

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
QUEEN'S BENCH DIVISION
COMMERCIAL COURT
BEFORE: MR JUSTICE ANDREW BAKER

20 November 2017

Claim No. CL-2017-000083

NCN: [2017] EWHC 3017 (Comm)
BETWEEN

FBN BANK (UK) LIMITED

Claimant

and

(1) LEAF TOBACCO A. MICHAILIDES S.A.
(a company incorporated under the laws of Greece)

(2) LEAF TOBACCO A. MICHAILIDES A.D.
(a company incorporated under the laws of Bulgaria)

(3) MIKA KORCA SH.A.
(a company incorporated under the laws of Albania)

(4) ALEXANDROS MICHAILIDES

Defendants

APPROVED JUDGMENT

Andrew Ayres QC and **Thomas Munby**, instructed by Norton Rose Fulbright LLP, Solicitors, appeared for the Claimant.

The Defendants did not appear and were not represented.

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(Official Shorthand Writers to the Court)

MR JUSTICE ANDREW BAKER:

1. The claimant, FBN Bank UK Limited, is a bank incorporated in England and Wales, a subsidiary of the First Bank of Nigeria Limited. The first defendant, Leaf Tobacco A. Michailides SA, a company incorporated in Greece, is, as its name might suggest, a company involved in the tobacco trade. The second and third defendants, Leaf Tobacco A. Michailides AD, a Bulgarian company, and Mika Korca SH.A, an Albanian company, are subsidiaries of the first defendant, owned as to the second defendant 98.31 per cent by the first defendant; as to the third defendant 62 per cent by the first defendant. The fourth defendant, Alexandros Michailides, is the majority shareholder and principal behind the first defendant and its group.
2. The primary contractual document between the claimant and the first three defendants is a revolving borrowing base facility agreement ("the agreement") originally entered into in March 2011 and undergoing thereafter a series of amendments and re-statements, culminating, so far as full signed copies of the agreement are concerned, in an amended and re-stated version dated as of 12 December 2012. That executed version of the agreement itself underwent further amendment in various respects, all as set out in amendment letters, copies of which have been provided to the court, dated 13 December 2013, 30 December 2013, 19 June 2014, 15 December 2014, 30 January 2015, 31 March 2015, 15 May 2015, 19 May 2015, 29 June 2015, 1 July 2015 and 23 November 2015.
3. Most helpfully, for the purposes of the application before me, a composite working document has been drawn up representing the net effect of all those further

amendment letters added to the original terms re-signed as of 12 December 2012.

4. Pursuant to the agreement, the claimant offered borrowing facilities to the first defendant in a total facility amount of some € 200 million. That facility commitment was for a time fully utilised, although parts of it were subsequently repaid and the total principal lending, pursuant to the facility, was somewhat less than the full commitment amount, as I shall explain shortly, when the events giving rise to the proceedings in this court and the application before me arose.
5. The proceedings pursue against the first defendant, first and foremost, the total amounts now claimed to be owing pursuant to the agreement in respect of the lending thereunder and interest on that lending, all, it is said, as provided for by the agreement.
6. The second and third defendants' role and participation in the agreement is by way of guarantee and indemnity in respect of the first defendant's obligations under the agreement, all as set out in clause 23 of the agreement. In the case of the fourth defendant, he signed, dated 16 May 2014, a deed by way of personal guarantee in respect of the obligations of the first defendant under the agreement, but with a cap on his liability, the precise effect of which I shall have to consider in this judgment, of € 30 million or its equivalent in other currencies.
7. As Mr Ayres QC for the claimant has properly pointed out to the court -- and as was disclosed in the evidence supporting the application before me -- there are other claims pursued against some or all of the defendants, both within the scope of the particulars of claim that have been served and beyond any claim currently formulated in the particulars of claim. There are also proceedings of various kinds by way of enforcement of obligations in other jurisdictions instigated by this

claimant and also certain proceedings instigated by other lenders to the Michailides Group.

8. I am satisfied that the existence of those other claims on the part of the claimant and other steps, including other litigation in other jurisdictions, do not give rise to any reason why the court should not consider the application now before it the claimant's claim for judgment today on its claims for principal and interest properly due and owing under the agreement or under the personal guarantee in the case of the fourth defendant. Specifically in that regard, the evidence before the court makes clear that whilst -- as I shall come on to in the context of events of default under the agreement -- it appears that the first defendant is and for some months has been in such a poor state of fiscal health as to be insolvent and that is likely therefore also to be true for its subsidiaries, including the second and third defendants, no process in any jurisdiction has reached a point yet whereby a formal state of insolvency has been entered into, or, in the case of Mr Michailides, if matters go this far for him, any formal state of personal bankruptcy. In those circumstances, no question arises of any requirement for these proceedings to be stayed at this stage or for permission to be required from any liquidator, receiver or court either in this jurisdiction or elsewhere, before the claimant can pursue what it says are sums plainly due.
9. Furthermore, as Mr Ayres QC submits, this is a case in which (a) there can be seen to be very substantial sums unarguably due pursuant to the agreement and the personal guarantee respectively; (b) there is no good reason why the court should defer adjudicating to that effect and granting such judgment as may be proper in relation to those large sums indisputably due without waiting for whatever further

process may or may not issue or be prosecuted in relation to other claims; (c) that is so particularly in circumstances where, given the precarious financial health of at all events the corporate defendants before the court, it may also be the fourth defendant as well in the light of the judgment that is liable to issue on this hearing, there must be at least some question over the viability or utility of the further prosecution of other claims, notwithstanding in particular that at least some of those are said to be worth amounts similar in order of magnitude, if not somewhat greater indeed, than the amounts claimed by way of simple debt under the agreement and the personal guarantee. Whether, as matters develop, it will be commercially worthwhile and otherwise viable to pursue such other claims is at this stage a matter for the claimant to continue to consider, as I am sure it will with all due care and anxiety, but it seems to me that those other claims do not in all the circumstances represent any reason not to proceed today to final judgment in such amounts as the court may be persuaded are plainly due and owing.

10. The other preliminary matter I should consider is this: since just before the letter I shall refer to shortly of 7 February 2017, by which the claimant claimed to accelerate and render immediately payable all principal outstanding and interest then accrued under the agreement, none of the defendants has engaged constructively, or it would seem at all, with the claimant and its claims. That has extended to their collective non-participation to date in the present proceedings.
11. In those circumstances, two particular matters need to be considered. The first is whether the court is satisfied that the defendants have had proper notice of the proceedings, the application now before me and the hearing of that application, which took place on Friday 17 November 2017, this being Monday

20 November 2017 for judgment. The second is whether it is appropriate to allow the claimant to seek summary judgment pursuant to CPR Part 24 in the absence of either acknowledgement of service or defence served by any of the defendants.

12. When it comes to the merits, Mr Ayres QC rightly relies upon the fact that there has been no intimation of any intention to defend these claims or any grounds upon which the claims might be contested, but, in the first place, that procedural fact gives rise under the CPR to a requirement for permission to seek a summary judgment rather than a judgment entered administratively upon the basis of the defendant's procedural default.
13. In relation to the first of those matters, the question of service, the claimant has done very much more than the minimum necessary to ensure both formally valid service of the claim form, the application notice before me and supporting evidence and also effective notice of the hearing.
14. The efforts in that regard have been set out in detail in the witness statement of Mr Nesta, dated 2 August 2017, and that of Mr Shattock, dated 6 November 2017. Those efforts have involved formally correct service upon Law Debenture in London, in the case of the first three defendants, and also formally valid and proper service pursuant to the Service Regulation or the Hague Convention respectively in connection with all four defendants. Those efforts have also involved multiple successful notifications of the claim, the application and the hearing by email.
15. In the circumstances, I am more than amply satisfied that each of the defendants has had both formally valid service of everything required to be served and also actual adequate notice of both the claim, the application and also the hearing. In those circumstances, I was satisfied that it was appropriate on Friday to proceed to

hear the argument on the merits, and I am satisfied, having obtained confirmation that there has been no material change of circumstance over the weekend, that it is appropriate to proceed to judgment this morning, although the defendants have not appeared or been represented at the hearing.

16. In relation to the permission requirement, that arises under CPR24.4(1) which provides that:

"A claimant may not apply for summary judgment until the defendant against whom the application is made has filed:

- (a) an acknowledgement of service; or
- (b) a defence,

unless:

- (i) the court gives permission; or
- (ii) a practice direction provides otherwise."

17. I am quite satisfied that that does not mean, and it has not been the practice at all events in my court, that there must be a separate and prior application for permission then to issue an application notice upon permission being granted for the substantive summary judgment application. An application notice is, as the name suggests, notice of the applicant's intention to make an application. That application, in the case of the present application for summary judgment, was then actually made at the hearing before me. It is, in my judgment, entirely proper for the application notice that is required to have been issued, unless waived by the court, for the summary judgment application to be considered, to include within it the application for permission under rule 24.4(1)(i) and for that application for permission to be made and argued as part and parcel of a single hearing at which

the summary judgment application may be considered on its merits if the court is indeed persuaded to grant permission. That is the procedure adopted by the claimant. It is a procedure that in my judgment, as I say, was proper. Furthermore, this is a case in which, as again has become a common practice in this court, the basis upon which permission is sought is that the claimant wishes, albeit it anticipates no active opposition, that its claims be tested in public in court and be adjudicated upon by a reasoned judgment rather than that they obtain simply the administrative entry of a judgment taking what has been stated in their pleadings as if established without the application of any judicial scrutiny.

18. The explanation given for seeking in the present case a proper judicial determination of the claims, in common with explanations that have been given to this court in other matters, is that it may assist the claimant in relation to enforcement efforts (if it has persuaded the court that there are sums properly due), that it is both the case, and can be seen to be the case, that that has been established after proper judicial scrutiny and consideration of the claims, rather than merely upon the basis of an administrative act by the court office. In my judgment, that is a good and proper reason, supported by the evidence before the court in this particular case, why there should be permission and the order on today's judgment will therefore reflect that I grant permission. That brings me to the substance of the matter.
19. By the early part of this year, 2017, the following principal loans had been advanced and in some cases re-borrowed from time to time under the revolving credit terms of the agreement, so as to be the outstanding principal indebtedness of the first defendant as borrower under the agreement:

(a) two loans under what the agreement called Tranche A in amounts of € 160,450,000 and € 3,550,000, totalling therefore the full Tranche A commitment amount of € 120 million. The fact that the € 120 million principal outstanding under Tranche A was made up of those two different amounts is material for my purposes only because in the calculation of interest accrued up to the dates I shall be coming on to, those two tranches may have had different interest period commencement and termination dates;

(b) a first Tranche E loan in an amount of € 7,130 415.47.

(c) a second Tranche E loan in the amount of € 2,000,000.

(d) a third Tranche E loan in the amount of € 13,645,262.21.

20. In the case of all those principal sums outstanding, by operation of the terms of the agreement and extensions agreed between the parties, the principal sum was due to be repaid in full unless some further extension were granted by 16 March 2017. In the event, no further extension was granted.
21. In the usual way, the agreement provided for interest to be payable on all lending under the agreement. The provisions in that regard were different as between the different Tranches as referred to under the agreement. In relation to the Tranche A loans, clause 6.1 of the agreement provided for interest at 3.5 per cent over applicable EURIBOR, whereas by clause 6.2 of the agreement interest accrued in respect of Tranche E loans at a rate of 7.25 per cent over applicable EURIBOR. In typical fashion for large scale banking transactions, the agreement provided by clause 6.6 for interest to accrue from day to day and to be calculated on the basis of a notional 360 day year.
22. In respect of the Tranche A loans, by facility premium rate letters, as they have

been dubbed, dated 16 March 2012 and 23 November 2015, each agreed between the claimant and the first defendant to be designated a finance document under the terms of the agreement, the first defendant agreed to pay an additional premium rate of interest of 3 per cent per annum. Provision was also made for that premium rate as accrued for the period of almost 16 months from 29 August 2015 to 16 December 2016 to fall payable as a lump sum on that latter date.

23. Pursuant to clause 11.2 of the agreement, collection accounts were established and referred to from which, if matters had gone as intended, repayments of the lending under the agreement would have been made, whether of interest or principal or both, and by clause 11.2.4 in particular the first defendant covenanted to ensure that each collection account never went into overdraft.
24. On 8 December 2016, the first defendant caused or allowed the collection accounts to become overdrawn. As a result, most of the interest for November 2016 and all of the interest for December 2016 went unpaid. No further payments have been made to the claimant pursuant to the agreement since that time. As a result by letter of 14 December 2016 to the first three defendants, the claimant gave notice of the default in payments that had occurred as of that date. It also gave notice, by reference to a schedule to the letter, of what it said were other events of default that had by then occurred, including, in particular, the first defendant's, as the claimant asserted, inability or admission of inability to pay its debts as they fell due. The claimant reserved all rights given to it under the agreement in respect of those and any other defaults extant at that time.
25. By further letter of 7 February 2017 to the first three defendants and also to the fourth defendant, the bank referred to the agreements and the personal guarantee, to

its rights thereunder and to its letter of 14 December 2016 reserving rights. By an Appendix 2 to that February letter, it set out a long list of further, as it would say, events of default under the agreement. In the operative part of the letter, having regard to all or any of those defaults which it said had occurred and remained unremedied, it gave notice that it required immediate repayment of the total principal amount of the loans, namely € 142,658,677, together with all accrued interest, fees and any other sums which might be outstanding under any of the finance documents.

26. For the purposes of the present application, I have not been asked to adjudicate upon all the events of default under the agreement alleged by the claimant in the particulars of claim and that it would seek to establish, if it needed them, were the matter proceeding to a full trial. However, I am quite satisfied that some, at least, of the events of default alleged are made out by the evidence and that there is no prospect of the defendants raising any viable contrary argument in relation to those events of default. Those indisputable defaults are, firstly, a payment default, designated an event of default by clause 16.1(a) of the agreement. There were, as I have already mentioned, interest payments due in late November 2016, the debiting of which from the collection accounts left those accounts overdrawn and the vast majority of the interest then due and payable unpaid. On 16 December 2016, the facility premium rate in respect of Tranche A lending that I mentioned fell due and went unpaid. On 30 December 2016 a further interest payment of a little over € 250,000 fell due and went unpaid.
27. Clause 16.1(a) of the agreement only renders a failure to pay on the due date an amount payable by one of the obligors under the finance documents an event of

default if the amount goes unpaid for more than three business days after the due date for payment, where the failure to pay in full on the due date is due solely to administrative or technical delay in the transmission of funds which are not the fault of the obligor. In this case plainly the sums unpaid went unpaid for very much more than three business days after their due dates. In any event, there is no evidence nor reason to suppose that the failure to pay any of those sums in full on their due dates was due solely to administrative or technical delays in the transmission of funds, not the fault of the first, second or third defendants, rather than simply their lack of means by then to meet those payments.

28. Secondly, Mr Ayres QC submits that I can also find indubitably established a default under clause 16.1(b), providing that it be a default under the agreement if an obligor is in breach of any obligation under any of the finance documents to which it is party and that breach is not remedied within five business days after notice of breach is given, if the breach be capable of remedy. I am not satisfied, for the purposes of a summary judgment, that the additional breach relied upon, namely the allowing of the collection accounts to become overdrawn, was sufficiently clearly notified as a breach requiring remedy absent which it would become a clause 16.1(b) default for it to be appropriate to grant judgment today on that basis. Had that been the only default relied upon therefore, it may not have been possible to grant the claimant summary judgment on this application, but there are, as I have indicated, sufficient clearly established defaults for that not to affect the ultimate conclusion today.
29. Thirdly, then, and in addition to the defaults under clause 16.1(a) to which I have already referred, it is plain on the evidence that there have been defaults under

clauses 16.1(f), 16.1(h) and 16.1(i). Those arise respectively because of:

- defaults in repayment of lending by Societe Generale Express Bank AD, a loan amount of some € 16 million, so as to create a cross-default, an event of default under clause 16.1(f);
- steps taken by that Societe General entity in Bulgaria to enforce security in relation to that lending, so as to create an enforcement of security event of default under clause 16.1(h) of the agreement; and
- the evident and admitted inability of the first defendant to pay debts when due as from the end of last year and the very beginning of this year, so as to create an event or events of default under clause 16.1(i).

30. In that last regard, the first defendant itself is responsible for: a cash flow statement it provided to PricewaterhouseCoopers acting for the claimant on 9 November 2016 disclosing a projected cash-flow deficit of € 15 million by the end of January 2017; letters to the claimant of 20 December and 22 December 2016 in which it sought € 3 million of immediate urgent further funding, failing which it accepted and asserted that it would be condemned to insolvency; a further letter to the claimant of 4 January 2017 asserting that a meeting of the board of directors was to be called to ask for a declaration of insolvency; and a letter of 2 February 2017 admitting breach of obligations to senior lenders and that the first defendant was, as it put it, "now in a liquidity crisis".
31. In addition to all that material, the first defendant gave a presentation to certain of its senior lenders in Athens on 14 February 2017. Although that therefore post-dates the claimant's acceleration letter of 7 February 2017 and therefore could not be relied upon as at the date of that letter as an extant admission of inability to pay

debts, it plainly evidences a financial condition on the part of the first defendant that had not arisen merely in the previous seven days and therefore more than amply confirms that, as of the date of that acceleration letter, there were indeed inability to pay debt events of default under clause 16.19(i).

32. In all those circumstances, I am quite satisfied, as contended by Mr Ayres QC for the claimant, that the total principal outstanding under the agreement was properly accelerated, so as to become immediately due and payable, by the 7 February 2017 letter.
33. In those circumstances, there will be judgment for the claimant against the first three defendants, as regards the principal outstanding under the agreement in the sum of € 142,658,677 as claimed by the 7 February 2017 letter. In the case of the fourth defendant, as I mentioned, and as I shall come back to in a moment, his personal guarantee liability in respect of any such debt is capped at € 30 million. There will be judgment against him accordingly but limited to € 30 million in relation to that principal debt.
34. All of that means also that the claimant is, in my judgment, plainly entitled, as against the first three defendants, to default interest as provided for by clause 6.5 of the agreement. Clause 6.5 provides as follows:

"If any Obligor fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before or after judgment) at a rate which is two per cent higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected

by the Lender (acting reasonably). Any interest accruing under this Clause 6.5 shall be immediately payable by the Obligor on demand by the Lender."

35. Pursuant to the second part of the first sentence of clause 6.5, the reference in particular to interest being payable as if a loan had been made for successive interest periods, the claimant contends that default interest under clause 6.5 is compound interest. Pursuant to clause 6.7 of the agreement:

"The determination by the Lender of any interest payable under this Clause 6 shall be conclusive and binding on each Obligor in the absence of manifest error."

36. By an interest calculation sheet certified for and on behalf of the claimant by Josephine McGowan, head of trade operations, and dated 23 October 2017, the bank has purported to determine and certify, pursuant to clause 6.7 of the agreement, the interest due and payable up to what was by then the scheduled date of this hearing, Friday 17 November 2017. It is apparent on the face of that purported certification that default interest has been calculated on a compound basis with quarterly rests. So the claimant has, in my judgment most fairly and properly, made that explicit, both in the heading to the relevant part of the calculation sheet and by the way in which the calculation that follows is actually set out.

37. In those circumstances, it has not been necessary to review the case law as to the precise scope of manifest error provisions in self-certification or third party certification clauses, such as clause 6.7. It is plain that the bank has in good faith taken a view that clause 6.5 allows it to compound interest and has prepared its calculation, and done so openly, on that basis. That means that, if that view, although as I said I have no doubt held in good faith, is incorrect as a matter of the

proper construction of the contract, then the bank has adopted an erroneous approach to the calculation of default interest and has done so in a way that is manifest. In those circumstances, the fact that the bank has issued the certificate and calculation I have referred to does not determine the question of the correct amount of interest accrued since the 7 February acceleration letter.

38. In my judgment, the bank is not correct in its contention that the second part of the first sentence of clause 6.5 provides for compound interest. All of the wording upon which the bank relies qualifies or describes the word "rate", that is to say the rate at which interest is to accrue on overdue amounts, when there has been default. It does not seem to me that that renders it anything like clear enough that interest is to be compound interest. I do not agree that compounding is the natural connotation of, or is implied by, the reference to the overdue amounts being treated as if they had been loans for successive interest periods. A "Loan" (as referred to in clause 6.5) is defined to be a loan made under the facility, that is under the agreement, or the principal amount for the time being outstanding of that loan. Interest Periods, as defined terms, as explained by clause 7, are not always of a set duration but can be the subject of selection by the borrower or by the claimant in certain circumstances. As a result, the principal reference rate by reference to which interest under the agreement is calculated is the EURIBOR rate and that means the relevant EURIBOR screen rate published on a particular quotation day for a particular length of interest period. The EURIBOR rate that is applicable will thus vary depending on the length of the interest period in question.
39. There is, I should add whilst dealing with EURIBOR, a deeming provision, such that, if and to any extent that EURIBOR as published is a negative rate, which it

presently is and has been for some time, for the purposes of the agreement it is deemed to be zero. As a result of that in practice, for present purposes, the potential variability of the EURIBOR base interest rate for the purposes of the agreement has had no impact on the amount of interest accruing. However, it does seem to me to mean, reading the agreement as a whole, that all the second part of the first sentence of clause 6.5 is doing is saying that any amount due and payable, but unpaid, and that would include an interest amount as well as an amount due to be repaid by way of principal, attracts upon and following default interest at a higher rate than otherwise provided for by the agreement, namely two per cent higher, and, in order to determine precisely what rate that is, the lender is entitled to select, or deem, an interest period, in this case the claimant has chosen quarterly, by reference to which selection the appropriate EURIBOR rate will then be fixed (as it happens that has always been deemed to be zero) and the default interest rate then is that EURIBOR rate, that applicable EURIBOR rate, plus margin as provided for by the agreement, plus a further 2 per cent. That, as it seems to me, gives a clear purpose to and meaning to all of the language of the second half of the first sentence of clause 6.5, without reading it as conveying, which to my eye it did not immediately convey, an entitlement to compound. That conclusion is reinforced, of course, by the fact that the one thing noticeably absent from the language is either a statement in terms that default interest is to be compound interest, or any of the language conveying directly that effect, such as a reference to periodic rests.

40. In those circumstances, to the extent that the amount of default interest hitherto calculated by the bank, which calculations may have been incorporated into the pleadings and the evidence in support of this application, have been made on

a compound basis, in my judgment the claim fails. I indicated at the end of the argument on Friday that the bank should, if possible, come for judgment today prepared to show the court the correct amounts of interest, if calculated on a simple basis, and I shall hear Mr Ayres QC in due course as to whether those figures are available, or whether I need to grant a little additional time for those calculations to be effected.

41. That brings me finally to the position of the fourth defendant and the issue I mentioned near the outset of this judgment as to the precise effect of the cap on his personal liability under his guarantee of May 2014. The provision in question is clause 2.3, which is in these terms:

"The total amount recoverable from the Guarantor under this Deed shall not exceed € 30,000,000 or its equivalent ... together with a further sum for all interest commission fees and other charges and all legal and other costs, charges and expenses as shall have accrued or shall have accrued due to the Lender at any time before or after the date of demand hereunder."

42. The principal obligation of the fourth defendant as personal guarantor is that there be punctual payment and discharge of all obligations from time to time incurred by the first defendant as principal debtor under the agreement. That therefore means that the principal obligation extends to sums due from the first defendant by way of interest, as much as it does to any principal repayments that have not been paid when due by the first defendant. There is, in the personal guarantee, a defined default rate of 8 per cent per annum and a provision at clause 8.5 that, if the fourth defendant fails to make any payment due under the deed, he will pay interest on the amount concerned at that default rate from the date it should have been paid until

actual payment after as well as before any judgment.

43. It seems to me in those circumstances that Mr Ayres QC is plainly correct to submit that the second part of clause 2.3, beginning with the words "together with", provides for an additional liability in excess of the € 30 million cap provided for by the opening words of that provision. Put another way, that is to say the "together with" wording is there to make clear that the € 30 million cap does not cover all of the fourth defendant's possible liabilities. It seems to me, however, to stretch the language used in the "together with" provision to an unnatural and unlikely extent to say, as the claimant seeks to contend, that its provision that the fourth defendant be liable, for example, to "all interest as shall have accrued or shall accrue due to the Lender", means that he has a liability for all amounts by way of interest payable by the first defendant under the agreement, even if he has already discharged a € 30 million maximum obligation under the first part of clause 2.3 in respect perhaps of principal sums. As it seems to me, rather, the back end of clause 2.3 simply makes clear that whereas the liability of the fourth defendant as guarantor in respect of the first defendant's obligations, be they by way of principal interest or otherwise, is capped at € 30 million, that cap does not extend to any other liabilities he may have, all of which will be provided for, if at all, by the guarantee itself. That therefore means, in my judgment, for example that in relation to interest, what clause 2.3 is doing is making it clear that the fourth defendant's liability under clause 8.5 to pay interest at the default rate is not subsumed by the € 30 million cap. That, in turn, means that, in a case such as the present, where the first defendant's liabilities guaranteed by the fourth defendant exceed that cap by a very large margin, the fourth defendant's liability will be for € 30 million in respect of the first

defendant's liabilities and in addition default interest under his personal guarantee, pursuant to clause 8.5, at the default rate of 8 per cent per annum. Again, therefore, to the extent that, for example in the draft order that was provided to the court, the bank in good faith pursued the alternative reading that it sought to persuade the court was correct and therefore included, as a proposed order against the fourth defendant, a liability for all interest sums due and owing by the first defendant even though that would exceed the € 30 million cap, to that extent in my judgment the claim fails. But that does not affect the substance of the matter which is that the application for a summary judgment in this case has been materially wholly successful. It means only that, as with the question of compounding default interest under the agreement, as against the first to third defendants, a little work will be needed, with the assistance of Mr Ayres QC and those with him to make sure that the order that is drawn up on this judgment is for the correct amounts.

44. In all those circumstances, there is final judgment for the claimant on its claims under paragraphs (1) and (3) of the particulars of claim, in respect of the full principal amount claimed against the first three defendants, as regards interest against those three defendants, to today's date, in an amount to be calculated on a simple basis at the default rate under the agreement, and in the case of the fourth defendant in amounts of € 30 million under the personal guarantee by way of principal and default rate interest at 8 per cent per annum to be calculated.