared seeking to capture Ms Gordiy's complaint in the form of recognised causes of action.
 - ii) The contemporaneous documents previously before the court in incomplete and untranslated form are now the subject of complete and certified translations and they have been supplemented in a number of important respects with further material.
 - iii) There are also further witness statements including from one of the lawyers who acted in one of the transactions.
5. The further material, and the legal submissions which the court has heard by reference to the proposed cause of actions, have materially changed the aspect of the case since the

November 2023 Judgment, and for that reason this judgment addresses the applications on a standalone basis.

The applicable legal principles

6. The principles to be applied on applications to amend pursuant to CPR 17.1(2)(b) were not in dispute:

- i) A proposed amendment must be arguable, carry a degree of conviction, be coherent, properly particularised and supported by evidence that establishes a factual basis for the allegation: see *Kawasaki Kisen Kaisha Ltd v James Kemball Ltd* [2021] EWCA Civ 33, [18].
- ii) The court should avoid conducting a mini-trial and factual averments should be accepted unless, exceptionally, they are demonstrably untrue or unsupportable: *Okpabi v Royal Dutch Shell Plc* [2021] UKSC 3; [2021] 1 W.L.R. 129, [107].
- iii) The court may reject an amendment seeking to raise a version of the facts of the case which is inherently implausible, self-contradictory or is not supported by contemporaneous documentation.: *Collier v P & MJ Wright (Holdings) Ltd* [2007] EWCA Civ 1329; [2008] 1 W.L.R. 643, *Carey Group Plc v AIB Group (UK) Plc* [2011] EWHC 594 (Ch) and *Shah v HSBC Private Bank (UK) Ltd* [2011] EWCA Civ 1669; [2012] Lloyd's Rep. F.C. 337.
- iv) Where the proposed amendment involves allegations of fraud,

“The correct test is whether or not, on the basis of the primary facts pleaded, an inference of dishonesty is more likely than one of innocence or negligence. As Lord Millett put it, there must be some fact “which tilts the balance and justifies an inference of dishonesty”. At the interlocutory stage, when the court is considering whether the plea of fraud is a proper one or whether to strike it out, the court is not concerned with whether the evidence at trial will or will not establish fraud but only with whether facts are pleaded which would justify the plea of fraud.”

(Flaux J in *JSC Bank of Moscow v Kekhman* [2015] EWHC 3073 (Comm) at [14] - [23], by reference to the analysis of Lord Millett in *Three Rivers District Council v Bank of England* [2003] 2 AC 1 at [184]-[189]).

The background

7. 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.
8. 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.

9. 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 Ms Dorofejeva and Target were shareholders. Target is an exempt limited partnership registered in the Cayman Islands. As at July 2022, Ms Dorofejeva held 9,880 ordinary shares in Finadvant, Target held 8,272 preference shares and the remaining 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.
10. Under the SPA, Ms Gordiy was to be paid £650,000 in cash, and receive shares in Finadvant which it was estimated would be worth an additional £50,000, or thereabouts, in return for her shares in Remeeta:
 - 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 this agreement except in relation to any antecedent breach.
 - iv) By clause 5, that at or prior to Completion, Ms Gordiy would provide:
 - 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.
11. On 22 August 2022, Finadvant, acting through Ms Dorofejeva, submitted a s.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.
 12. On 14 September 2022 the FCA acknowledged receipt of that s.178 notice but contended that it was incomplete. The FCA further asked for s.178 notices to be given by Ms Dorofejeva and Target, such information to be provided by 26 September 2022.
 13. On 22 September 2022, Finadvant, acting through Ms Dorofejeva, submitted a revised s.178 notice to the FCA. In her covering email to the FCA, Ms Dorofejeva stated that s.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.
 14. While these exchanges with the FCA were underway, a transaction for the acquisition of Finadvant was in contemplation. On 6 October 2022 a Dutch company called PNL Fintech BV ("**Fintech BV**") entered into a subscription agreement ("**the Subscription Agreement**") with, inter alia, Ms Gordiy, Ms Dorofejeva and Target. Ms Gordiy was notified on 6 October 2022 that all parties had signed the Subscription Agreement.
 15. 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) Ms Dorofejeva and Target agreed on completion to transfer their shares in Finadvant to Fintech BV and to accept in exchange certain shares in Fintech BV.
 16. On 3 October 2022, the Subscription Agreement and an agreement dealing with the SARs were uploaded to DocuSign and the signatories to the Subscription Agreement, including Ms Gordiy, were notified of this fact by Van Campen Liem, Fintech BV's Dutch lawyers. Ms Gordiy was sent an electronic invite to sign the documents. On 6 October, Ms Gordiy was notified that all of the signatures for these documents had been obtained.
 17. On 17 October 2022, two other agreements to which Ms Gordiy was party, the Stock Option Cancellation Agreement and the Option Shares Transfer Deed, were executed, and Ms Gordiy was notified of this.
 18. On 20 October 2022, completion of the Subscription Agreement took place, albeit the actual transfer of legal ownership of the shares did not take place on that date. Under s.770(1)(a) of the Companies Act 2006, the transfer would not be registered until a proper

instrument of transfer had been delivered to the company. The transfer of the shares in Finadvant was subject to stamp duty, and the share transfer forms could not be registered until the share transfer forms had been duly stamped (s.17 of the Stamp Act 1891).

19. On 26 October 2022, Van Campen Liem sent two sets of closing binders to Ms Dorofejeva. No copy was sent to or passed onto Ms Gordiy. While Ms Gordiy is able to point to the fact that Ms Dorofejeva did not pass on one of the two sets of closing binders received by her, as I explain below Ms Dorofejeva did give Ms Gordiy an accurate summary of the state of the Subscription Agreement transaction on 5 November 2022, and so this point is of very limited assistance to Ms Gordiy. The fact that Van Campen Liem was responsible for distributing closing binders in the first instance and had contact with Ms Gordiy independently of Ms Dorofejeva makes any suggestion that Ms Dorofejeva would have sought to mislead Ms Gordiy about the status of the transaction forensically challenging.
20. On 3 November 2022, in response to the revised s.178 notice that had been sent under cover of Ms Dorofejeva's email of 22 September 2022, the FCA informed Ms Dorofejeva that she and Target were required to give s.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 s.178 notices and the fuller explanation by 17 November 2022.
21. On the same day, Ms Gordiy sent Ms Dorofejeva a message on the Telegram messaging app, in which she confirmed "tomorrow I'll make two more applications and send them to you for signing" (which was clearly a reference to Ms Gordiy preparing s.178 notices for Ms Dorofejeva and Target). She asked for information about Target's structure saying the form "must show Limited partners and general partners and managers."
22. Ms Gordiy and Ms Dorofejeva exchanged further Telegram messages on 5 November 2022. There was discussion about how much information needed to be given about the limited partners in Target. They also addressed the issue of how to deal with the Fintech BV acquisition in the FCA filings. It is now apparent that Ms Dorofejeva informed Ms Gordiy that "as it stands now in a week the deal with [Fintech BV] and Companies House will change. Do we need to do this before or we already give the new structure." Ms Gordiy asked what the new structure would be, and whether it would include Target. In the course of these exchanges, Ms Dorofejeva stated "[Fintech BV] owns 100% of Finadvant". When Ms Gordiy asked, "will this information be already in the registry in a week?", Ms Dorofejeva replied "maybe two weeks. Stamp duty needs to be paid". Ms Gordiy responded to this by stating "we have deadline, we'll submit with future changes in mind". This clearly reflected a decision to prepare the s.178 notices on the basis of the shareholding as currently recorded at Companies House, notwithstanding that Fintech BV now owned 100% of Finadvant, but to update the s.178 notices when the position at Companies House was updated after stamp duty had been paid. The full exchange shows that Ms Gordiy was clearly told that the Fintech BV deal had gone ahead, but that it would take a short period of time before the Companies House register was updated because stamp duty needed to be paid.
23. On 7 November 2022, the stamp duty was paid by Fintech BV, although it is clear Ms

Dorofejeva was not aware of this until 5 January 2023 (see below).

24. Accordingly, Ms Gordiy prepared (i) revised s.178 notices to be served by herself, Ms Dorofejeva and Target on the basis that Ms Dorofejeva and Target were substantial shareholders in Finadvant, without at that stage mentioning that Finadvant had been acquired by Fintech BV, (ii) a structure chart which suggested that Ms Dorofejeva and Target would be shareholders of Finadvant after the sale, and (iii) a covering email under which these documents were to be provided to the FCA. The position as it now emerges from the documented exchanges differs to some extent from the positions taken before the court at the November 2023 hearing at which:
 - i) Ms Dorofejeva alleged that Ms Gordiy took the decision and instructed her that the FCA should not be told of the Fintech BV acquisition until after approval had been given for Finadvant's acquisition of Remeeta. While the first part of that explanation is correct, the second is not entirely accurate.
 - ii) Ms Gordiy alleged that Ms Dorofejeva informed her that the s.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 s.178 notices were accurate. The first part of that explanation is wrong, and the second is only partially accurate.
25. On 14 November 2022, Ms Dorofejeva contacted Mr Nafikov of Target seeking a signature of the s.178 notice prepared for Target. Mr Nafikov had also received electronic prompts from Ms Gordiy asking him to sign the s.178 notice prepared for Target. Ms Dorofejeva stated:

“Since we haven't changed everything yet so that [Fintech BV] could be seen in Finadvant, we decided to finish the process as the old structure so that you and I are beneficiaries.”
26. There is nothing in this message to support the suggestion that Target was being asked to hide the sale to Fintech BV from the FCA for the purpose of harming Ms Gordiy. On the contrary, the message was wholly consistent with the prior discussion between Ms Gordiy and Ms Dorofejeva.
27. On 15 November 2022, Ms Dorofejeva shared the draft notices with Ms Makarova of Target, and they discussed various entries. Ms Makarova made some amendments. I accept Mr Matthewson's submission that the communication was dealt with as “a routine operational matter”.
28. Ms Gordiy sent the draft notices and structure chart to Ms Dorofejeva on 16 November 2022, having herself signed the notice which was to come from Remeeta.
29. On 17 November 2022, Ms Dorofejeva sent the revised s.178 notices for Remeeta, herself and Target and the structure chart, to the FCA, under cover of an email using the text Ms Gordiy had circulated.

30. On 23 November 2022, Ms Gordiy had a Telegram exchange with Ms Dorofejeva which is now available in translated form, from which it is apparent that the exchanges proceeded on the basis that the SPA was going ahead.
31. On 5 December 2022, Ms Dorofejeva asked Lewis Silkin, the solicitors acting for Finadvant in the Subscription Agreement transaction, about the status of the stamp duty payment, to be told that HMRC had yet to approve the payment and that they would provide an update as soon as they had one. On 7 December 2022, Lewis Silkin wrote to Ms Dorofejeva stating the stamped documents had yet to come through but “that should be just a formality.”
32. On 6 January 2023, Ms Dorofejeva contacted Lewis Silkin again to ask about the stamping of the transfers, to be told that the stamp had in fact come through late in the previous year. The letter from HMRC giving that confirmation had been sent by Lewis Silkin to Fintech BV’s lawyers on 15 December 2022, and not to Ms Dorofejeva, but Fintech BV had not amended the register at Companies House.
33. On 9 January 2023, the FCA sent a message to Ms Dorofejeva seeking further information, including “documentary evidence of the source of the £650,000 required for the transaction” such as a bank statement. The FCA chased that information on 13 January, asking that it be provided by 17 January 2023.
34. On 13 January 2023, Ms Dorofejeva informed Ms Gordiy of the FCA’s request of 9 January 2023, explaining Fintech BV was “waiting for money from Target to show these 650,000. Will arrive on the 21st”. This was a reference to the fact that it was Target, through Fintech BV, which was to provide the necessary funding, and that Finadvant could not satisfy the FCA’s request until this happened.
35. On 14 January 2023, there were further Telegram exchanges between Ms Gordiy and Ms Dorofejeva. Ms Dorofejeva stated that the FCA was chasing proof of funds, and having initially set a deadline of 9 February, they were now asking for proof by 17th January. Ms Dorofejeva said that Fintech BV “would receive funds from Target only on the 21st [January]. Initially the FCA said on 9th February, but they wrote that they wanted to see the money I raised the issue with [Fintech BV] as very urgent, but there is no money and they won’t be able to get it until Tuesday ... They can only give a loan on paper, but then we may get questions about why [Fintech BV] is getting this loan ... And it will be necessary to show the deal with [Fintech BV] ... We may get a withdrawal from the FCA.” Ms Gordiy replied, “there will be no withdrawal, we will fit into the time frames”. Ms Gordiy stated “statutory deadline to close the deal is 17/02 or around that date By then we have to close the deal”. They agreed to seek to extend the date, Ms Dorofejeva saying that they should ask for a date not earlier than 1 February 2023 on the basis that “Target will pay to [Fintech BV], they will pay to our account, I will show them all statements”.
36. It is clear, therefore, that Ms Gordiy knew that the source of funding for the SPA transaction was to be Target via Fintech BV, that Ms Dorofejeva was open with Ms Gordiy about the risk that explaining the intended source of funding by producing an explanation of the

intended financing risked raising issue of the Fintech BV transaction with the FCA which might prevent them from approving the SPA. It was mutually decided to seek to extend the deadline to 7 February, on the assumption that by that date, Finadvant would be able to show it had sufficient cash its bank account to satisfy the FCA.

37. On 16 January 2023, Ms Dorofejeva informed the FCA that the requested information would be provided once Finadvant had received cleared funds by 7 February 2023.
38. It is clear that on around 20 January 2023, Ms Dorofejeva visited those behind Target in Cyprus and that she was told that Target did not intend to fund the SPA. Ms Dorofejeva sent Ms Gordiy a Telegram message on that date saying “I don’t have good news ... I will call you tomorrow after 11, in flight”, asking Ms Gordiy to meet her at Stansted Airport the following day. In a follow-up message, she explained “[Fintech BV] refused to buy a licence” – a reference to the acquisition of Remeeta which held a UK licence – “I couldn’t convince them. They went into complete refusal.”
39. On 21 January 2023, Ms Dorofejeva met Ms Gordiy at Stansted Airport. While there is some dispute as to what was said at that meeting, Ms Gordiy accepts that she was told that Fintech BV and Target had refused to release the funds necessary for Ms Dorofejeva to satisfy the FCA that the £650,000 was available, with the result that the SPA would not be approved. She also says that at that meeting, Ms Dorofejeva agreed that Ms Gordiy would be paid £32,000 to compensate her for the non-completion of the SPA, although this is disputed. Even on Ms Gordiy’s evidence, the premise of the meeting was that the SPA would not be going ahead.
40. On 22 January 2023, there were further Telegram exchanges between Ms Gordiy and Ms Dorofejeva in which Ms Gordiy sought to keep the deal alive, suggesting that steps could be taken to be able to show funds to the FCA by the deadline “and close the questions about the controller but we don’t complete the deal” until Remeeta had received an E-money licence from the FCA, with the deal closing in April-June. Ms Dorofejeva replied stating “I think we won’t get through this; they don’t want to pay for a licence this year in all scenarios and want options where they can enter if they decide they don’t need the UK market.” Ms Gordiy replied: “it’s clear, then resolve the question of the compensation please”.
41. On the same day, Ms Gordiy wrote to Finadvant seeking compensation for the financial loss incurred “as a result of a breach” of the SPA. She referred to Finadvant not providing information which had been requested by the FCA and thereby completing the transaction (i.e. proof of the availability of funds) and sought £32,500 compensation. This demand was sent under cover of an email which stated, “I have attached the letter compensation demand, as agreed, for your review”.
42. On 25 January 2023, Ms Dorofejeva informed the FCA that it would not be possible to show the availability of funding, stating:

“We ought to inform you that, unfortunately, they 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”.

43. That explanation was entirely consistent with what Ms Dorofejeva had told Ms Gordiy on 20 and 21 January. On the same day Ms Dorofejeva informed Ms Gordiy that the lawyers were working on a deed to cancel the SPA.
44. On 27 January, a draft Deed was sent over. The draft provided for an agreement which would cancel both the SPA and the £50,000 worth of shares which formed part of the deal. That was not acceptable to Ms Gordiy. In explaining why Finadvant had been unable to fund completion of the SPA itself, Ms Dorofejeva stated that Finadvant had not received cash from Fintech BV, just shares: “we just changed shares to [Fintech BV] ... on paper they gave us 7 million euros but now it’s 3.5 mill”. There was no expression of surprise by Ms Gordiy that the transaction with Fintech BV had clearly gone ahead.
45. On 3 February 2023, Finadvant’s “person of significant control” register at Companies House was updated to show that Finadvant was now controlled by Fintech BV’s controllers. While I accept that there was a period of a month between Ms Dorofejeva becoming aware that the stamp had been paid, and the change of the register, I do not think that there is an arguable inference that this was deliberate delay intended to mislead Ms Gordiy as to the state of the transaction given the fact that on 20 January, Ms Dorofejeva had told Ms Gordiy that the SPA would not be going ahead, and when there is nothing in the exchanges between Ms Dorofejeva and Ms Gordiy in the period from 6 January to 3 February which can be read as a representation that the Subscription Agreement had yet to complete. In any event, that was a period of significant activity – the FCA were becoming insistent about proof of funding, Finadvant was in difficulty in satisfying this request, and Ms Dorofejeva had visited Target’s representatives in Cyprus.
46. On 14 February 2023, at a meeting at the FCA, the FCA informed Ms Dorofejeva 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 but I accept it is arguable that it was Ms Dorofejeva. However, it is important to note that Ms Gordiy and Ms Dorofejeva were already proceeding on the basis that the SPA was not going to complete.
47. On 15 February 2023 (by a letter misdated 15 January), 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.
48. On 18 February 2023, the Longstop Date was reached, and the SPA lapsed.
49. 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.
50. On 23 February 2023, a Confirmation Statement of the position 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 had completed, and showed various shareholders

listed on the previous Confirmation Statement having transferred their shares on 17 October 2022.

Ms Gordiy's complaint in summary

51. In summary, Ms Gordiy's case is as follows:

- i) Ms Dorofejeva intentionally withheld the completion of the Subscription Agreement from her and led her to believe that the SPA was on track until 20 January 2023.
- ii) To that end, Ms Dorofejeva and Target made false statements in the s.178 notices filed with the FCA which did not disclose the effects of the completion of the Subscription Agreement.
- iii) Ms Dorofejeva falsely led Ms Gordiy to believe that funds would be available to complete the SPA.
- iv) Ms Dorofejeva deliberately delayed telling the FCA about the change of control of Finadvant until there was insufficient time before the Longstop Date to obtain fresh FCA approval.
- v) As part of this plan, Ms Dorofejeva deliberately delayed notifying Companies House of the change in control until after the Longstop Date had passed.
- vi) These activities were undertaken as part of a coordinated plan with Target.

52. Those underlying complaints are relied upon to establish the following causes of action:

- i) Against Ms Dorofejeva, for deceit.
- ii) Against Ms Dorofejeva and Target, for the tort of causing loss by unlawful means (the unlawful means relied upon being offences under s.191F(1) and 191F(6) of FSMA, the making of untruthful statements to the FCA and/or Companies House and offences under s.790M(5) and s.790VA(2) of the Companies Act 2006).
- iii) Against all three Defendants, for the tort of unlawful means conspiracy (relying on the same unlawful means).

53. With the benefit of the contemporaneous documents now available, I am satisfied that Ms Gordiy has no realistic prospect of establishing the factual allegations necessary to underpin any of those causes of action.

The allegation that Ms Dorofejeva intentionally withheld the completion of the Subscription Agreement from her, and instead led her to believe that the SPA was on track until 20 January 2023

54. It is now clear that Ms Gordiy was made aware of the dates when the relevant documents

required to complete the Subscription Agreement had been signed, albeit I accept that it is arguable that that would not have been sufficient to inform her that completion had taken place.

55. However, in Telegram messages on 5 November 2022, Ms Dorofejeva expressly told Ms Gordiy that the deal had gone through, and that only issues relating to stamp duty were holding up a change in the Companies House registry which was expected to happen within a short period. Those statements were a fair representation of the position as it was at the time. While stamp duty was paid on 7 November 2022, it is clear from Ms Dorofejeva's communications with Lewis Silkin in December and January that she did not become aware of this until 5 January 2023. Further, the stamp had still not been received by Lewis Silkin on 7 December 2022 (as they confirmed in response to Ms Dorofejeva's enquiry of 5 December 2022).
56. While the stamp did come through from HMRC on 15 December, it was not sent to Ms Dorofejeva at that time (as Lewis Silkin confirmed on 5 January 2023). I also accept that Lewis Silkin had advised Ms Dorofejeva in a letter of 16 September 2022 that it was Fintech BV's job rather than her job to update the register at Companies House.
57. Ms Dorofejeva's Telegram exchanges with Ms Gordiy on 13 and 14 January were premised on the fact that the Fintech BV transaction had completed, it being suggested that funds coming through Fintech BV were due to arrive with Finadvant on 21 January. There was no suggestion that the reason this had not happened was because the Subscription Agreement had yet to complete. On the contrary, on 14 January, Ms Dorofejeva expressly warned Ms Gordiy that explaining where the funds would be coming from would require disclosing the Fintech BV deal, and the possibility that the FCA might withdraw approval.
58. I accept that it was only on 20 January that Ms Dorofejeva told Ms Gordiy that the SPA would not complete. However, there is no arguable basis for suggesting that Ms Dorofejeva had understood that Target would not be providing the necessary funding before meeting with Target in Cyprus. The correspondence is wholly consistent with Ms Dorofejeva learning this information on 20 January in Cyprus, messaging Ms Gordiy that day and meeting her at the airport the next day to talk about this unwelcome news.

The allegation that to that end, Ms Dorofejeva and Target made false statements in the s.178 notices which did not disclose the effects of the completion of the Subscription Agreement

59. It is now clear that it was Ms Gordiy's decision to complete the s.178 notice on the basis of the structure as then recorded in Companies House, in the knowledge that the register was expected to change in a week or two, with the intention of updating the notices as and when necessary. Ms Dorofejeva went along with that suggestion and passed on the same message to Target. With the benefit of a more complete set of communications, there is no suggestion that Ms Dorofejeva held any different knowledge or understanding to Ms Gordiy when the s.178 notices were prepared and filed. Further, there is nothing in Ms Dorofejeva's communication with Target which suggested that the s.178 notices were intended to mislead or conceal in any way, with a view to causing loss to Ms Gordiy.

The allegation that Ms Dorofejeva falsely led Ms Gordiy to believe that funds would be available to complete the SPA.

60. As I have stated, I accept that it is only on 20 January that Ms Dorofejeva told Ms Gordiy that the SPA would not complete. However, there is no arguable basis for suggesting that Ms Dorofejeva had appreciated this before meeting with Target in Cyprus on that date. The correspondence is wholly consistent with Ms Dorofejeva learning this information on 20 January in Cyprus, messaging Ms Gordiy that day and meeting her at the airport as she arrived.

The allegation that Ms Dorofejeva deliberately delayed telling the FCA about the change of control of Finadvant until there was insufficient time before the Longstop Date to obtain fresh FCA approval

61. It is clear that Ms Dorofejeva discussed the need to inform the FCA about the Fintech BV deal with Ms Gordiy both on 5 November and 14 January, and in both cases Ms Gordiy's preference was to get the deal over the line before doing so. Had Ms Dorofejeva wished to "kill" the deal on the basis of the FCA Condition, she had no need to inform Ms Gordiy on 20 January 2023 that Fintech BV were refusing to provide funding (something which, on its own, made it impossible to satisfy the FCA Condition given the FCA's insistence on seeing proof of funds).

The allegation that as part of this plan, Ms Dorofejeva deliberately delayed notifying Companies House of the change in control until after the Longstop Date had passed.

62. It is now clear that the timing of the changes to the persons of significant control register at Companies House reflected:
- i) the fact that Ms Dorofejeva had not been told that the stamp had been received from HMRC until 6 January 2023; and
 - ii) delay by Fintech BV in changing the register, in circumstances in which Lewis Silkin had advised Ms Dorofejeva that this was Fintech BV's job.

63. It is also clear that the register was amended on 3 February 2023, before the Longstop Date.

The allegation that these activities were undertaken as part of a coordinated plan with Target

64. There being no arguable case against Ms Dorofejeva, it follows that there was no arguable co-ordinated plan with the other Defendants. In any event, there is simply nothing to tie Target into any such plan. As I have stated, the communications to Target asking them to sign the s.178 notice were wholly anodyne in content and reflected the course Ms Gordiy had decided on of filing s.178 notices by reference to the position as it currently appeared on the register and updating them when it changed.

Conclusion

65. The effect of these conclusions is that permission to amend and to serve out of the

jurisdiction should be refused, and Ms Gordiy's claim dismissed. It is not necessary to address various other objections raised by the Defendants, by reference to alleged legal defects in the claim, the inadequacy of the particularisation or procedural obstacles which need to be overcome. Had there been a viable case of dishonesty on the facts, it would have been necessary to consider very carefully whether the legal and procedural arguments raised gave the Defendants a knock-out blow.

66. This result will come as a bitter blow to Ms Gordiy, who is clearly in dire financial straits, and for whom the collapse of the SPA and the resultant litigation have been nothing short of a catastrophe. However, it would not advance Ms Gordiy's interests to allow a claim without a real prospect of success to proceed to trial. Although I suspect this will provide very limited consolation to Ms Gordiy, she can rest assured that all that could possibly be said in support of her claims has been said, and that the issues and evidence raised in answer to her complaints by the Defendants have now been fully tested. The court is extremely grateful for the time given by Mr Fulton KC and Howard Kennedy LLP which has made this possible.