Neutral Citation Number: [2019] EWHC 2733 (QB)

Case No: HQ18M02000

**IN THE HIGH COURT OF JUSTICE**
**QUEEN'S BENCH DIVISION**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17 October 2019

**Before** :

**MR JUSTICE GRIFFITHS**

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**Between :**

| | |
|---|---|
| **ROUNDSHIELD PARTNERS LLP** | **Claimant** |
| **- and -** | |
| **(1) CIUDAD REAL INTERNATIONAL AIRPORT SL** | |
| **(2) REMOTOR REPARACIONES Y MOTORES SL** | |
| **(3) PUNTA IBIZA SL** | |
| **(4) RAFAEL GOMEZ ARRIBAS** | **Defendants** |

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**Harris Bor** (instructed by **Birketts LLP**) for the **Claimant**
**Frederico Singarajah** (instructed by **Capital Law Ltd**) for the **Defendants**

Hearing dates: 7, 8, 10 and 11 October 2019

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# Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

MR JUSTICE GRIFFITHS

## Mr Justice Griffiths:

1. This is the trial of an action in which the Claimant ("Roundshield") claims money from the Defendants pursuant to a Term Sheet (the "Term Sheet") dated 13 October 2017. The Term Sheet was agreed while negotiations took place for a €70 million loan from Roundshield to assist in the acquisition of the Ciudad Real International Airport in Spain ("the Airport"). In the event, negotiations came to nothing and the loan was not made. The acquisition and intended operation of the Airport were eventually financed from elsewhere.

2. The First Defendant ("CRIA") and the Second Defendant ("Remotor") are companies formed under the laws of Spain and involved in the acquisition of the Airport. The Fourth Defendant ("Mr Arribas") is an individual, who gave evidence at the trial. It is common ground that he is the ultimate beneficial owner of almost the entire interest in, and primary director of, the First and Second (and, indeed, Third) Defendants. At the start of the trial, claims were made in contract and in tort against the Third Defendant but by the end no claims against the Third Defendant were pursued.

3. Much of the Term Sheet was not legally binding, being essentially heads of terms directed towards the final transaction (to be enshrined in a facility agreement) which never took place, but the clause under which Roundshield makes its claims was one of those which were legally binding from the outset.

4. The Term Sheet contained the following provisions:-

> "[Roundshield] and/or its affiliates and partners (the "Fund") are engaged in discussions with [CRIA] regarding a possible €70 million facility (the "Loan")…
>
> "…This Letter is indicative only for discussion, is not comprehensive and all terms are not exhaustively provided for and are strictly subject to contract."
>
> "…the following provisions shall be legally binding and fully enforceable under the laws and jurisdiction of England and Wales by the relevant Party: …. "Fund Expenses and Expenses Deposit" "

5. Roundshield makes its claims under the binding "Fund Expenses and Expenses Deposit" clause. It included the following provisions:-

> "The Sponsor [which was defined as CRIA and Remotor respectively] acknowledges and agrees that the Fund [which was defined as "[Roundshield] and/or its affiliates and partners"] will incur reasonable third party fees and out of pocket expense in respect of lawyers, outside counsel and consultants retained by the Fund to advise on the Proposed Transaction. These fees and expenses shall include, but not be limited to, fees relating to due diligence investigations, fees for drafting and negotiating the legal documentation and fees for preparing any insurance reviews, appraisals, environmental

> reports and engineering and structural reports and are to be agreed by the Sponsor [i.e. CRIA and Remotor] (acting reasonably) ("Fund Expenses")."
>
> "In consideration of the Fund undertaking and incurring the Fund Expenses:
>
> 1. the Sponsor undertakes to pay the Fund, within 5 days of mutual execution of this Letter, an initial non-refundable €50,000 good faith deposit (the "Expense Deposit") to cover Fund Expenses; and
>
> 2. the Sponsor agrees to pay, or to reimburse the Fund in respect of, any Fund Expenses in excess of the Expense Deposit within 5 Business Days of request from the Fund."
>
> "For the avoidance of doubt… notwithstanding any abort of the Proposed Transaction or non-execution of the Loan documentation: (i) the Expense Deposit is non-refundable; and (ii) the Fund Expenses in excess of the Expense Deposit remain payable by the Sponsor within 5 Business Days of request from the Fund."

**The claims and the issues**

6. The Fund Expenses claimed (which were the subject of some amendments on the first day of the trial) now consist of the following six items (itemised in the "Amended Schedule of Sums Owed" attached to the Amended Particulars of Claim, supplemented by the "Claimant's Particulars Underlying Schedule" produced on 7 October 2019):-

   i) Sidley. Work on legal documentation. €140,000 initially quoted. €178,610 eventually charged and now claimed.

   ii) Uria. Work on legal due diligence, tax and Spanish documents. €135,000 initially quoted, reduced to €110,000. €330,661.80 eventually charged and now claimed.

   iii) Ogier. Work on "Luxembourg documents (including incorporation and financing)". Quotes of €5,000-6,000, then €12,000, then €20,000. €33,556.05 eventually charged and now claimed.

   iv) Kroll. Work on background checks. £6,500 initially quoted (said to be equivalent to €7,410). Same sum now claimed.

   v) Savills. Work on "Ibiza asset valuation". €18,000 quoted. Slightly less - €17,424 - charged and now claimed.

   vi) AURA. Work on "Airport asset valuation". €30,000 quoted. €37,500 charged and now claimed.

7. Some of the claims are in pounds sterling, and others in Euros. The Amended Schedule of Sums Owed attached to the Amended Particulars of Claim converts sterling amounts into Euros, so that the whole claim is denominated in Euros, but the Claimant's Particulars Underlying Schedule includes the original sterling amounts in the two cases (Sidley and Kroll) in which billing was in sterling rather than Euros, as well as the conversion to Euros in those two cases.

8. The issues were narrowed in the course of the trial. The questions I now have to decide are:-

   i) To what extent, if at all, were Fund Expenses required to be approved in advance? This turns on the effect of the words "and are to be agreed by the Sponsor [i.e. CRIA and Remotor] (acting reasonably)" in the Term Sheet quoted above.

   ii) Following on from i), and looking at the six items, was sufficient approval obtained in each case?

   iii) Are the amounts claimed reasonable? The parties agree that, for the sums claimed to be recoverable, they must be reasonable, that being stated in the passages from the Term Sheet which I have cited.

   iv) Is Mr Arribas personally liable in tort for inducing breach of contract?

   v) An issue about Roundshield's entitlement to sue was also raised, based on the fact that some of the invoices were addressed to another entity.

**The evidence**

9. The evidence at trial was presented in two forms: evidence from witnesses and evidence from documents.

10. Each side called one witness of fact. The Claimant called Mr Ignacio Lliso, a Vice President within the Roundshield investment team, who had day-to-day conduct of the deal on behalf of Roundshield. The Defendants called Mr Arribas, who was the individual with conduct of the matter on their side. He was identified in the Term Sheet as the "Key Principal".

11. Over 2,200 pages of contemporaneous documents were included in the trial bundles including correspondence, quotes, bills, invoices, emails, WhatsApp conversations, due diligence and other reports, and contract documentation, both as executed and in draft.

12. The case was presented from two angles. On the one hand, I was introduced to the chronology of the period over which matters developed between the parties. This was, evidently, a complex and at times fractious commercial discussion between the two sides which did not ultimately result in agreement. On the other hand, the case was analysed thematically, based on the six Fund Expenses in question, and the issues of prior approval and reasonableness as they related to each of them. I do not think that I need to go into the details of every twist and turn in the relationship, in order to decide

the issues before me. I will, however, begin by establishing key points in the chronology, before turning to the individual claims.

## Chronology of key events

*Initial discussion and the Term Sheet*

13. CRIA's search for financing started with an information memorandum put out on its behalf by Blackwood Capital in May 2017. Blackwood made contact with Roundshield in May 2017 and, after some initial discussions, Roundshield confirmed by email of 26 July 2017 (from Mr Lliso) its definite interest in the project.

14. A draft Term Sheet was produced on 26 July 2017. The final version, which is the basis of this action, was signed on 13 October 2017. Mr Arribas signed on behalf of CRIA and Remotor (described as their "Sole Administrator"), and Mr Driss Benkirane (Mr Lliso's line manager) signed on behalf of Roundshield (described as "Managing Partner").

15. At first, discussions proceeded relatively smoothly. Counsel for the Claimant described the period to January or February 2018 as "a golden age", when things were progressing as expected.

16. On 3 October – that is, before the Term Sheet was signed on 13 October – Mr Arribas's lawyer (Federico Fruhbek) emailed Mr Lliso saying:-

> "**10) Fund Expenses and Expense Deposit**
>
> We agree on an upfront deposit, amounting to €50,000"

Mr Lliso responded, saying:-

> "OK, but we want to make sure that you are aware that the deal expenses will be considerably higher. We assume so after what Federico said on Sunday, where he spoke about €X00k figures."

17. On 18 October 2017, Mr Arribas sent 13 files of papers to Mr Lliso.

18. Kelly Rothwell, an in-house lawyer at Roundshield ("Ms Rothwell"), approached two firms of lawyers to be instructed on the project. They were the Spanish law firm Uría Menéndez Abogados ("Uria") and the New York office of the law firm Sidley Austin LLP ("Sidley").

*Uria – initial period*

19. Ms Rothwell emailed Uria on 17 October 2017 with the Term Sheet and a sample shareholders' agreement from another deal, asking for a fee estimate for work which had apparently previously been discussed. Uria provided a fee estimate on 18 October which I am told was €135,000. Ms Rothwell replied "we think the fee estimate is high", giving reasons, and asked for a lower figure. Uria came back on 24 October 2017 saying:-

> "…in view of the ongoing relationship we want to build with you, we are willing to do an effort and scale down our fees and fixing a cap of 110,000 Euros."

20. Ms Rothwell responded "I still think this number is high but we will discuss with the Sponsor (as they are the ones ultimately paying) and revert as soon as possible". Uria replied on 25 October 2017 saying "if any further flexibility from our side is needed, please let us know". It does not seem that this indication of further flexibility was explored further.

21. On 1 November 2017, Ms Rothwell emailed Uria saying "Pleased to say that your fees have been agreed by the Sponsor…" Ms Rothwell was not a witness and what she was referring to was not in evidence over and above this email. Roundshield was not able to say how, when or with whom at "the Sponsor" this agreement had been obtained, or precisely what was said or what the context of it was. Mr Arribas was asked about this email in cross examination, and he said:

> "The only thing I agreed is that anything that would go over the €50,000 would have to be previously discussed and agreed and approved by me. I never approved this €110,000 for Uria. I approved an initial deposit of €50,000 and before approving a new budget, an extra, any extra amount, I would need justification of this initial amount. In order to justify extra budget I would have needed for this initial budget to have been justified and specified all the different expenses, so that I could see that it was necessary to increase the amount. [The cap of €110,000] was a maximum, maximum cap. But before increasing it, it was necessary to have full justification and explanation of the previous amount, how that had been spent. I have never received any invoices, not until the negotiations were broken."

22. On the basis that Uria did go on to do work, he was asked how much, in his opinion, he should be paying. He said "quite a bit less than €110,000. Maybe €70,000." When asked why he had not paid that, he said: "Because I haven't had the chance or the information in order to pay, because I only found out about the amount and the figures just a few days before this trial."

*Sidley – initial period*

23. I will now turn to the initial discussions with Sidley. On 19 October 2017, Sidley sent Ms Rothwell a detailed "scope of work" proposal for which "As agreed, our overall fee quote is expected to be £140,000 subject to the assumptions set forth below. We will give fee updates on a regular basis and upon request." The assumptions included "The transaction closes within 4 weeks of the date of this email".

24. Sidley also said:

> "We will agree to an abort fee discount of 35% of fees over and above the costs of the first drafts, if the transaction does not complete."

25. Ms Rothwell replied saying the quote was "too high… we need to get down to £120-130k." Sidley replied, in an email of which I have been shown only a fragment, saying "We can do £130,000 and of course structuring and those ancillary documents will be included"; and "Timing… will change to 8 weeks."

*October 2017 to January 2018*

26. On 26 and 30 October, the "initial non-refundable €50,000 good faith deposit… to cover Fund Expenses", required by the Term Sheet, was paid in two equal instalments. The remittance details provided by Mr Arribas by email identified him as "Sole Administrator" of both entities, and as "Beneficial Owner" of CRIA only.

27. Part of the security which Roundshield was interested in, for any finance they eventually provided, was the proceeds of a claim pending in the Balearic High Court for compensation of €64 million plus interest. This was a claim being brought by Punta Ibiza and another entity called Mecron SL. On 20 November 2017 a favourable judgment was given on this claim by the Balearic High Court.

28. On 23 November 2017, Fruhbeck's initial due diligence report was sent to Uria. This reported on potential security offered by the Airport property, an Ibiza property, the Balearic High Court claim and on various companies associated with the transaction, not limited to CRIA and Remotor. Uria reviewed it and sent it to Roundshield with queries on 30 November. In early December, Uria requested additional information from Mr Arribas. On 11 December, Mr Arribas confirmed that CRIA and Remotor were willing to provide the information requested.

29. On 18 December, Mr Lliso emailed a more senior colleague (Mr Benkirane, who did not give evidence) with a detailed update on progress and his current information. He indicated that Mr Arribas "is nervous because he doesn't want to lose the airport and needs to know if we are willing to close as things stand right now (will elaborate further) or if he has to find a way to do it on his own." He discussed the fact that the Term Sheet exclusivity period was expiring (although it might be extended); and that "a contract with Inditex (or big operator) is NOT going to be signed/ready prior to purchase of the airport". He said "We have performed the DD [due diligence] and tax work" and "We started drafting the FA [Facility Agreement] end of last week". Mr Lliso suggested to his colleague two alternatives: either "Extend exclusivity, continue with the deal as planned but we add features to the deal to cover for the lack of pre-lease agreement. For instance, we take more from the deal (i.e. economics and decision making)…" or "Tell them that they have not delivered on the CP so we cannot do the deal as planned." He said "…we should exploit the leverage we have, I never wanted to hold them hostage but they promised the pre-lease and it is not going to be there in time." It may be that Mr Lliso rather misjudged the situation here, because Mr Arribas (as I saw when he gave evidence) was a strong character who was not at all willing to be exploited or held hostage. He was older than Mr Lliso and, comparing the way in which they both gave evidence before me, it seemed to me that Mr Arribas has more confidence and clarity of thinking than Mr Lliso. He was prepared (as later events proved) to find other partners to complete his deal if Roundshield did not come up to scratch.

30. A first draft of the proposed facility agreement was sent out on Roundshield's behalf on 4 January 2018. Fruhbeck sent it back with a detailed and combative email in

response on 15 January consisting of 25 numbered points and objections to Roundshield's proposed approach. These included a strong rejection of various proposals that might increase costs, or which might throw a burden of costs on to the Defendants instead of Roundshield. He also dismissed the suggestions prefigured in Mr Lliso's earlier email to Mr Benkirance that Roundshield might insist on greater control of the operation. He said:

> "1. Being Roundshield a sole lender we do not understand why there shall be an agent and a security agent (being the same person as the lender) and furthermore, why CRIA should pay the costs for such services. In fact, we did not agree in the Term Sheet that CRIA shall pay any such costs neither to the lender nor to any agent.
>
> …
>
> 3. We have to discuss whether it really makes sense to incorporate a Luxemburg holding company as such incorporation will delay the closing of the transaction and accordingly, the acquisition of the airport.
>
> 4. We haven't got any draft yet in respect of the Shareholders' Agreement nor of the Key Man agreement. If we do not start with the negotiation of such documents soon, again a delay of the closing of the transaction will take place, making the consummation of the transaction more difficult.
>
> 5. The Original Commitment, amounting to €65 million has to be revised, as the sum of the uses set forth in the Term Sheet amounts to €64.7 million and the closing costs (including legal fees) have to be added on the top. If we estimate such costs at €0.5 million, then the Original Commitment should amount to €65.2 million, and maybe we can round it up to €65.5.
>
> …
>
> "7. Clause 9: In the Term Sheet we did not agree that the interest would be capitalized. Accordingly, the wording of this clause is not in line with the agreed deal.
>
> …
>
> 9. Clause 12: We did not agree in the Term Sheet that the borrowers should take any increased costs. Furthermore, they do not have responsibility at all in respect of the facts triggering such costs (Basel III, CRDIV, etc).
>
> 10. Clause 13.3: The borrowers cannot take costs, losses or liability incurred by the agent due to its gross negligence or other category of liability.

11. Clause 15.1: In the Term Sheet we did agree on a one time and not on an annual Origination Fee.

12. Clause 15.2: The transaction expenses to be paid by the borrowers have to be agreed in advance and set forth under the uses of the facility, as we did in the Term Sheet. The same shall apply in respect of any amendment costs to be incurred.

13. Clause 15.5: As stated before, we did not agree in the Term Sheet to become liable in respect of monitoring costs.

14. Clause 16.3: The Key Man and eventually other executives of CRIA will need to have signing rights in the Transaction Account in order to carry out the payments of the company in the ordinary course of business.

15. We did not agree in the Term Sheet on any LTV [Loan to Value] ratio. Anyway if (i) the valuation of the airport is 150 Mio Euro, and (ii) the loan facility amounts to 70 Mio Euro, subject to 4 years of interest at a rate of 15%, then the amount due at the end of the term will represent an LTV ration of 75%. Accordingly, the ratio of 70% is not in line with the terms and conditions set forth in the Facility Agreement. In our opinion there should not be any LTV ratio at all.

16. Clause 21.15 Governance. This point has to be discussed in detail. It is essential for all parties that the Key Man (Rafael Gomez Arribas) is in charge of the governance of the company…

19. Clause 25.1 c): If Roundshield decides not to transfer the Loan Facility to a new lender, and later on such new lender to a third lender, and so on, it is not reasonable that the costs arising therefrom, are paid by the borrowers. At any case, such payment obligation was not agreed in the Term Sheet.

20. Clause 27.2 We did not agree in the Term Sheet to pay any Parallel Debt as consideration for the rendering of any security agency services.

21. Schedule 2. Part 1. Section 1.4: This condition precedent should be deleted, as we cannot get on the shareholders' resolution of CRIA the signature of the minority shareholder (European Value Advisors). On the other hand a resolution approved by the majority of shareholders is sufficient to all effects.

22. Schedule 2. Part 1. Section 3: We did not agree in the Term Sheet as a condition precedent to deliver an environmental report nor an archaeological, a ground condition, a

> measurement survey, a structural survey and a rights of light report…"

31. This did not bode well for the negotiation and, although it carried on, the parties agreed to put "pens down" in March 2018, as I will explain in more detail later. Within this email, it is particularly notable that Fruhbeck were insisting (at point 12 above) "The transaction expenses to be paid by the borrowers have to be agreed in advance and set forth under the uses of the facility, as we did in the Term Sheet." On the other hand, Roundshield emphasises the reference (at point 5 above) to an estimate of "closing costs (including legal fees)" at €0.5 million". However, those would be the costs at the end of a wholly successful investigation and negotiation, leading to a completed transaction, and the figure is, in context, clearly a round sum put forward as the roughest of rough estimates even on that basis.

32. On 18 January 2018, Uria emailed Ms Rothwell and said "as of today the time on the clock is… €80,000 in CRIA". He added:

> "In respect to the fee break down, it is going to be a little bit complicated to put this together at this stage. We do not usually provide a fee break down unless we have been told it is necessary from the early beginning (in such case we ask our lawyers write down detailed descriptions and to do them in English).
>
> Nevertheless, if this is not very inconvenient for you, moving forward we can certainly undertake to provide you with a weekly update of all the fees incurred. We will instruct everyone accordingly to acknowledge that from now on time keeping reports will be issued weekly."

33. Mr Lliso was copied in on this email but no-one at the Defendants was, nor is it suggested that this email was ever forwarded to Mr Arribas or anyone at the Defendants. As to Uria's offer of weekly updates, Mr Lliso said in evidence "This was never done."

34. Also on 18 January 2018, Ms Rothwell asked Sidley for "approximate fees on the clock to date" and was told "We have approximately £20,000 of fees on the clock to date (excluding VAT)." Again, the Defendants were not copied in or forwarded these emails. Nor was any detail of the sum sought or obtained by Roundshield at this point.

35. It may be that Ms Rothwell was taking stock of fees because the negotiations were not proceeding as rapidly or as smoothly as expected.

36. In late January 2018, Roundshield discovered that Mr Arribas was in discussions with other potential sources of the finance he was looking for. Roundshield was not happy with this, because the Term Sheet had included some exclusivity provisions, but the Defendants' position is that those provisions had expired in accordance with their terms.

*Non-legal advisers*

37. In 2018, Roundshield started to instruct non-legal advisers, and these account for the costs claimed in respect of Kroll and (as valuers) Savills and Aura. Roundshield is not able to point to any document in which Kroll, Savills or Aura were raised with the Defendants in advance of instruction.

*(1) Kroll*

38. Kroll sent Mr Lliso an engagement letter addressed to Roundshield (and also RS Fund II LP and RS Luxemourg II Sarl) dated 24 January 2018, "in relation to background due diligence on Rafael Gomez Arribas", i.e. Mr Arribas.

39. The engagement letter of 24 January 2018 said Kroll would "conduct public-record due diligence on Arribas" and said "Professional Fees for the Services will be capped at £6,500". No breakdown of their work has been provided, but their invoice dated 24 April 2018 claimed "Fees for Hourly Professional Services Rendered" of the same figure: £6,500. That is the amount claimed in this action (said to equate to €7,410 if converted to Euros). The invoice is addressed to Mr Lliso at RS Fund II LP.

40. The Kroll report produced for this fee was dated 2 March 2018 and is in the papers. It ranged far beyond Mr Arribas personally. It referenced his wife, children and grandchildren. It covered the Airport itself, and previous bidders for it, and press opinion about the project. It homed in on CRIA's head of investor relations, and discussed matters in relation to him that were not directly connected to Mr Arribas. It said that "three companies linked to Gomez Arribas have been publicly listed as owing significant sums to the Spanish Inland Revenue". It looked into an ionisation project and real estate interests. It discussed reputation, legal issues and political exposure. It reads like a hostile piece of opposition research, heavy with innuendo, and based in part on media reports and unresolved enquiries into incomplete records.

41. It appears that it was provided on the basis that Roundshield would not disclose it to anyone, including Mr Arribas or the other Defendants, since it stated: "Any communication, publication, disclosure, dissemination or reproduction of this report or any portion of its contents to third parties without the advance written consent of Kroll is not authorized."

42. Mr Arribas gave evidence that he was not told anything about this: "If I remember well, the truth is the first time I have heard the name Kroll, it has been in the last few days". Mr Lliso's evidence, in general terms, that he regularly updated Mr Arribas (to which I will return), was put to Mr Arribas. He rejected it. Mr Arribas said that the due diligence report provided by Fruhbeck was, so far as he was aware, the only due diligence provided in about himself and his companies. It was put to him that he should have expected Roundshield to carry out its own background checks, and he said: "I think Roundshield can do whatever they think is necessary, but if it is something that concerns me then it would have had to be agreed with me."

*(2) Savills*

43. For independent valuation advice, Roundshield at first turned to Savills, who on 1 February 2018 got an email from Mr Lliso asking informally for an urgent quote to

value property. Savills by return suggested a fee of €20,000, or €18,000 with less analysis. On 15 February, Mr Lliso emailed asking them to start the next day, although the engagement letter was not drawn up until 27 February. The copy of the engagement letter in the bundle is unsigned and states that the agreed fee for provision of a report on the Ibiza property was €18,000. The engagement letter is addressed to Roundshield and to RS Fund II LP and to RS Luxembourg II Sarl and marked for Mr Lliso's attention. There is no evidence that any of this correspondence was copied or forwarded to the Defendants. A year later, on 15 February 2019, the work was invoiced to RS Fund II LP only, for a fee "As agreed" in the sum of €14,400 plus VAT, making a total of €17,424 (slightly below the quotation, therefore) which is what Roundshield now claims.

*(3) Aura*

44. Somewhat later, Mr Lliso approached property experts in Madrid, Aura, for a valuation of the Airport itself. I have been referred to very little documentation about this and most of what I have been shown is in Spanish without translation. Mr Lliso by email from Roundshield on 6 March 2018 (very shortly before the final breakdown of negotiations) asked Aura for an urgent desktop valuation of the Airport property, asking him to exercise "la maxima discrecion" or "maximum discretion." An email from Aura the same day offered to provide the valuation in 3 or 4 days, quoting a fee of €7,500 "for this phase I" ("para esta fase 1") with phase II to be agreed "according to your needs" ("La fase II quedaria pendiente de definir segyn vuestras necesidades"). Aura followed up on 7 March 2018 with a formal quotation, in English, addressed to "Roundshield Partners", with a description of work and a quoted fee of €7,500 plus VAT.

45. On 12 March 2018, Mr Lliso chased for the work by email, stressing its urgency. On the same day, he received and acknowledged it. Mr Lliso then asked for more and, on 19 March 2018, he was given a detailed description of work to be done (shown to me only in Spanish) with a quoted fee of €30,000 plus VAT. Mr Lliso immediately by email accepted the quote and commissioned the work. There is no evidence that any of this correspondence was copied or forwarded to the Defendants.

46. On 30 April 2018, Aura presented an invoice for €37,500 plus VAT of €7,875 (total €45,375) to RS Fund II, LP. The claim in this action is for €37,500.

47. In relation to valuation reports, Mr Arribas said "they should have been reports commissioned by me to companies in Spain, not by them [Roundshield], and after the negotiations were broken". He said "…one of the basic principles of the negotiations was that anything that was going to go over the 50,000 amount, the 50,000 deposit, would have to be budgeted and commissioned and agreed by me." He said "I provided them with official valuations including institutions like the Commercial Court, and I also provided all the documentation related to the compensation claim which included a valuation of the Ibiza asset." He did not object to Roundshield conducting independent valuations before lending, "but always communicating with me and telling me the cost beforehand so that I could agree. But not in this way, when it is already done." He said "…these checks or valuations done by a third party should have been approved and also their cost should have been approved by me because Term Sheet is not a free bar."

*Ogier and the Luxembourg joint venture company*

48. The final item of the six that are claimed in this action (in addition to the legal fees of Sidley and Uria, the Kroll fee for investigation, and the valuation fees of Savills and Aura) is in respect of work by the Luxembourg office of the law firm, Ogier. Ogier were approached in relation to Roundshield's proposal, which I have already mentioned, that a company should be set up in Luxembourg. On 26 February 2018, a lawyer from Uria emailed Federico Fruhbeck and others including Mr Arribas saying (according to the translation from Spanish which I was taken to in the bundle):-

> "In order to accelerate the procedures from a point of view Luxembourgish and to be able to meet the right times we have managed, we have requested from Ogier (who normally advises Roundshield in his operations in Luxembourg) a budget for them to take charge of prepare all the documentation corporation in Luxembourg for (i) the constitution of the joint venture company (JV LuxCo), (ii) the contributions non-monetary of Punta Ibiza, Mecron and CRIA, and (iii) increases in capital to be performed by Roundshield.
>
> We have been told by Ogiers that the budget for these services be between €5,000 and €6,000 (excluding VAT – if applicable – cost of third parties and general costs for an amount of 3%), which, in our experience is very competitive. In addition Ogiers tells us that from your point of view be possible to close the operation on 9 March. As long as they receive all the information in time, that the negotiation of documents are not prolonged and that both parties act from a joint, orderly and efficient way.
>
> Considering the above, I please that we confirmasels [*sic*] asap if are according to the stated budget and with the choice of Ogier as advisors to the execution in the constitution in the JV LuxCo so we can start working with them asap to be able to reach the proposed dates…"

49. Mr Arribas responded within minutes "For my part I agree".

50. Uria replied a couple of hours later thanking him and saying "We assume then that we can give the OK to the lawyers Luxembourg." To this, Fruhbeck responded (still following the translations provided to me):

> "For my part there is no any inconvenience of using these Luxembourg advisors. Its price it's competitive. What worried me is the date of March 9th, since wanted have the close as very late [*perhaps better translated as "at the very latest"*] on March 6th so that they do not delay the test flights of certain potential clients.
>
> Maybe we could set the constitution of the structure from Luxembourg as a "condition subsequent""

51. The next email was from Mr Arribas, who said:

> "I adhere to Federico's last comment. We must try to sign on Tuesday the 6th of March, not to delay from one to two months more the airport leave…"

52. Uria replied:-

> "Rafael [Arribas] Federico [Fruhbeck], thank you very much for your confirmation.
>
> We will do our best to reach the indicated date… we will send you in a few minutes a mail with the information that Ogier needs to start working and need what we contestasels [*sic*] between now and tomorrow first thing to be able to start the paperwork in Luxembourg…"

53. On 19 March 2018, Ogier emailed Ms Rothwell and Mr Lliso saying

> "Following the recent changes in the scope of work for this transaction, we estimate that our legal fees in relation to (i) the incorporation… and (ii) its subsequent share capital increase, should finally range between €12,000 and €13,000 (VAT, disbursements and sundry expenses excluded)…
>
> Please let us know if this is fine from your perspective".

54. Mr Lliso did not in his evidence refer to this email and Ms Rothwell did not give evidence. The papers do not show what if any discussion followed Ogier's suggestion at this point. It is not alleged that the emails were copied or forwarded to Mr Arribas, the Defendants or their lawyers.

55. The next email in this chain is again from Ogier, dated 22 March. The later email, again addressed to Ms Rothwell and Mr Lliso, said:

> "Just wanted to follow up on the fee question so that you are aware of our costs.
>
> Considering the various last minute changes in the implementation of the project (one step incorporation reconsidered for a two-steps incorporation with further share capital increase, which might finally end up in a one-step incorporation), the various back-and-forth discussions with Uria, Frehbecks and Aztec for the incorporation, opening of the bank account and implementation of the joint venture, please note that our fees as of today amount to €15,638 (VAT and disbursements excluded).
>
> Considering where we are at the moment and the fact that our documentation still might require some last minute changes depending on the incorporation route chosen, we estimate that our legal fees until completion of this transaction should

> amount to approximately €20,000 (VAT and disbursements excluded).
>
> Please let us know whether you have any question/comment in relation thereto."

56. Again, there is no evidence from Mr Lliso on this particular exchange. Indeed, Mr Lliso's evidence in chief did not refer to the Luxemburg angle, or to Ogier, at all. Nothing of substance was added on this aspect (not surprisingly, given the lack of evidence in chief) in Mr Lliso's cross examination.

57. Mr Arribas was cross examined about these emails, although, with one exception, it was not suggested that he had been shown them at the time. The exception was the initial quote of €5,000 to €6,000, in the exchange including Mr Arribas' comment: "For my part I agree."

58. Mr Arribas said about that: "This might have been a cap, but the operation, the incorporation in Luxembourg wasn't done in the end. All this work detailed here was never carried out." Removing the double negative, and making allowance for the translation, I understood this to mean "Not all the work detailed here was carried out." In relation to his agreement to the initial figure, Mr Arribas said "Yes, but always on the basis that there has to be a budget, it needs to be reasonable, it needs to be known by me and it needs to be agreed and executed according to the agreement."

59. Mr Arribas' assertion that "the incorporation in Luxembourg wasn't done in the end" was not at first accepted in cross examination, but the documents he was taken to by way of narrative invoices did not contradict it. Eventually, further instructions were taken, and the Claimant conceded that "the actual incorporation never actually finally happened because the deal died, as it were. But what the [invoice] shows is that the documentation is all being drafted and being put in place".

60. This exchange strengthened Mr Arribas' credibility as a witness, in that he made a clear assertion – that "the incorporation in Luxembourg wasn't done in the end" - which he maintained under cross examination, and it proved to be correct. I accept that the final invoice is consistent, as the Claimant argues, with some preparatory work being done, but the documents do not show that the detail of this work, including the chopping and changing which was said to have driven up the costs, was ever put to or agreed by Mr Arribas. I see no reason not to accept his evidence that, to the extent that even preparatory work was being done, he was not aware of it being significantly progressed and did not agree to it beyond the initial discussion and quotation. The emails I have quoted fall into two parts. The first part is a discussion in which Fruhbeck and the Defendant side insist that no setting up of a Luxembourg structure should be allowed to delay the transaction, and could, if necessary, be deferred into the final documentation (which was never agreed) as a condition subsequent. The second part suggests that Ogier were receiving inconsistent instructions which drove up their costs but came to nothing, without documentary evidence being shown to me of it being referred to or approved by Mr Arribas or the Defendant's representatives. I will return to this when I consider the question of reasonableness.

61. The final bill from Ogier was much bigger, not only than the original proposal of €5,000 to €6,000 on 26 February (which was for all the work, not just preparatory work), but even the increased figures provided to Ms Rothwell and Mr Lliso alone of "between €12,000 and €13,000" on 19 March (again for the whole transaction) and "approximately €20,000" on 22 March ("until completion"). Ogier's invoice dated 8 May 2018 was rendered to RS Fund II LP and was for €20,000 (VAT not being chargeable) plus expenses of €600 in respect of legal advice in connection with "Roundshield – incorporation of JVCo", but they also invoiced RS Fund II LP on 9 May 2018 for a further €12,956.05 (excluding VAT but including expenses and disbursement) in respect of "legal advice" in connection with "RS Real Punta Sarl – financing of Ciudad Real Airport." The claim is for the total of both invoices, namely €33,556.05.

*Mr Lliso's evidence*

62. Mr Lliso's evidence in chief said that he had regularly given advance notice to Mr Arribas of all the costs being incurred by way of Fund Expenses, but it was evidence given in general terms. Paragraphs 36 to 40 of his witness statement are the heart of this evidence, and, in view of their importance to Roundshield's case, they deserve to be quoted at some length:-

> "… in addition to the documentary evidence, I also had telephone calls with Senor Arribas.
>
> I would update Senor Arribas on costs generally on a monthly (approximately) basis (predominantly by telephone) and additionally when specific costs updates had come in but I also updated him at particular milestones:
>
> During the initial "kick off" call [on 6 November 2017, including Sidley, Uria, Mr Lliso and Mr Arribas, in which Mr Lliso's evidence was at paragraph 18 that "it was agreed that Senor Arribas was to cover Roundshield's legal/other professional fees"] there was agreement to Senor Arribas covering Roundshield's costs incurred;
>
> When specific pieces of work, such as those carried out by Kroll, and the valuations undertaken by Savills and Aura, were about to be commissioned I would call Senor Arribas and alert him to the quote for the work that was about to be undertaken. This would be, roughly 2-3 weeks before the relevant reports were produced (this being the average lead time for this sort of work). The charges of Aura and Savills were largely in line with those quotes…;
>
> When the first draft Facility Agreement was delivered on or around 4 January 2018 I updated Senor Arribas in a call as to how much of the original quote had been incurred to date. It was also the point where our incurred costs started to exceed the deposit of €50,000 which had been paid so that was another reason for providing the update to Senor Arribas;

> In or around early February 2018… I spoke to Senor Arribas to update him on the costs incurred with Uria and Sidley Austin LLP to that point. This was important because, if the project was not going further, then we would have raised our invoice at this point;
>
> In or around the end of February… I called Senor Arribas at this time to advise him that Uria's fees would go over the original quote but it was not known by how much;
>
> The last occasion when I believe I provided an update was at the "pens down" moment when Kelly Rothwell obtained updates on the position with fees. I conveyed these to Senor Arribas by telephone.
>
> I do not recall the exact dates that the calls I refer to above took place…
>
> What I do recall is that all these calls were with Senor Arribas and at no time did he express any dissatisfaction or concerns with the costs being incurred, particularly the increasing legal fees. In my view there was no doubt that Senor Arribas was to cover the costs which Roundshield was incurring in the project.
>
> I acknowledge that it is a little unusual for these matters to be discussed in telephone calls but, due to the particular nature of the contacts and referrer on this particular project, the approach and conduct was predominantly by telephone between Senor Arribas and me."

63. At trial, it became clear that it was not correct that "the approach and conduct was predominantly by telephone between Senor Arribas and me." I was shown numerous emails and WhatsApp messages, and also internal Roundshield communications, and none of them referred to regular updating on costs by Mr Lliso to Mr Arribas in the way suggested in this witness statement. Nor, when confirmations were sought from Mr Arribas in writing (as I detail in this judgment), was it said that they were supplemental to detailed updates and agreements obtained regularly by telephone between Mr Lliso and Mr Arribas.

64. The witness statement itself acknowledges that what was being suggested was "a little unusual" and I would go further and say that, in the context of this transaction and the other communications between these parties, it is inherently incredible. It is not made more credible by Mr Lliso's lack of reference, in the witness statement, to any particular documents: no exhibit is referenced in the passage I have quoted. He is apparently relying on a very general recollection over a year after the event (the witness statement is dated 13 June 2019) and such recollections, unassisted or supported by contemporaneous documents, are to be treated with caution.

65. The witness statement not only lacks detail in referring to particular dates, it makes one assertion which appears to be demonstrably inaccurate. It says, at paragraph 18, that during the kick-off call on 6 November 2017 "it was agreed that Senor Arribas

was to cover Roundshield's legal/other professional fees". This cannot be reconciled with the Term Sheet dated 13 October 2017 which provided that this liability fell on CRIA and Remotor (the First and Second Defendants, referred to in the Term Sheet as "the Sponsor") and not on Mr Arribas (referred to in the Term Sheet as the "Key Principal"). Although there was at the outset of the trial a claim that Mr Arribas had subsequently assumed, with the Third Defendant, a contractual liability, this was dropped, and there was no evidence to support it.

66. In cross examination, Mr Lliso said that when working on a project "I do have notes, I have – I do keep, you know, notes et cetera… I record everything that happens…" However, none of these were produced, and none, therefore, were produced to corroborate his case about conversations with Mr Arribas about costs. When asked about this, Mr Lliso appeared to backtrack on the suggestion that he kept notes:

> "As I said, usually those notes are limited to certain things and most of it I would say I keep in my head and it is, you know, evidenced either in the termsheet or in the emails exchanges, for instance, on commercial points that need to – or commercial or not commercial points from the documents that are being negotiated or I put calendar appointments in my Outlook…"

67. Another indication that Mr Lliso's evidence was not reliable came at the end of his re-examination. On the subject of Kroll, he had in cross examination said that Kroll did not have to apply a cap to their fees because they had not incurred fees in excess of their quote. However, his witness statement of evidence in chief said that a witness statement from his line manager Mr Benkirane (who did not give evidence) "explains why Kroll then went over its quote". Asked to clarify or reconcile this contradiction, he looked at the passage in his own witness statement and said: "And this – then I believe it is incorrect".

68. Mr Lliso in cross examination gave rambling and not always relevant answers, and came across as a person with a pleasant manner who did not have a strong grasp of essentials or a clear recollection. His evidence appeared to be impressionistic rather than precise, and improvised rather than rooted in reliable memory. Such a person might well, after the event, wish and therefore believe that he had nailed down what has turned out to be an important point with those required to be appraised of it, but that does not mean that it happened like that at the time.

69. On balance, I decided that Mr Lliso was not a credible or reliable witness. In particular, I was completely unable to accept any evidence of information given to Mr Arribas, or agreement obtained from Mr Arribas, unless it was independently corroborated by documents, or accepted by Mr Arribas in his own evidence (which was clearer, more coherent, more confident, and more consistent). That was not the case with Mr Lliso's evidence about regular oral and undocumented updates to Mr Arribas about costs. I reject that evidence.

*February and March 2018*

70. Returning to the main narrative of events, on 7 February 2018 Mr Arribas sent Mr Lliso an email headed "Legal Fees" in which he said as follows:-

> "In accordance with your request, I am pleased to confirm that [CRIA and Remotor] shall pay reasonable fees for the lawyers at Roundshield Partners LLP ("Roundshield") for working with CRIA and Remotor to compile and negotiate the necessary contracts for Roundshield to finance the acquisition of [the Airport]…"

Heavy reliance is placed on this by the Claimant. However, it does no more than repeat the words of the Term Sheet and, indeed, is more limited than those words, because it refers only to reasonable fees "for the lawyers", and only to fees "for working with CRIA and Remotor" to "compile and negotiate the necessary contracts…". The Term Sheet (which was, of course, independently enforceable and at this date operative, whether or not the period of exclusivity had ended) referred to more (subject to the proviso that it was "to be agreed by the Sponsor"), namely:

> "…reasonable third party fees and out of pocket expense in respect of lawyers, outside counsel and consultants retained by the Fund to advise on the Proposed Transaction. These fees and expenses shall include, but not be limited to, fees relating to due diligence investigations, fees for drafting and negotiating the legal documentation and fees for preparing any insurance reviews, appraisals, environmental reports and engineering and structural reports and are to be agreed by the Sponsor [i.e. CRIA and Remotor] (acting reasonably) ("Fund Expenses")."

71. I regard the fact that Mr Lliso was in the email exchange only getting explicit agreement to legal fees, as demonstrating that he was not here getting advance approval for incurring other sorts of fee, and, in particular, the Kroll, Savills and Auria fees which I have already outlined and which were not for legal services. I have set out the dates and context of the approaches to Kroll, Savills and Auria in my narrative above.

72. Mr Arribas' email of 7 February was, moreover, expressed to be conditional on receipt of "the mark-up of the Loan Facility Agreement with the agreed changes, the provision agreement for the €70 M corresponding to the Sponsor and the first draft of the Shareholders' Agreement and the Key Man Agreement within the next 48 hours" and said that, if Roundshield did not provide confirmation of agreement with the email "within the next 24 hours" then "this e-mail will have no effect."

73. In response the next day, on 8 February, Mr Lliso said "it is clear that everything is moving forward"; "We already sent the documents yesterday"; "Today we will send the Facility Agreement" and "tomorrow we will send the Shareholders' Agreement" but "Just to be clear, I can confirm that the Shareholders' Agreement will take longer" and "Therefore, I am replying to this e-mail as a formality to avoid misunderstandings within the 24 hour time period."

74. Mr Arribas' email in response appeared content with that. However, WhatsApp messages in the following days suggest that Mr Arribas did not subsequently feel that matters were going as he wished. On 11 February, he messaged to Mr Lliso "Ignacio, call me if you can please." Mr Lliso responded almost 24 hours later "Rafa!! I've just seen this, sorry, I'll call within the next 2 hours." The next message, almost 4 hours

later, is again from Mr Arribas, saying "Ignacio, tell me what's going on." There is no response for 2 days, until 14 February, at which point the WhatsApp are very much about Mr Arribas putting pressure on Mr Lliso to deliver, including (at 16.10 on 14 February) "We're running out of time so I'd be grateful if you could tell us what is going on, or at least tell us when you can update us today." It appears that Roundshield were not meeting the deadlines set by Mr Arribas in his email of 7 February.

75. Mr Lliso sent another email on 8 February, on which reliance is placed by the Claimant. It was headed "Roundshield – CRIA Documents" and addressed to Mr Arribas and to Mr Fruhbeck. It enclosed a draft sponsor guarantee, and then referred to "a few points relevant to the progress we are undertaking by drafting of documentation for the CRIA transaction with the aim to close the deal asap (and in any event by 28 February 2018)." These points included passages on "Expenses", the "Purchase Deed" and the "Structure", including a query about whether CRIA would be the borrower. The passage on "Expenses" said:-

> "We would highly appreciate your confirmation (by return email) regarding the obligation of the Sponsor to cover any third party expenses incurred by RoundShield in relation to this transaction, in line with the estimated total budget of £230,000 you approved for Legal advisors until closing (which is the main expense).
>
> - It was agreed in the term sheet and you approved the budget parallel to providing us with the expense deposit in November. However, fees incurred are already above the €50,000 expense deposit and this confirmation is required given that the Sponsor has not increased the expense deposit (as requested by RoundShield)
>
> - We acknowledge you are aware of this obligation for the Sponsor and you have recently confirmed as of last week and recent emails that it is clear as per the agreed Term Sheet"

76. This is not a request for approval of specific expenses, and the reference to recent emails seems only to have been to the other email of 8 February which I have quoted above (no others were identified to me). Although it refers to legal advisers as "the main expense" it does not identify the source, nature or amount of any non-legal expenses.

77. This passage is introduced (as I have already quoted) by a general reference to "drafting of documentation for the CRIA transaction with the aim to close the deal asap (and in any event by 28 February 2018)" rather than general due diligence, and the context was said to be a drafting exercise which was racing towards a successful transaction to be closed within 3 weeks at the latest – which did not, in fact, happen.

78. The passage undoubtedly discloses that the expenses have already exceeded €50,000, but it does not say by how much, or break them down by source, amount or work done. It only says they are "in line with the estimated total budget of £230,000 you approved for Legal advisors until closing".

79. The letter is rather like Mr Lliso's evidence at trial in its generality and lack of precision and the reference to "the estimated total budget of £230,000 you approved for Legal advisors until closing" was not linked at trial to any actual budget of £230,000, let alone to any approval by Mr Arribas of such a budget.

80. It does not appear that this email was responded to from the Defendants' side.

81. Mr Lliso did not refer to this email in his evidence in chief. In cross examination, Mr Lliso said that "the estimated total budget of £230,000" was a reference "To Uria and Sidley" and "It covers specifically the budget that was discussed way earlier, back in November, about the expected legal fees…"

82. There is no precise reference to a budget of £230,000 for legal fees before this. However, if one adds the 110,000 Euros at which Uria offered to cap their fees on 24 October 2017 to the £130,000 quoted by Sidley at about the same time, and taking account of the need to convert the Uria figure from Euros to pounds (which would equate to £98,560 at a rate of 0.896 pounds to the Euro), a rough figure of £230,000 can be achieved.

83. In cross examination, Mr Arribas was asked about this reference to £230,000 and he said it was "maximum budget, but that would need to be justified and I would need to have a specific budget, agree on this budget and also have detail of hours." In relation to the specific figure of £230,000, he said "In my opinion this is not a budget. It is just a maximum amount that could be reached but always everything previously known by me and agreed by me."

84. The bundle included a record of WhatsApp conversations between Mr Arribas and Mr Lliso between 17 July 2017 and 27 April 2018, to which I have already referred. There is no reference to specific costs figures until 8 February 2018 when Mr Lliso messages Mr Arribas (after discussing other matters, like a hunting trip) and says:

> "Lliso: …The schedule isn't a problem (I'm talking about closing the deal)
>
> Lliso: Our e-mails crossed.
>
> Lliso: In the one we sent, the most relevant items are the Deed and the Structure. We are well below the expenditure budget, but above 50 thousand euros, for this reason we need confirmation."

85. There is no response from Mr Arribas. The next message in time is 3 days later and on other topics. Mr Lliso's vague statement "We are well below the expenditure budget, but above 50 thousand euros" was explored in cross examination with him, but he did not say what the figure was at that time, only that it was "below the 230,000, or well below, and above the 50k. Not just above the 50k okay." His emphasis when giving this evidence indicated that he meant that the figure was well below €230,000 and was above €50,000, but not "only just" above €50,000. There is no evidence that I have been shown of what the actual figures were at this date. This was not one of the points in time when Ms Rothwell is on record as checking what was "on the clock" so

far. Mr Lliso did not claim to know the precise figure, and no attempt was made to suggest that he did know, or that he had equipped himself to find out, what it was.

86. By now what Roundshield's Counsel described as "the golden age, where things are progressing as one would expect" was ending, and Roundshield started to focus on other matters including, in particular, tax liabilities (a point raised in the Kroll report of 2 March), and enforcement action, which it feared might weaken its security. Mr Arribas was, meanwhile, clearly losing patience with them and looking elsewhere.

87. Roundshield relies on the matters which it started to focus on as things that should have been disclosed earlier, which justified further expensive work, and (because of the time pressure, which was now acute) suggests that the expense was greater than it might otherwise have been, which it says goes to the reasonableness of the particular fees now being claimed.

88. However, there are difficulties with this argument. First, Roundshield had not asked about all these things before, and it did not seem to me on the evidence that it had ever been misled about anything, or that there had been a failure to disclose anything about which specific enquiry had been made. After the Kroll report (which was based only on publicly available information) a series of strange emails purportedly coming from the Spanish tax authorities but actually sent from a Gmail address which no-one suggested was genuine were sent to the individuals at Roundshield dealing with the Airport financing negotiations, although their contact details, and even their names, were not publicly available, even from Roundshield's website. These emails made allegations about tax liabilities which Roundshield then required Mr Arribas to address. Mr Lliso was not able to explain how those details were obtained by the anonymous informant. It seems that the emails potentially constituted a breach of confidentiality in tax affairs which was not only unlawful, but potentially criminal, as a matter of Spanish law. A criminal complaint has been raised, and Mr Lliso in evidence said he thought that was quite understandable. Be that as it may, before these emails, Roundshield had not raised any enquiries about tax liabilities. Second, not only was I not persuaded that any non-disclosure was culpable, but some of the non-disclosure complained of did not seem to me to be established at all. In particular, Mr Lliso said that Roundshield did not realise that one of the companies for which Mr Arribas acted was not 100% beneficially owned by him. But several of the documents he provided to Roundshield showed that he did not claim 100% beneficial ownership of all the companies for which he was acting. Third, even if Roundshield embarked on new or enhanced enquiries late in the day, that would not absolve them from the requirement in the Term Sheet that any Fund Expenses should not only be reasonably incurred but also "are to be agreed by the Sponsor [i.e. CRIA and Remotor] (acting reasonably)" which both sides seemed to accept would involve at least some element of agreement in advance. Finally, the suggestion that Fund Expenses were higher because work had to be done quickly was not supported by any specific evidence of specific amounts which were attributable to the need for speed.

89. On 20 March 2018, Roundshield learned that the Spanish tax authorities had registered an interest in one of the proposed security properties (the property in Ibiza). But the negotiations were already going badly for other reasons.

90. On 12 March 2018, Fruhbeck rejected a proposal for increased costs in the draft facility. On 18 March, Fruhbeck criticised what it said were slow responses from

Sidley. The deadlines previously imposed by Mr Arribas had long since passed. Closing continued to be elusive.

91. On 22 March 2018, Mr Arribas wrote a long email to Mr Lliso and his boss Mr Benkirane saying that the delays were "not acceptable" and that Roundshield were too often reneging on points which had appeared to be agreed and changing their requirements. He challenged them, in effect, to deliver, or to walk away.

92. Also on 22 March 2018, emails between Mr Fruhbeck and Ms Rothwell identified a particular point on which neither side could agree, and which looked like a deal-breaker. This was a new clause from Roundshield which would give them a veto on who CRIA and Remotor could appoint as their representatives on the Board. Mr Fruhbeck said this was never going to be agreed but Ms Rothwell said "we need this". Mr Fruhbeck said:

> "Let's have a "pens down" with the lawyers so that we don't accrue any more costs.
>
> We're going to call the judge tonight and tell him that unfortunately there is no agreement.
>
> A pity it hasn't gone through. In the end at least it has been a good learning experience and a pleasure to get to know you. We did all we could."

93. On 26 March 2018, Ms Rothwell emailed her own team along the same lines:-

> "For anyone I have not spoken with, meetings with [Mr Arribas] in Madrid this morning did not go so well and as such there are numerous issues which need to be sorted before this transaction can move forward again. So, with the exception of Uria team working on the tax issues etc, please can you all put pens down on the transaction documentation and incorporation of the Luxco. Hopefully we will have some positive news over the next few weeks but for now, thank you all for your hard work and we apologise for the numerous stops/starts on this.
>
> Please can each team also provide me with a fee update as today (doesn't need to be exact)."

94. There were some more meetings, and more time for discussion was obtained from the Spanish court which had the power to set deadlines on an Airport deal, but things got no better. In fact, as more anonymous emails from the mysterious Gmail address were produced by Roundshield (dated 24 and 25 March 2018), they seem, if anything, to have got worse. At the start of the trial, Roundshield's claims included damages for defamation (arising from a press statement by Mr Arribas on 19 April 2018) and breach of confidentiality. These claims were abandoned on the first day of the trial, with an order for Roundshield to pay the costs.

*Invoices*

95. Ms Rothwell, as I have quoted, had in her "pens down" email of 26 March 2018 called for fee updates. From then on invoices started to appear, and various demands for payment of Funds Expenses were made. The level of fees claimed by Roundshield has risen, as incorporated into amendments to the Amended Particulars of Claim which I allowed on the first day of the trial, 7 October 2019.

96. On 20 April 2018 (sent out on 23 April), Roundshield invoiced CRIA for "Fund Expenses Incurred and reimbursable per the Term Sheet" in the sum of €451,168. This was broken down into the six items now claimed, but in the following amounts:-

    i) Sidley. Fee quote €148,200, fees accrued €148,200, abort cap -€49,157, adjusted fee claimed €99,043.

    ii) Uria. Fee quote €110,000, fees accrued €318,000, adjusted fee claimed €318,000.

    iii) Ogier. Fee quote €12,000, fees accrued €28,715, adjusted fee claimed €28,715.

    iv) Kroll. Fee quote €7,410, fees accrued €7,410, adjusted fee claimed €7,410.

    v) Savills. Fee quote €18,000, fees accrued €18,000, adjusted fee claimed €18,000.

    vi) Aura. Fee quote €30,000, fees accrued €30,000, adjusted fee claimed €30,000.

    Added up, the total claimed, after deduction of the €50,000 already paid, was €451,168. No breakdown of any of these sums was provided.

97. Mr Arribas by email dated 30 April 2018 refused to pay, saying that the Term Sheet did not apply after 22 December 2017 (a point no longer pursued) and that any expense incurred before that (which he characterised as a "period of your total inactivity") "must be sufficiently covered by the €50,000 deposit".

98. On the same day, 30 April 2018:-

    i) Aura invoiced RS Fund II for €43,375 (€37,500 plus VAT). This fee was not broken down in any respect, nor was any description (except "Project Ciudad Real") provided.

    ii) Sidley invoiced RS Fund II for £159,657.59. There was a note saying: "This bill will be reduced to £100,000 if there is no payment from the borrower of which £50,000 will be paid now." There was an accompanying narrative of work done by date and the rates charged.

    iii) Uria invoiced Roundshield for €330,661.80. This included expenses (including telephone, travel, and translations) totalling €5,961.80, but was not otherwise broken down. There was an accompanying narrative in general terms.

99. On 8 May 2018, Ogier invoiced RS Fund II for €20,600. On 9 May, Ogier invoiced RS Fund II for €12,956.

100. On 23 May 2018, Roundshield sent a letter before action to the Defendants, and on 7 June it issued its Claim Form.

101. On 30 June 2018, Sidley invoiced RS Fund II for £50,184.79. There was a note saying: "If fees cannot be recovered from the Borrower we will give a dead deal discount as per our agreement of £100,000 and Roundshield will pay £50,000 within 30 days towards the discounted invoice with the balance to be paid by year end." There was an accompanying narrative.

102. On 9 July 2018, Roundshield served Particulars of Claim. The six items were claimed in the following amounts, which corresponded to the amounts in the invoice of April 2018:-

i) Sidley. Claim for €99,043.

ii) Uria. Claim for €318,000.

iii) Ogier. Claim for €28,715.

iv) Kroll. Claim for €7,410.

v) Savills. Claim for €18,000.

vi) Aura. Claim for €30,000.

The total claimed, after deduction of the €50,000 already paid, was €451,168 as in the original invoice.

103. On 24 April 2018, Kroll invoiced RS Fund II for £6,500 on "Project Turf". That is the amount claimed in this action (converted to €7,410). On 17 August 2018, Kroll invoiced the Claimant for £10,800 on "Project Arkles" and by separate invoice for a further £13,099.32 on "Project Lanterns". No explanation has been given for these invoices, or for the various project names. However, they have been disclosed and included in the bundles, and presumably relate in some way to work done in connection with the Defendants.

104. On 23 September 2018, Mr Lliso emailed Uria and notified them that the deal had fallen through and that Roundshield was litigating. He said:

> "…there are two possible scenarios:
>
> - One where we can recover the costs and pay everyone in full, particularly Uria
>
> - One where we do not recover the costs and will need to pay advisers out of our own pocket in which case we agree on a discount which still needs to be formally agreed."

105. On 27 December 2018, Uria invoiced Roundshield for €217,016.80. The invoice has a brief narrative of work (less than a page) but no breakdown of the total sum. The number of hours spent is not stated, fee earners are not identified, and hourly rates are not given.

106. On 15 February 2019, Savills invoiced RS Fund II for €14,400.

107. On 29 August 2019, Uria invoiced Roundshield for €113,921.89. There is a longer narrative of work than before (2 pages) but no statement of hours spent, hourly rates, or other detail which might help in assessing or cross-checking the total amount claimed. None of the narrative breaks down the total fee claimed.

108. The Amended Particulars of Claim for which I gave permission on the first day of the trial altered the amounts claimed to the following:-

i) Sidley. €178,610 (converted from £159,657.59).

ii) Uria. €330,661.80.

iii) Ogier. €33,556.05.

iv) Kroll. €7,410 (converted from £6,500).

v) Savills. €17,424.

vi) Aura. €37,500.

This produces a total claim (including the sterling amounts converted into Euros) of €555,161.85, compared with the claim of €451,168 previously being made.

**Decision on the claims and the issues**

*Issue (1): To what extent, if at all, were Fund Expenses required to be approved in advance?*

109. This is an issue arising from the wording of the following passage in the Term Sheet (which I will call 'the Fund Expenses clause'):-

> "[CRIA and Remotor, as "the Sponsor"] acknowledges and agrees that the Fund will incur reasonable third party fees and out of pocket expense in respect of lawyers, outside counsel and consultants retained by the Fund to advise on the Proposed Transaction. These fees and expenses shall include, but not be limited to, fees relating to due diligence investigations, fees for drafting and negotiating the legal documentation and fees for preparing any insurance reviews, appraisals, environmental reports and engineering and structural reports and are to be agreed by [CRIA and Remotor] (acting reasonably)…"

110. The crucial phrase here is "and are to be agreed by [CRIA and Remotor] (acting reasonably)".

111. It is provided separately, later in the Term Sheet, that

> "2. the Sponsor agrees to pay, or to reimburse the Fund in respect of, any Fund Expenses in excess of the Expense Deposit within 5 Business Days of request from the Fund."

Therefore, the phrase in the Fund Expenses clause "and are to be agreed by the Sponsor [CRIA and Remotor] (acting reasonably)" cannot simply mean that the Sponsor is agreeing to pay reasonable fees. The Sponsor agrees to pay fees in the clause numbered 2 above, and the requirement that the fees payable should be reasonable is stated earlier in the Fund Expenses clause.

112. The phrase "and are to be agreed by the Sponsor [CRIA and Remotor] (acting reasonably)" must therefore impose an additional requirement, if it is not to be redundant. In context, I think it is clear that it means that the Fund Expenses "are to be agreed by the Sponsor (acting reasonably)" in advance, and not only when a demand for payment is made.

113. This construction is consistent with paragraph 12 of Fruhbeck's email of 15 January 2018 (quoted more fully above), which said: "The transaction expenses to be paid by the borrowers have to be agreed in advance and set forth under the uses of the facility, as we did in the Term Sheet."

114. In closing, the Claimant accepted that the phrase required an element of advance notification and agreement, but suggested that quite a general notification would be sufficient, and no overt act of acceptance would then be required, lack of objection being sufficient to indicate assent.

115. In my judgment, for any Fund Expenses "to be agreed by the Sponsor", they must be sufficiently identified, and with sufficient detail, for it to be possible to say whether the agreement is given "reasonably" (or, indeed, withheld unreasonably, as the case may be).

116. Whether that was so in the case of the six items now claimed is best decided in the context of each of those items.

*Issue (2): Following on from issue (1), and looking at the six items, was sufficient approval obtained in each case?*

117. Because of my detailed findings on the narrative of events, and about the credibility of the witnesses, I can take these points relatively shortly.

***Sidley***

118. It was Ms Rothwell who negotiated Sidley's initial fee quote, and she had got this down to £130,000 on or about 19 October 2017, which was only just after the date of the Term Sheet on 13 October 2017. This, however, was for the whole costs of a successful transaction, albeit one closing (in accordance with Sidley's stated assumption when quoting) within a matter of 8 weeks.

119. The Term Sheet had agreed that the initial deposit for all the Fund Expenses should only be €50,000.

120. Sidley's October 2017 quote included "an abort fee discount of 35% of fees over and above the costs of the first drafts, if the transaction does not complete."

121. When Ms Rothwell asked Sidley for "approximate fees on the clock to date" on 18 January 2018 she was given a figure of £20,000 excluding VAT. By this time,

relations with the Defendants were already beginning to sour (perhaps that is why Ms Rothwell asked for a fee update).

122. There is no document before 7-8 February 2018 in which any mention is made of Sidley's instruction and fee quote to Mr Arribas. There is no suggestion in the papers that Ms Rothwell's negotiations – which were by email – were copied or forwarded to Mr Arribas; nor are they referred to in the WhatsApp record between Mr Lliso and Mr Arribas.

123. Mr Lliso's witness statement, which I have quoted, said

> "When specific pieces of work, such as those carried out by Kroll, and the valuations undertaken by Savills and Aura, were about to be commissioned I would call Senior Arribas and alert him to the quote for the work that was about to be undertaken… The charges of Aura and Savills were largely in line with those quotes…"

124. Sidley is not specifically mentioned. The first reference to Sidley is in connection with the emails of February 2018.

125. I have, in any event, rejected Mr Lliso's evidence of oral updates.

126. The Claimant's closing submissions have no case of advance notification or approval of the Sidley fees or quotation before February 2018 except the evidence of Mr Lliso of oral communication to Mr Arribas which I have rejected.

127. I conclude from the evidence that Mr Arribas was not told, specifically, that it was proposed to instruct Sidley, or the level of fees that they had proposed. Before February 2018, therefore, I conclude that he was not informed about work to be done by Sidley, and the fees to be charged for their work, at all. I note that he does not appear to have had English or American lawyers himself and his lawyers, Fruhbeck, were mostly (although not exclusively) dealing with Roundshield's Spanish lawyers, Uria.

128. It follows that, before February 2018, so far as I can see from the evidence, the Defendants had not been asked to agree, and had not agreed, the work being done by Sidley to the extent required for their fees to be recoverable as Fund Expenses under the Fund Expenses clause.

129. When February 2018 is reached, the Claimant's case on Sidley relies on the emails of 7 and 8 February.

130. Mr Arribas' email of 7 February (which I have quoted in my narrative of February and March 2018 above) did not name Sidley and did not contain any figure for work to be done by any lawyer, named or unnamed. It did no more than confirm that CRIA and Remotor would "pay reasonable fees for the lawyers at [Roundshield] for working with CRIA and Remotor to compile and negotiate the necessary contracts for Roundshield to finance the acquisition of [the Airport]". This added nothing to the agreement already given in the Term Sheet itself. I agree with Mr Arribas that the Term Sheet was not a "free bar". For Fund Expenses to be recoverable, they had "to

be agreed" under the Fund Expenses clause. Mr Arribas' email of 7 February did not contain such an agreement in respect of Sidley.

131. There is the further point that Mr Arribas' email of 7 February was expressly conditional on certain deadlines being met, which were not met. His email said that, if they were not met, "this e-mail will have no effect".

132. The Claimant then relies on Mr Lliso's email of 8 February 2018 (also quoted in my narrative of February and March 2018). This is the email in which Mr Lliso asked for "confirmation (by return email) regarding the obligation of the Sponsor to cover any third party expenses incurred by Roundshield in relation to this transaction, in line with the estimated total budget of £230,000 you approved for Legal advisors until closing (which is the main expense)…" No budget of £230,000 for legal advisors had, before this email, been submitted to the Defendants, let alone approved. Mr Lliso was, therefore, presenting a figure without the explanation given at trial, that it was the sum of an initial quote of £130,000 from Sidley (of which the Defendants had not been made aware) and an initial quote of €110,000 from Uria to which I will turn later.

133. Moreover, this passage was in a letter which dealt with other matters, including a Purchase Deed and a Structure. In his WhatsApp at the time (which I have quoted in my narrative), Mr Lliso distracted attention from the reference to legal fees (I do not say he did so deliberately) by saying: "In the [email] we sent, the most relevant items are the Deed and the Structure. We are well below the expenditure budget, but above 50 thousand euros, for this reason we need confirmation."

134. I doubt that an email sent in these vague and confusing terms could have securely grounded "agreed" Fund Expenses under the Fund Expenses clause. It neither made clear the amount of the expenses already incurred (well below £230,000, but above €50,000), nor how they were made up, or who had incurred them. Nor did it give any detail of future expenditure, except that it would be "in line with the estimated total budget of £230,000" which would mean nothing to the Defendants, who had not been given such a budget.

135. But that is perhaps not important, because the email asked for "confirmation (by return email)" and did not get it. There was no confirmation, and no response. Therefore, there was no agreement.

136. I conclude that the claim for Sidley fees falls at the first hurdle.

***Uria***

137. Mr Arribas knew that Uria had been instructed to do legal work for Roundshield. It was to Uria that Fruhbeck sent the initial due diligence report on 23 November 2017. Uria (as I have noted in my narrative) later asked Mr Arribas to provide information, and Mr Arribas agreed to do so.

138. Ms Rothwell negotiated fees with Uria at the outset, in October 2017. She got them to agree to a cap of €110,000 on 24 October 2017. It is very striking that Ms Rothwell then said: "I still think this number is high but we will discuss with the Sponsor (as they are the ones ultimately paying) and revert as soon as possible". I see no reason to think that she did not intend to do that: she had no reason to say this unless she meant

it. Did she, in fact, do it? Her email of 1 November 2017 says: "Pleased to say that your fees have been agreed by the Sponsor…" Again, although she gave no evidence, having left Roundshield's employment before the trial, I see no reason to doubt that what she said was true. I find that Uria's fee quote, capped at €110,000, had been agreed with the Sponsor on or before 1 November 2017, somehow or other.

139. This was, of course, a quote for fees to be incurred up to a successful closing of the transaction. Just as the Term Sheet was not a "free bar", so a quote capped at €110,000 for the whole transaction did not mean that payment of this sum had been agreed in the event that the transaction aborted. There was also the separate requirement of reasonableness.

140. In this context, I think that Uria's offer "moving forward" of "a weekly update of all the fees incurred" on 18 January 2018 is significant. At that point, Uria told Ms Rothwell that time on the clock was €80,000. By this time, the initial expectation of closing within 4 or 8 weeks had been disappointed, and the golden age was drawing to a close, if it had not closed already. In my judgment, if Roundshield wanted to claim Uria fees from the Defendants under the Fund Expenses clause after 18 January 2018, the requirement of the Fund Expenses clause that such fees had to be "agreed by the Sponsor", and that (as I have decided) they be sufficiently identified, and with sufficient detail, for it to be possible to say whether agreement was given or withheld reasonably, made it necessary to pass on Uria's time on the clock to date, and at least offer to provide the weekly updates which Uria had offered. This was not done. I have rejected Mr Lliso's evidence of oral updates. That leaves only the Lliso email of 8 February which did not state the amount of Uria's fees, and his WhatsApp which said that all the legal fees (which he knew included Sidley as well as Uria) were "well below [£230,000], but above 50 thousand euros". This email and WhatsApp did not, as I have noted in relation to Sidley, get a confirmation of agreement in response.

141. I must also take account of Mr Arribas' evidence at the trial, which I have set out at paragraphs 21 and 22 above.

142. My conclusion is that Roundshield's instruction of Uria to do legal work, with a cap of €110,000 if the transaction completed, was approved by the Defendants at the outset, and that, for the period to 18 January 2018, such work had been "approved" within the meaning of the Fund Expenses clause. It was not "approved" for the period after 18 January 2018. The extent to which fees down to 18 January 2018 could be recovered (that is, the amount recoverable) is something I will consider later, under the issue of reasonableness.

***Ogier***

143. Uria emailed Fruhbeck and Mr Arribas on 26 February 2018, proposing that Ogier be instructed to work on the proposed incorporation of a Luxembourg entity with a specific budget of "between €5,000 and €6,000", and Mr Arribas responded "for my part, I agree."

144. This email to and approval by Mr Arribas were sufficient, in my judgment, to meet the requirements of the Fund Expenses clause in respect of Ogier's fees within that budget and for the work proposed.

145. However, the subsequent proposals by Ogier for increased fees, starting on 19 March 2018, were not referred to the Defendants, or agreed by them. Therefore, I find that those enhanced budgets, and the further work done over and above the initial budget, were not agreed by the Defendants as required by the Fund Expenses clause and cannot be recovered under that clause.

***Kroll***

146. I accept Mr Arribas's evidence that he was not told that Kroll were to be instructed, and that he was not aware of the report they had prepared until well after the event. I have set out the evidence in the section of my judgment addressing Kroll above.

147. I reject the Claimant's submission that the Defendants ought to have realised, without being told, that a report of this nature would be commissioned.

148. I find, in any event, that the requirement of the Fund Expenses clause was that Roundshield was required to obtain the Sponsor's agreement to incurring such an expense, and that, to do so, it had to provide sufficient detail for it to be possible to say whether it was reasonable or unreasonable to agree or not agree to it. No such agreement was sought or obtained.

149. I find that the cost of the Kroll report, which was commissioned secretly, is not recoverable under the Fund Expenses clause.

***Savills***

150. Savills, as I have explained in the section of my judgment dealing with them above, were commissioned to provide valuations.

151. The Claimant's case is that agreement to their work by Mr Arribas was given as a result of the oral updates alleged by Mr Lliso in his evidence. I have rejected that evidence. Mr Arribas was not asked to agree to this work in accordance with the Fund Expenses clause.

152. The Claimant also relies on a passage in the Term Sheet, in a section headed "Appraisal" (etc), stating:-

> "Funding of the Loan shall be subject to the Fund's receipt and review of the following reports
>
> (a) an "as-is" and stabilised valuation of the Assets and any existing assets; instructed by the Fund/addressed to the Fund"

153. Mr Arribas' evidence was that he understood that it was the Defendants' obligation to provide such reports. This is consistent with the alternatives offered of "instructed by the Fund/addressed to the Fund".

154. There is no evidence that any attempt was made to inform Mr Arribas or the Defendants of the instruction of Savills, or of the fees that Savills proposed to charge for their work. The instruction (as I have explained in my narrative of the evidence about Savills, above) was given informally by Mr Lliso by email, and he asked for the

work urgently. He did not copy his emails to Mr Arribas as he might have done, if he wanted agreement to it under the Fund Expenses clause.

155. The Savills work was done without reference to the Defendants, and without any attempt to comply with the requirements of the Fund Expenses clause. In my judgment, it was not agreed to by the Defendants as required by that clause.

***Aura***

156. The position in relation to Aura's valuation work is very similar, and, again, I can simply refer back to the narrative section of this judgment dealing with Aura, above.

157. Mr Lliso approached them, and he did so urgently. He asked for "maximum discretion". He dealt by email, and did not copy or forward the emails to Mr Arribas or anyone at the Defendants. When he was given a quote, he accepted it instantly. There was no suggestion that he was referring to anyone at the Defendants for agreement first.

158. I have rejected Mr Lliso's evidence that he provided the necessary information orally, or that he obtained oral approval, expressly or by implication.

159. I accept Mr Arribas' evidence. He had provided valuations and as far as he was concerned they were satisfactory and sufficient. He was not consulted about the Aura commission and he did not agree to it as required by the Fund Expenses clause. Their fees cannot be claimed after the event.

*Issue (3): Are the amounts claimed reasonable?*

160. The Term Sheet required that any sums claimed under the Funds Expenses clause had to be "reasonable".

***Sidley***

161. I have rejected the claim for Sidley fees, because they were not "agreed" as required by the Funds Expenses clause.

162. The question of reasonableness does not, therefore, arise. However, for completeness, I will address it.

163. The original claim for Sidley fees was €99,043. This was the figure in Roundshield's invoice to the Defendants dated 20 April 2018, and in the original Particulars of Claim. It included an abort cap (which seems appropriate, since the transaction did not complete, and an abort discount was agreed with Sidley at the outset).

164. This was within the original quotation of £130,000, before an abort discount of 35%.

165. However, I note that Ms Rothwell was told by Sidley on 18 January 2018 that "approximate fees on the clock to date" were £20,000 excluding VAT. That is well short of the original quotation.

166. I have referred to Mr Lliso's evidence (supported by his WhatsApp) that the total legal fees were above €50,000 when he sent his email on 8 February 2018. However, this would have covered the fees of Uria as well as Sidley.

167. In view of those figures, at those dates, and given that the negotiations were heading towards the rocks from February 2018, I regard the escalation of Sidley's fees to actual fees of €148,200 by 20 April 2018 (before the abort cap brought them down to €99,043) in Roundshield's invoice of 20 April 2018, as on its face unreasonable. The burden of proving reasonableness is on the Claimant. The Claimant did not call Ms Rothwell or any other lawyer to justify the fees in detail.

168. Doing the best I can on the evidence, therefore, I would say that reasonable Sidley fees could not have exceeded £30,000.

***Uria***

169. I have found that the Sponsor (the First and Second Defendants) appear to have agreed to Uria being instructed on the basis of a fee cap of €110,000 (Ms Rothwell's email of 1 November 2017).

170. I have also found that further agreement was required as matters progressed, and that there was a failure to seek or obtain such agreement after 18 January 2018.

171. Therefore, I consider that Uria's fees to 18 January 2018 are recoverable, subject to the requirement of reasonableness, but that subsequent fees are not.

172. Uria told Ms Rothwell that time on the clock as at 18 January 2018 was €80,000. It seems that Uria were the main negotiators and lawyers interacting with Mr Arribas' lawyers. When compared with the capped quote of €110,000, I do not think that fees on the clock of €80,000 at 18 January 2018 are unreasonable.

173. I have already quoted Mr Arribas' evidence about how much, in his opinion, he should be paying, which was "quite a bit less than €110,000. Maybe €70,000." This does not cause me to revise my impression that the figure of €80,000 is reasonable and, therefore, recoverable under the Fund Expenses clause.

***Ogier***

174. I have found that Ogier's fees for work on the proposed incorporation of a Luxembourg entity were approved with a specific budget of "between €5,000 and €6,000".

175. I see that the actual sum claimed in respect of Ogier is €28,715 (Amended Particulars of Claim, unchanged from the original invoice and Particulars of Claim).

176. The evidence I have set out above shows that the Defendants were never keen on the Luxembourg joint venture, although they accepted it at the suggestion of Roundshield. The Defendants were concerned that it would create delay, and they were never agreeable to delay: this was a project in which time was very short (although it turned out that extensions were obtained from the authorities which meant that it ended up not being as short as originally expected).

177. I have also referred to evidence that the escalation in Ogier fees appears to have been attributable to a lack of consistency in the instructions they were receiving: see paragraphs 55 and 60 of this judgment. This looks as if it was down to Roundshield: there was no suggestion in evidence that it was the fault of the Defendants, who never showed any interest in or commitment to the Luxembourg angle. It may be relevant that I have already referred to evidence of Mr Lliso making urgent ad hoc requests for work to Savills and Aura.

178. I remind myself that the burden of proving reasonableness is on the Claimant. The Claimant did not call anyone from Ogier, or its own legal team, to explain and justify the escalation in fees. I do not think it is clear from the paperwork that it was reasonable or, if it was, that it was reasonable to claim it from the Defendants.

179. Doing the best I can on the evidence, I am prepared to accept that Ogier's fees would have been reasonable if they had not exceeded the original estimate of €6,000 maximum. Their invoices do not charge VAT. Nothing, therefore, is to be added on account of that.

180. It follows that the Claimant is entitled to claim €6,000 in respect of Ogier expenses, and no more.

***Kroll***

181. I have found that the Kroll work and fees were not agreed by the Defendants, and are not therefore recoverable under the Fund Expenses clause.

***Savills***

182. I have also found that the Savills work and fees were not agreed, and are not recoverable.

***Aura***

183. I have also found that the Aura work and fees were not agreed, and are not recoverable.

***Credit for €50,000***

184. CRIA and Remotor are entitled to credit for the €50,000 paid in advance on account of Fund Expenses.

*Issue (4): Is Mr Arribas personally liable in tort for inducing breach of contract?*

185. The claim for inducing or procuring a breach of contract is made against Punta Ibiza and/or Mr Arribas in paragraph 63 of the Amended Particulars of Claim (unchanged from the original Particulars of Claim) which pleads:-

> "…the Third Defendant… and/or the Fourth Defendant induced or procured the First and Second Defendants to breach the terms of the Term Sheet as pleaded. The Third and Fourth Defendants were directly involved in approving and paying the expenses and the negotiation and implementation of the

> Potential Loan, and exercised sufficient control over the First and Second Defendants to cause breaches. The Third and/or Fourth Defendants knew of and understood the terms of the Term Sheet, and would have intended to bring about the breach and to injure the Claimant."

186. The claim against the Third Defendant was abandoned at the end of the trial. There had not been any evidence to support it.

187. It was pursued against Mr Arribas, although the Claimant's Counsel indicated that concerns about the ability of the contracting parties (the First and Second Defendants) to satisfy any money judgment had to some extent reduced.

188. The elements of the tort were definitively considered and identified by the House of Lords in *OBG Ltd v Allan* [2008] 1 AC 1. They include a requirement that the person in question has to know that he is inducing a breach of contract and to intend to do so with knowledge of the consequences. I saw no reason to doubt Mr Arribas' evidence that he did not think that Roundshield's claims were well founded. I also note that the papers in support of the claim appear to have been assembled in some haste, with some important late disclosure, bundles not yet complete at the point that skeleton arguments were being prepared, and a pleading which lacked any clear indication of how the sums claimed were broken down, until more particulars were provided at my suggestion on the first day of the trial, as a condition of granting permission to amend. This supports the submission that Roundshield's case on agreement, and on the reasonableness of the quantum, was never clear, and so it was not unreasonable to withhold payment of any sum, until what, if anything, was due and why had been more clearly set out and established. I have disallowed entirely 4 of the 6 items claimed, and, in respect of the 2 items which I have allowed in part, the sums I have allowed are less than a quarter of the amounts being claimed in each case.

189. There is also the difficulty that the claim against Mr Arribas is based entirely on his actions as the Key Representative of CRIA and Remotor. It is an attempt, therefore, to pierce the corporate veil, since he is never said to have been acting in a personal capacity, as opposed to his capacity as an officer or employee or agent of his companies.

190. The tort claim is not made out, and I reject it.

*Issue (5): Is Roundshield entitled to sue for the sums in question?*

191. A submission was made by Counsel for the Defendants that, because some of the invoices in question were rendered to RS Fund II LP (the invoices rendered by Sidley, Ogier, Savills and Aura), rather than the Claimant, there was no evidence that the Fund Expenses in question were recoverable by the Claimant at all.

192. This was not a point clearly signalled in the Defence, if it can be said to have been raised in the Defence at all, other than by way of bare non-admission or denial. It was raised in the Defendant's written opening.

193. I have only allowed the claims in respect of Uria and Ogier. The Uria invoice was to Roundshield, not to RS Fund II LP, and so the point does not apply to them.

194. That leaves the claim in respect of Ogier.

195. I do not think the objection is well founded. The Term Sheet was signed by Roundshield, and "Accepted and agreed on behalf of RoundShield Partners LLP". No-one else signed it apart from Mr Arribas (on behalf of the Sponsor).

196. It was made clear in the opening words of the Term Sheet that references to the "Fund" (which was the body that, in the Fund Expenses clause, was going to incur the "reasonable third party fees and out of pocket expenses") were references to "Roundshield Partners LLP and/or its affiliates and partners". Mr Lliso gave evidence, which I accept, that RS Fund II LP is an affiliate. Indeed, that is suggested by the name, and the context.

197. Ogier's quote was originally obtained by Roundshield and the invoices, although rendered to RS Fund II LP, clearly referred to work on "Roundshield – incorporation of JVCo" and (in their second invoice) to work on "RS Real Punta Sarl – financing of Cidad Real Airport" (see paragraph 61 of this judgment, above).

198. I think there is quite enough evidence to satisfy me that Roundshield, as signatory to the Term Sheet, is entitled to recover the Ogier fees under the Fund Expenses clause even though the invoice was addressed to an affiliate, such affiliates being expressly referred to in the definition of the parties to the Term Sheet.

199. The submission of the Claimant's Counsel in closing was as follows:-

> "The point is that the agreement provides rights to the Fund of which we are a member. We represent the Fund in entering into this agreement. We can therefore, as a matter of contract, collect on behalf of the Fund and of course we would have a duty between the various Roundshield entities to account to the Fund. But that is not part of the contract that we have with the First and Second Defendants. So far as the First and Second Defendants are concerned, we represent the Fund and we can collect on behalf of the Fund. As between ourselves, that is our issue and that is the way we would put it."

200. I accept that submission.

## Conclusion

201. There will be judgment for the Claimant accordingly, but only in respect of the fees of Uria and Ogier, and only in the amounts that I have indicated, which are substantially less than the amounts claimed. There will be credit for €50,000 already paid in advance.

202. There may be questions of interest and costs, or other matters, which I hope can be agreed. I will therefore invite the parties to draw up an agreed Order. To the extent that agreement is not possible, I will give directions.