Neutral Citation Number: [2025] EWHC 219 (Ch)

Case No: BL-2024-000160

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)

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

Date: 07/02/2025

Before :

MASTER KAYE

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Between :

ZUFI ALEXANDER	**Claimant**
- and -	
1. CENTURY FINANCIAL BROKERS LLC	**Defendants**
2. CENTURY FINANCIAL CONSULTANCY LLC	
3. CMC MARKETS UK PLC	

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Bobby Friedman (instructed by **Kingsley Napley LLP**) for the Claimant
Yash Kulkarni KC (instructed by **Sham Uddin direct access barrister**) for the Second Defendant
The First and Third Defendants did not appear

Hearing dates: 4 November 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on 7 February 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MASTER KAYE

Master Kaye :

1. This is my judgment in respect of the Second Defendant's application to challenge this court's jurisdiction pursuant to CPR 11(1) dated 30 June 2024 ("**CFC**") ("**the Application**").

2. CFC disputes the court's jurisdiction to determine the claim against them and/or argues that the court should not exercise such jurisdiction as it may have to determine it. It therefore applies to set aside the claimant's permission to serve it out of the jurisdiction or seeks to set aside service on it.

3. The Application is supported by the first and second witness statements of Sanjay Kumar Jethwa, manager of CFC dated 28 June 2024 and 26 August 2024 respectively ("**Jethwa 1**" and "**Jethwa 2**"). It is further supported by two witness statements/reports from Mr Jassim Mohamed Al Suwaidi, Chairman of Jassim Al Suwaidi Advocates and Legal Consultants LLC based in Dubai UAE ("**Al Suwaidi 1**" and "**Al Suwaidi 2**").

4. The claimant's evidence is provided by the first and second witness statements of Mr James Elkin Glaysher, solicitor for the claimant, dated 19 December 2023 and 5 August 2024 respectively ("**Glaysher 1**" and "**Glaysher 2**"). The claimant further relies on two witness statements/reports from Mr Hamdan Mohd Hamdan Abdulla Al Shamsi, the senior partner of Hamdan Al Shamsi Lawyers & Legal Consultants based in Dubai UAE dated 18 December 2023 and 5 August 2024 respectively ("**Al Shamsi** 1" and "**Al Shamsi** 2").

5. The claimant issued her claim in the Commercial Court on 20 December 2023; it was transferred to the Chancery Division by order dated 24 January 2024. The claimant pursues a claim for relief under section 423 Insolvency Act 1986 ("**section 423**") as a victim, by which she seeks (i) declarations that certain transactions which she describes as the "**Offending Transactions"** constituted transactions at an undervalue and were entered into for the purpose of putting assets beyond her reach or to otherwise prejudice her interests and (ii) such other directions as the court thinks fit to restore her position including monetary relief.

6. She is a British national based in Dubai. The First Defendant ("**CFB**") and CFC are companies registered and based in Dubai. The claimant says that CFB is a Dubai financial services company undertaking trading investment and brokerage and CFC is a Dubai consultancy or advisory vehicle. She says both are managed and controlled by the same individuals, Mr Sulaiman Mohebi a majority shareholder in both and Mr Bal Krishen a director of CFB and CEO of CFC.

7. The Third Defendant ("**CMC**") is a publicly listed English registered company which operates a trading platform. In its defence CMC explains its services as dealing with off-exchange derivatives products, including contracts for differences on futures, forwards, foreign exchange, precious metals, shares, indices, commodities and various other underlying asset classes which it deals with as principal on an execution only basis ("**CMC Defence**" at [8]).

8. By order dated 14 February 2024 the claimant's application for permission to serve CFB and CFC out of the jurisdiction in Dubai was granted on paper. The claimant relied on two of the gateways in Practice Direction 6B.

9. The primary gateway relied on was PD 6B paragraph 3.1(20)(a). It is common ground that a claim under section 423 would fall within PD 6B paragraph 3.1(20)(a) for the purposes of permission to serve out of the jurisdiction and that it has extraterritorial effect (*Orexim Trading Ltd v Mahavir Port and Terminal Pte Ltd* [2018] EWCA Civ 1660 ("***Orexim***"); *Re Paramount Airways Ltd* [1993] Ch 223 ("***Re Paramount***")). It is also common ground that there has to be sufficient connection between the claim and the jurisdiction (see *Orexim*, *Re Paramount* and *Erste Group Bank v VMZ Red October* [2015] 1 CLC 706 ("***Erste Group***")).

10. The claimant had also relied on the ground that there was a real issue between the claimant and CMC which it was reasonable for the court to try, and CFC was a necessary or proper party to the claim against CMC (as anchor defendant founding jurisdiction) (PD 6B paragraph 3.1(3)).

11. CFB has not responded to the claim. They are subject to an insolvency process in Dubai.

12. CFC acknowledged service on 30 May 2024 indicating an intention to challenge the jurisdiction and then issued the Application.

13. CMC acknowledged service on 17 April 2024 and filed the CMC Defence dated 5 June 2024.

14. The CMC Defence was served without prejudice to CMC's right to apply to strike out the claim against them and/or to apply for summary judgment on the basis that they had derived no benefit from the Offending Transactions. No such application has yet been made. CMC are not a party to the Application but submitted a note explaining why CMC say the claim against them is not only misconceived but does not include any properly particularised claim for relief against them.

15. The claimant does not agree but she did not address this issue in her reply evidence. She says that she will serve a Reply to the CMC Defence, and any other defence, in due course with her Directions Questionnaire.

16. CFC and CMC invite me to consider the CMC note which they say goes to the question of whether CMC can be a proper anchor defendant. However, (i) CMC have accepted jurisdiction and served the CMC Defence; (ii) there is no current application to strike out the claim against CMC nor an application for summary judgment by CMC, (iii) they are not a party to the Application, and (iv) they positively do not seek to participate in the Application or make submissions.

17. CMC cannot seek to piggyback on the Application nor seek to achieve a strike out or summary judgment in their favour by a side wind. The claimant is able to rely on CMC's position as an English company served in the jurisdiction and which has defended the claim.

18. I have had the benefit of written and oral submissions from counsel for the claimant and CFC and have read the evidence with care. There is a long history to this dispute and if I do not refer to every detail or point that has been made it does not mean I have not considered it and taken it into account when reaching this decision.

Background

19. On 17 December 2013 CFB and CMC entered into an Introducing Broker Agreement ("**the CFB IBA**"). It was governed by English Law and had a broad (one way) exclusive English jurisdiction clause in favour of CMC.

20. The CFB IBA recorded that CFB was authorised and regulated by the UAE Central Bank to provide the services set out in the CFB IBA. By clause 4, CFB covenanted and undertook to comply with all Legal and Regulatory Requirements (clause 4.1.1) and warranted that it was duly registered with and/or licensed by the relevant Regulatory Authority and permitted to carry on its business including under the CFB IBA, and that it had disclosed all potential conflicts including the receipt of commission from CMC (clause 4.2). As was subsequently determined in proceedings in Dubai CFB was not in fact so authorised or regulated and it had not disclosed its commissions.

21. By clause 2 CFB's Introducing Broker Activities, as defined, were to be carried out solely within the Territory which was defined for these purposes as the UAE.

22. Under the CFB IBA, CFB would introduce its clients in the UAE to CMC which provided the platform through which those clients could trade investments in financial markets ("**the CMC Platform**"). For the purposes of those trades the client and CMC were the counterparties. A separate direct agreement would be entered into directly between CMC and the CFB client but with CFB appointed as authorised broking agent for the CFB client. CFB would receive a commission on the trades undertaken by those clients on the CMC Platform. The relationship between the CFB client and CMC was however a direct contractual relationship.

23. Clause 10 contained contractual termination provisions. Clause 10.4 provided CMC with a right to terminate with immediate effect in certain circumstances including (i) breach of any of CFB's obligations under the CFB IBA; (ii) CFB's inability to pay its debts or an insolvency event (iii) CFB's inability to meet its obligations under the CFB IBA due to UAE law, regulation or otherwise (iv) CFB's performance of its obligations under the CFB IBA might breach legal and regulatory requirements as defined in the CFB IBA and (v) in its absolute discretion if there was a change of business strategy or a change in circumstances.

24. By clause 10.6 save for any accrued entitlement to fees/commissions, on termination CMC's obligation to pay those fees or commissions to CFB would cease with immediate effect. Additionally, the CFB IBA provided that all clients of CFB covered by the CFB IBA would then be deemed to be direct clients of CMC. If those clients had traded on the CMC platform, they would already have a direct contractual relationship with CMC in any event.

25. Finally, clause 14.6 is a non-waiver clause which provided that any delay in exercising a right or remedy did not constitute a waiver of that right. On the face of it therefore CMC's delay in exercising the immediate right to terminate under clause 10.4 once it had accrued did not waive that right.

26. The claimant resides in Dubai including for tax purposes. She came to the UK in 1994 to attend University attending first the LSE and then the university of Surrey between 1994 and 1997. She continued to live in the UK from 1994 until May 2015. She married

a British National and has a son who has a British passport. Her principal occupations are described as fashion designer and investor. She initially established her fashion design business in the UK but now works predominantly as a bag and shoe designer in Dubai. The claimant says that she spends a significant part of the year in the UK, but the evidence was that she spends about two months a year in the UK during which time she stays at Cannizaro House, an hotel in Wimbledon, SW19.

27. In about 2016 the claimant was in contact with CFB. They introduced her to CMC. On 15 August 2016 she completed the CMC application form to open a trading account with CMC ("**the CMC Account**"). The counterparties to the CMC Account were the claimant and CMC. CFB were her appointed broking agent under the terms of the CMC Account. The CMC Account was governed by the law of England and Wales and contained a broad jurisdiction clause in favour of the courts of England and Wales.

28. When entering into the CMC Account, the claimant confirmed (i) her residence was in Dubai, (ii) her bank account was with ADIB in the UAE, (iii) she was resident in the UAE for tax purposes and in no other country. She acknowledged that she had a good understanding of the risks involved in trading and confirmed that she was fully responsible for the acts or omissions of CFB. She acknowledged that CMC were not responsible for any loss caused by the actions of CFB.

29. Between 15 August 2016 and the end of 2017, the claimant invested US$6,250,000 on the CMC platform. Although she had withdrawn about US$1.3m by November 2017, her investments had been largely unsuccessful, and she had by then lost circa US$6.2m. Following her complaints to CFB about their conduct and her losses CFB gave her a further sum of US$150,000 to invest but this was lost as well.

30. From as early as December 2016 the claimant had raised concerns with CFB about the heavy losses she suffered. She considered these to be a consequence of the actions of CFB's representatives. She continued to raise concerns throughout 2017 and 2018 and threatened litigation.

31. The WhatsApp exchanges over this period between the claimant and representatives of CFB demonstrate her increasing concern and frustration at the losses she had suffered and her complaints about CFB's conduct.

32. The claimant says that she was aware of CFC which she believed to be part of a group of companies, CF Group, which included CFB. However, she had no contractual relationship with CFC or what she describes as CF Group. Whilst her evidence suggests that there may be other CF entities she has not explained or defined what she considers to be the CF Group.

33. Unknown to the claimant at the time CFC and CFB began discussions with CMC about moving the CFB business over to CFC and/or CFC entering into an Introducing Broker Agreement with CMC. CMC say these discussions started as early as July 2017. In 2019 CFC (or CFB on its behalf) and then again in 2021 and finally in 2023 CFC sought to persuade CMC to transfer commissions accrued for the benefit of CFB under the terms of the CFB IBA to CFC. CMC did not do so and made no further payments to CFB after May 2019.

34. The claimant says this evidence of the conduct, discussions and negotiations between the defendants supports her claim. It demonstrates that CFB, CFC and CMC were involved in attempts to put assets beyond her reach from an early stage and at least when she had already started to make losses, complain about CFB's conduct and threaten a claim. She says it puts into context the subsequent events in 2020 and 2021 when the Offending Transactions took place which she says were part of a scheme to put assets beyond her reach.

35. On 21 April 2019, the claimant issued a claim against the defendants in the Dubai Court of First Instance ("**Dubai CFI**"), (Case No. 731 of 2019 Plenary Commercial) seeking damages for US$19,494,061. This claim was issued in Dubai despite the English Law and jurisdiction clauses. The claimant resisted the defendants' attempts to challenge the jurisdiction of the Dubai courts.

36. On 14 October 2020, the Dubai CFI handed down its judgment ("**the Dubai judgment**"). One can extract the following key points from that judgment:

    i) The claimant successfully resisted the challenge to the jurisdiction.

    ii) The claimant had invested US$6,252,700, withdrawn US$1,324,788 and her losses amounted to US$1,606,012.11.

    iii) CFB was not licenced under the laws of the UAE to undertake the functions it purported to undertake for the claimant under the CFB IBA and it had not complied with all the relevant UAE regulations relating to the services it purported to provide to the claimant.

    iv) CFB had executed some of the trades on the claimant's account without her knowledge or approval.

    v) The claimant's trading activities were a commercial business undertaken with an intention to make a profit but that involved the risk of losses as well.

    vi) CFB had received undisclosed commissions on the claimant's trades of US$2,496,600.73.

    vii) CMC received commission of US$12.

    viii) CFB was found liable to pay the claimant a total of US$4,102,539.11 made up of the commissions of US$2,496,600.73 and losses of US$1,606,012.11.

    ix) However, the final order determined the sums payable to the claimant as US$2,496,600.73 plus interest at 9% from the date on which the case was filed for the undisclosed commissions and US$2m as the compensatory element, on which interest was to accrue at 9% from the date of the judgment becoming final after exhaustion of all rights of appeal which was in fact 12 September 2021.

    x) The claim against CFC and CMC failed and no findings were made in respect of either of them.

37. Consequently, CMC's immediate right to terminate the CFB IBA under clause 10.4 had accrued at latest when the Dubai judgment was issued. They did not immediately terminate the CFB IBA.

38. On 21 October 2020 CFB's bank accounts were frozen by the Dubai court (Case No 562/2020 Provisional Attachment- Commercial).

39. On 26 October 2020 CMC, CFB and CFC entered into a "**Migration Agreement**" by which the parties agreed to transfer all clients introduced to CMC by CFB under the CFB IBA to CFC under the terms and conditions of that agreement which differed from the default provisions of clause 10.6 of the CFB IBA.

40. The terms of the Migration Agreement included a requirement that all the CFB clients under the CFB IBA be notified of the transfer to CFC and sign client declaration forms (as defined) in relation to the provision of services by CFC and sign new CMC Account agreements with CMC in which CFC would be the authorised broking agent. The conditions had to be satisfied at least 10 days before the Migration Date as defined which itself was a date to be notified by CMC to CFB and CFC. It was a future date. When the Migration Agreement took effect CFB would no longer have access to any of its client accounts or be able to place any trades on behalf of clients who would then be CFC's clients.

41. The consideration for the Migration Agreement was £1, it was governed by English law and had a broad (one-way) English jurisdiction clause in similar terms to the CFB IBA and the CMC Account. It was signed for CFB and CFC by Mr Krishen as a director of both CFB and CFC.

42. CMC say that during the discussions between CMC, CFC and CFB from about July 2017, CMC had been informed that CFB intended to stop trading and close its bank account. CMC say the plan to close the CFB bank account was confirmed on 20 March 2019, 6 months before the Dubai CFI claim was issued. Throughout this period CFB and CFC knew that the claimant had already suffered losses, raised complaints and threatened litigation.

43. The Migration Agreement was the culmination of a lengthy period of negotiations. It provided a process by which the CFB clients were to be transferred to CFC rather than CMC effecting an immediate termination under clause 10.4 and having to rely on the deeming provisions in clause 10.6 of the CFB IBA. The claimant says that the Migration Agreement was entered into at a time when CMC, CFC and CFB knew that she had the benefit of the Dubai judgment. She says using the Migration Agreement to move the entitlement to future commission payments away from CFB and the timing of the Migration Agreement support her section 423 claim.

44. On 12 November 2020 CFB filed an appeal. This was dismissed by the Dubai Court of Appeal on 24 February 2021.

45. In the meantime, on 1 February 2021 an Introducing Broker Agreement was entered into between CMC and CFC ("**the CFC IBA**"), a necessary component for the completion of the Migration Agreement. It was governed by English Law and again had a broad (one-way) exclusive English jurisdiction clause in favour of CMC.

46. On 9 March 2021 CMC confirmed the Migration Date under the Migration Agreement to Mr Krishen as 20 March 2021.

47. On 15 March 2021, the claimant commenced enforcement action against CFB in Dubai.

48. On 17 March 2021, a notice of termination was issued by CMC to CFB pursuant to the CFB IBA which was to be terminated with effect from 20 March 2021 – the Migration Date – and the Migration Agreement took effect.

49. The claimant defines the Migration Agreement alone and/or in conjunction with the CFC IBA and/or the termination of the CFB IBA as the Offending Transactions which she says were designed to put the valuable assets of CFB beyond her reach and thwart her ability to enforce her Dubai judgment. She relies on the timing of the Offending Transactions as supportive of her claim.

50. Under the CFB IBA commissions had accrued to CFB between 15 May 2019 and 20 March 2021 in the sum of US$3,001,027. CMC had not made any payments to CFB since 15 May 2019, 3 days after the Dubai CFI came to their attention in which it was alleged that CFB were not licenced/authorised to undertake brokerage, trading or investment in the UAE which would have been a breach of the CFB IBA. They had not therefore paid any commissions to CFB from the point at which an immediate right to terminate may have accrued under clause 10.4 and once they had knowledge of the Dubai CFI.

51. On 18 April 2021 CFB filed a second appeal in the Dubai Court of Cassation which was dismissed on 12 September 2021. CFB's rights to appeal were now exhausted.

52. Between April 2021 and June 2021 various orders were made in Dubai as part of the enforcement process which included orders requiring CMC to provide information about the sums held and not to pay any monies to CFB. By order dated 20 June 2021 the Court of Cassation in Dubai suspended the enforcement process pending determination of the second appeal.

53. In August and September 2021 CFC sought to persuade CMC to pay the accrued commissions it was holding for CFB to CFC. CMC did not do so.

54. The Dubai judgment debt was not paid by CFB. In July 2022 Mr Mohebi, a majority shareholder in CFB, (he told the Dubai CFI that he had 95% shareholding) commenced a process to liquidate CFB in Dubai.

55. On 8 September 2022, the claimant sent a letter of claim to CMC alleging that CMC were party to an unlawful means conspiracy (amongst other claims). The allegation appeared to be based on an assumption that CMC had transferred away the accrued CFB commissions when it had not. CMC confirmed that they had not but explained that CFC asserted a claim to the accrued commissions.

56. The claimant commenced a claim in the Commercial Court (CL-2022-000547) on 18 October 2022 ("**the English claim**") to provide her with an enforceable judgment in this jurisdiction for the principal Dubai judgment debt together with accrued interest and her costs. The claim was served out of the jurisdiction on CFB which failed to acknowledge service or file a defence. On 2 December 2022, the claimant issued a

request for judgment in the sum of US$5,529,656.03 (principal, interest and costs). On 8 December 2022 Judgment in Default was entered against CFB in the sum of £4,586,550.16 ("**the English Judgment**" and "**the English Judgment Debt**").

57. On 12 December 2022 CFC wrote to CMC asserting that CFC were entitled to receive the CFB commissions.

58. On 14 December 2022, the claimant applied for an Interim Third-Party Debt Order ("**ITPDO**") against CMC as Third Party. The ITPDO was made on 22 December 2022. On 12 January 2023 CMC confirmed that it was holding the sum of US$3,001,027.46 to the credit of CFB. On 23 January 2023 CMC provided a witness statement explaining CMC's involvement with CFB and CFC over the relevant period. The claimant says that until she received that witness statement, she had not known about the events which took place between CFB, CFC and CMC between 2018 and 2021 referred to above.

59. The ITPDO was made final on 29 January 2023. On 22 February 2023 CMC remitted US$2,994,756.66 to the claimant.

60. The claimant used this in part payment of the English Judgment Debt. She calculated that the balance of the English Judgment Debt and/or the Dubai Judgment as at 22 February 2023 amounted to US$2,625,802.28.

61. On 22 March 2023, the claimant wrote to the defendants setting out the basis for the section 423 claim. She said that in 2021 when the Offending Transactions were entered into CFB's clients had a significant monetary value arising from both the accrued and future commissions that would have been payable to CFB by CMC under the CFB IBA in excess of the £1 consideration set out in the Migration Agreement. The claimant sought compensation from CFB and CFC of a sum equivalent to the balance of the English Judgment Debt. In addition, the claimant sought disclosure from CMC of the commission payments received by CMC from the trading associated with the claimant's account and "reimbursement" to the claimant for this sum.

62. On 24 April 2023 in Lawsuit No 1379 of 2022 Commercial Partial the Dubai court gave judgment ("**The Liquidation judgment**") in respect of the CFB liquidation action commenced by Mr Mohebi in July 2022 and made an order starting a liquidation process (the "**Liquidation order**"). The Liquidation judgment concluded:

> "First: dissolving and liquidating the company ((Al-Asr Financial Brokerage (LLC)) and appointing the competent accounting expert who holds the role in the table as a liquidator for it, by making an inventory of all the company's assets and its capital of rights and obligations. The company's director has to write a detailed list of the company's funds, its budget, its rights with others, and its obligations and debts, assign the liquidator to sell the company's assets through a public auction and deposit the proceeds of the sale in a bank for the account of the company under liquidation, notifying the company's creditors, settling all debts owed by the company, and distributing the remaining funds among the partners, each according to his share. Upon the end of the liquidation, the liquidator shall announce this judgment, and an amount of twenty thousand dirhams shall be

> specified as the liquidator's fee to be added to the liquidation costs."

63. The CFB director who had to undertake the work set out in the Liquidation judgment was Mr Mohebi.

64. The claimant says that she only discovered the Liquidation Order had been made when CFC's Dubai legal representatives notified her on 4 May 2023.

65. There was a dispute between the parties about the current status of CFB. What does not seem to be in dispute is that Mr Mohebi has not yet taken any or sufficient further steps pursuant to either the Liquidation judgment or the Liquidation order to enable the liquidation to be registered.

66. The particulars of claim ("**POC**") dated 19 December 2023 frames the claim against all the defendants. POC [41] to [44] relies on the value of the commissions which had accrued to CFB and were held by CMC as evidence of the value of CFB both at the time of the Migration Agreement and prospectively in relation to future commissions. The claim is advanced on the basis that a transfer for a consideration of £1 was significantly less that the value of the CFB clients to CFC/CMC and thus undervalued CFB at the time of the Offending Transactions. The claimant submits that in entering into the Offending Transactions the defendants stripped CFB of a valuable asset (its clients) and revenue stream (future commissions) for nominal consideration leaving it with the Dubai judgment which it could not then pay.

67. The claimant relies on the following factors more fully set out at POC [42] from which it is said that the court can infer that the Offending Transactions were entered into for the purpose of putting assets beyond the reach of the claimant whom the defendants knew at the relevant time was or might make a claim against CFB or were otherwise intended to prejudice her interests in relation to such a claim:

    i) That the individuals involved in the management and operation of CFC and CFB were the same;

    ii) CFB and CFC knew that the claimant was angry about the loss of her investment and had threatened litigation against CFB;

    iii) The communications between CFB/CFC and CMC about the CFC IBA began in about December 2018 when CFB/CFC already knew that the claimant considered she had a substantial claim against CFB;

    iv) The proposal to transfer the CFB clients to CFC which resulted in the Migration Agreement involving all three defendants was proposed after the claimant had issued the Dubai CFI claim on 21 April 2019;

    v) The proposed CFC IBA and the Migration Agreement were discussed between the defendants whilst the Dubai CFI claim was continuing.

    vi) All the defendants knew that the Dubai judgment directed that CFB pay circa US $ 4.5m to the claimant;

vii) The Migration Agreement was entered into less than two weeks after the Dubai judgment and subsequently completed on 20 March 2021 less than a month after CFB's unsuccessful appeal at the same time as the CFB IBA was terminated and was replaced by the CFC IBA;

viii) The Offending Transactions would have the clear and obvious effect of prejudicing the claimant's ability to enforce the Dubai judgment against CFB by the transfer of valuable business assets to CFC from CFB with CMC's agreement and the defendants must have appreciated this;

ix) The defendants have provided no justification for the Offending Transactions.

68. At POC [44] she sets out the benefit she says accrued to each of CFC and CMC as a consequence of the Offending Transactions.

69. CFC and the CMC Defence rely on the terms of the CFB IBA, its termination provisions and in particular the effect of clause 10.6 (wrongly referred to as clause 11.6 in the CMC Defence and the CMC note). CFC/CMC say that the effect of clause 10 was that CMC's contractual right to terminate immediately, cease paying commission and to treat the CFB clients as its own had already accrued before the Migration Agreement was entered into and that any delay in enforcing that right did not amount to a waiver (clause 14.6).

70. CFC submit that consequently CFB had no future right to commission at the time of the Migration Agreement and unless CFB/CMC/CFC were able to reach an agreement the right to future income/commissions was worthless both to CFB and CFC. As against that the claimant argues that even if the right to terminate had accrued the very fact of the Migration Agreement is evidence that the defendants must have perceived value in CFB and at a minimum there was a value in having its cooperation and assistance in implementing the transfer of clients.

Permission to serve out:

71. The test for permission for service out of the jurisdiction can be conveniently taken from *Dicey, Morris & Collins on the Conflict of Laws (16th ed)* at §11-100, which explains that in order to satisfy the test for an order to obtain permission to serve out, an applicant is required to satisfy 3 requirements:

> "First, the applicant must satisfy the court that, in relation to that defendant, there is a serious issue to be tried on the merits of the claim. "A serious issue" means a substantial question of law or fact or both. The test is the same as that applied to resist an application for summary judgment, viz. whether there is a real, as opposed to a fanciful, prospect of success." [serious issue to be tried in relation to each cause of action]
>
> "Second, the applicant must satisfy the court that there is a "good arguable case" that the claim for which permission to serve proceedings out of the jurisdiction is sought falls within one or more of the cases mentioned in this Rule." [The jurisdictional gateways set out in PD 6B 3.1]

> "Third, the applicant must satisfy the court that in all the circumstances, England is clearly or distinctly the appropriate forum for the trial of the dispute and that in all the circumstances the court ought to exercise its discretion to permit service of the proceedings out of the jurisdiction." [Forum]

72. CFC submit none of the three requirements are met but even if claimant can persuade the court that there is a serious issue to be tried, and it is able to satisfy the court that one of the jurisdictional gateways can be met, she would still fail at the forum stage in any event and the claim if pursued at all should be pursued in the UAE.

73. Where there is a challenge to the jurisdiction it is for the claimant to satisfy me that all the requirements for service out have been met including that England is clearly and distinctly the appropriate forum rather than a forum.

74. On any application for permission to serve out of the jurisdiction the claimant has to provide a fair presentation of the material available including any counter arguments. The claimant should draw the court's attention to matters that are adverse to their position. A failure to meet this obligation on a without notice application may amount to a basis for setting aside an order for service out in its own right if sufficiently serious but will more usually form part of the court's overall consideration and is likely to weigh against the claimant.

75. On the application for permission to serve out Glaysher 1 did not address or draw to the court's attention the effect, if any, that clauses 10 or 14 of the CFA IBA or any of the clauses in the CMC Account might have on the claim or the application for permission to serve out. Indeed, having failed to draw the court's attention to those provisions or to consider what if any effect they might have on the claim, Mr Glaysher said at [81]:

> "I am not aware of any other facts that are not already addressed above that ought to be highlighted in this witness statement by way of full and frank disclosure."[sic]

76. It was not raised in the Application as a basis for setting aside the order, but CFC make observations about what they say were inadequacies in the evidence relied on by the claimant. They say it was not as frank as it should have been.

77. Had CFC intended to rely on this as an additional basis to set aside service it was incumbent on them to give notice to the claimant so that the claimant had an opportunity to respond. It is too late and unfair to only raise those complaints in skeleton arguments or submissions.

78. Nonetheless, I consider that the evidence in support of the application for permission to serve out had some unfortunate gaps which I would have expected the claimant to have addressed without the need for CFC to point them out. In particular the failure on the part of the claimant to draw the court's attention to the termination provisions of the CFB IBA and their potential impact even if the claimant considered that they did not affect her claim.

The Application

79. The Application seeks the following relief but does not itself set out the grounds on which jurisdiction is challenged. Instead, it relies on Jethwa 1:

> "1. Set aside permission to serve the claim form upon it out of the jurisdiction; 2. Set aside service of the claim form; and/or 3 declare that thye court does not have jurisdiction to try this claim; or 4 declare that the court does not exercise such jurisdiction as it has4. Costs"

80. Jethwa 1 however, at [10] to [18] might at best be said to be unclear about the basis on which the jurisdiction was being challenged. Mr Jethwa says at [10]:

> "CF Consultancy challenges the jurisdiction of the English Court to hear this matter or to decline such jurisdiction as it has. It also applies to set aside permission for service of the claim form out of the jurisdiction. I shall leave any detailed legal argument to my counsel at the hearing itself but, in the meantime, set out the bases on which I take issue with the claim being served on CF Consultancy and the English Court seeking to exercise jurisdiction over it."

81. He continued at [11] and [12] to assert that there was no claim or substantive relief sought against CMC in the POC to which CFC is said to be a necessary and proper party:

> "One of the bases on which the Claimant sought permission to serve CF Consultancy out of the jurisdiction was under paragraph 3.1(3) of Practice Direction 6B, on the basis that CF Consultancy was a necessary or proper party to a claim against the CMC Markets, which is incorporated in this jurisdiction.
>
> As far as I can tell from the Particulars of Claim, there is no claim against CMC Markets in the English Court. Whilst it may be a party to the claim, no substantive relief is sought against it as a defendant. In the UAE proceedings to which Mr Glaysher refers, the claim against CMC Markets was dismissed.
>
> I would contend, therefore, that there is no claim against CMC Markets to which CF Consultancy is a necessary or proper party."

82. At [14] to [18] Mr Jethwa then addressed sufficient connection which relates to the gateway at PD 6B paragraph 3.1(20) and forum.

83. The claimant says she had not understood that CFC challenged jurisdiction on the basis that there is no serious issue to be tried.

84. CFC say it ought to have been obvious that the question of whether there is a serious issue to be tried would need to be considered on the Application. However, whilst the

Application was not a model of clarity and the main focus was PD 6B 3.1(20), Jethwa 1 did put in issue whether CFC was a necessary and proper party under paragraph 3.1(3) which would and does require consideration of whether there was a serious issue to be tried as between CMC and the claimant. Since the claimant relied on this as an alternative gateway, it ought to have been apparent that the claimant was going to have to address the basis of the claim.

85. And despite the complaints the claimant's counsel had in fact addressed the question of serious issue to be tried in his skeleton argument at [25] and [26] and expanded on his written submissions orally. Further in any event paragraph 3.1 (20) requires the court to consider whether there is a sufficient connection with England which requires some consideration of the basis of the claim.

86. One final procedural issue is the use of expert evidence in respect of UAE Insolvency law. There are four witness statements/expert reports on UAE Insolvency law. It is not uncommon for parties to seek permission to rely on expert evidence on matters of foreign law when seeking to challenge the jurisdiction, but neither party had sought permission to do so.

87. The evidence though extensive at its heart goes to two narrow questions about the current position of CFB and the availability of similar relief to section 423 in the UAE. If I had been asked, I would have given permission for expert evidence on some relevant narrow issues of UAE Insolvency law but would have directed a joint statement. That would assist the parties and the court to more easily understand that in the end there was less between the experts than it appeared. Neither party has objected to the other party's reports. Had they sought permission in advance, even at the outset of the hearing I would have granted it. I will treat the omission as an oversight and consistent with the overriding objective and good case management allow both parties to rely on the expert evidence on UAE law for the purposes of the Application.

Serious issue to be tried on the merits:

88. CFC submit the effect of CMC's accrued contractual termination rights under clause 10.4 and the consequences set out in clause 10.6 meant that at the time of the Migration Agreement, CFB's entitlement to future commissions was worthless.

89. It does appear to me that CMC had accrued an immediate right to terminate under clause 10 from at least October 2020 when the Dubai judgment was handed down. In light of the no waiver provisions in clause 14 this right appears to have continued to exist when the Migration Agreement was entered into on 20 October 2020 and when it was completed on 20 March 2021. CFB would therefore have had no right to any income generated through commissions after the CFB IBA was terminated on 20 March 2021 irrespective of the Migration Agreement because of the accrued right to terminate if CMC had exercised that right. Of course, they did not exercise that right but instead negotiated the terms of the Migration Agreement.

90. CFC say that CFB's rights were heavily qualified by clause 10. Once the right to terminate with immediate effect had accrued CMC were free to enter into a new commercial relationship with another party. CFB would have had no accrued rights to future commission and no clients to transfer by the time the Migration Agreement was entered into. CFC argue if the negotiations between CFB, CFC and CMC had broken

down that is what the position would have been. All that would have remained were the accrued entitlement to commission already "earned" which were the sums held by CMC and subsequently paid over pursuant to the TPDO. If the Migration Agreement were to be set aside CFC say that the immediate right to terminate under clause 10 would still be available.

91. CFC argue in the alternative that even if the claimant can satisfy the court that it has a real prospect of success, the claim cannot have a value of more than nominal damages for the same reasons.

92. The claimant says that given the breadth of the court's discretionary powers under section 423 and section 425 to restore the position or protect victims of the Offending Transactions the court cannot say now that CMC would be able to rely on its accrued contractual right if the Migration Agreement were set aside.

93. It does seem to me that given the provisions of clause 10 and in particular the breadth of clause 10.4 that CFB's rights were always heavily qualified. I agree that the nature and extent of this qualification would be significant in the event that the court set aside the impugned transactions and was considering how to exercise its discretion and its restorative powers under section 423. That exercise of discretion would take into account all the circumstances and the factual matrix as determined at trial including the court's view of the conduct of the parties. I accept that the court in those circumstances would carry out a balancing exercise including considering the position of all the parties. (see for example *Re Dormco SICA Ltd (in liquidation)* [2022] at [116] for a summary of the approach).

94. The claimant argues that CMC/CFC received a benefit as a consequence of the Migration Agreement. The effect of the Migration Agreement was that CMC would continue to receive financial benefit from CFB's clients who had been migrated to CFC such as the fees paid for using the CMC Platform. CFC would receive the benefit of the commissions generated by the migrated clients trading on the CMC platform.

95. The claimant argued that CMC needed CFB's assistance to ensure the effective transfer of CFB's clients to CFC under the Migration Agreement to enable both CMC and CFC to achieve that benefit.

96. CFB had an essential role to play in the process of migrating the CFB clients to CFC for the benefit of both CFC and CMC. Whilst absent the Migration Agreement on termination the CFB clients would be deemed to be CMC clients, the terms of the Migration Agreement which had been negotiated between CMC, CFC and CFB, go beyond the limitations of the default deeming provisions in clause 10.6 of the CFB IBA. The Migration Agreement benefited both CMC and CFC in ensuring the CFB clients were transferred with new agreements in place with CMC and CFC rather than having to rely only on clause 10.6 (see POC [44]).

97. The claimant argued that at a minimum CFB's cooperation and assistance was needed to obtain the agreement of their (former) clients to transfer to CFC. That of itself would be a benefit. In those circumstances CFB's rights were not worthless or nominal. She points to the value of the accrued commissions between May 2019 and March 2021 of about US$3m to provide some understanding of the potential value of the right to future commissions which were transferred by the Migration Agreement.

98. The claimant argued that if a purpose of the Migration Agreement was or could be inferred to be intended to move value away from and out of the reach of the claimant and to prejudice her interests whilst providing a benefit to the defendants, at a time when the defendants knew about the Dubai judgment the court can intervene and has very broad powers to do so. It could not be said now that in the event that the court were to set aside the Migration Agreement that the claimant had an entirely fanciful or unarguable prospect of circumventing the potential issues arising from the termination provisions given the court's wide discretion and broad powers.

99. CFC may not agree that such a circumvention of CMC's contractual rights might be possible in the event that the Migration Agreement is set aside but it seems to me that on the Application I cannot say that such an argument is unarguable or is not more than merely fanciful given the breadth of the court's restorative powers even if I consider it to be improbable. I cannot say now what approach the court might take to the clause 10 termination rights if it determined that there had been a transaction at an undervalue and it was going to exercise its discretion in relation to the remedy. I am satisfied on that basis that it overcomes the low bar for these purposes. It may mean that the claim even if successful would provide a pyrrhic victory to the claimant, but it is not something that can be determined finally on the evidence available on the Application.

100. Further, I keep in mind that in a section 423 claim it may not be necessary to prove the precise benefit received by a defendant (*Integral Petroleum SA v Petrogat FZE & others* [2023] EWHC 44 (Comm) ("**Integral**")). The absence of a clear or more fully particularised statement of benefit now is not fatal to the question of serious issue on its own as against CFC.

101. As set out above the remedies under section 423 are discretionary in nature and restorative rather than punitive in concept. The remedy is of course for the body of creditors as a whole – this is not about the claimant obtaining some priority over other "victims". The figures in the Liquidation judgment makes it clear that the claimant was at least a substantial creditor of CFB, but she does not appear to be the only one. There may be other victims or creditors.

102. The bar for satisfying the court that there is a serious issue to be tried is low. The claimant has to satisfy me that her claim is more than merely fanciful and is more than merely arguable. It can be improbable but that would still be enough to overcome the low bar.

103. CFC, CFB and CMC knew of the claimant's entitlement under the Dubai judgment at the time they entered into the Offending Transactions. Even if CMC's rights to terminate immediately had already accrued there is a more than merely fanciful argument that one can at least draw the inference that a purpose of the Migration Agreement was to put some benefit derived from the CFB IBA beyond the reach of creditors or victims of CFB. The evidence suggests that at least as between CFB and CFC there had been some intention to achieve the transfer of clients to CFC from 2017. On the evidence available those discussions were proximate in time to when the claimant had started to complain to CFB about her losses. CMC having accrued a right to immediately terminate by at latest the Dubai judgment did not do so. Instead, CMC, CFC and CFB negotiated the terms and timing of the migration including the timing of the termination.

104. On that basis it seems to me more than merely fanciful and more than merely arguable that at least a purpose that can be inferred was that the Migration Agreement and CFC IBA were intended to move assets to CFC to the detriment of CFB and that it had some benefit for all three defendants. It had a particular benefit for CFC since the effect of the migration was that the former CFB clients became CFC clients and CFC had the opportunity to receive commissions from the former CFB clients trading on the CMC platform. As set out above it appears that these had a potentially significant value. It follows therefore there is a more than merely fanciful basis for arguing that the Migration Agreement was a transaction at an undervalue and had a value of more than £1.

105. As set out above the claimant's position in relation to CMC's accrued contractual rights if the Migration Agreement is set aside relies on the court exercising its broad discretion in relation to the remedy it might construct in the event that the claimant is successful. The claimant argues that the court cannot say now that the claim is worthless or only of nominal value. A decision about what is the appropriate remedy will depend on the facts as found and the exercise of the court's discretion as to remedy taking all the circumstances into account.

106. Ultimately for these purposes I am satisfied that it is more than merely fanciful and indeed properly arguable that the Migration Agreement was entered into for a purpose or that it can be inferred it was entered into for a purpose that put assets beyond the reach of creditors and provided additional benefits to the parties to it over and above the default provisions in the CFB IBA. In principle therefore it may have some value and the question of what happens if there was a transaction at an undervalue will engage the court's wide discretion on remedy.

107. Additionally, CMC have fully defended the claim. That puts into context any argument about whether there is a serious issue to be tried when as between the claimant and CMC, a party to the Offending Transactions, the claim would continue. I cannot assume that they will make an application to strike out or that if made it would be successful.

108. CMC are not a party to the Application. The fact of their defence is a factor in the Application, but they are not precluded by this judgment from making an application to strike out or for summary judgment. Nor can anything that is said in this judgment about the merits of any claim or defence be other than provisional in the sense that it will not bind a trial judge. CMC's position will be different to that of CFC or CFB. They raise a number of points in their note and the CMC Defence which do not directly relate to the position of CFB or CFC. Those include what they say about their entitlement to exercise their contractual rights and the particularisation of the claim against them. They say that the subjective intention of CFB and CFC when the Migration Agreement was entered into is not within CMCs knowledge. If the claim against them proceeds and court were to find in due course that they were an innocent third party that would of course impact the outcome for all parties and is likely to affect the way the court approaches remedies. These will be matters to be considered in due course, and if not before, at trial.

Gateways:

109. The claimant must, however, also satisfy the court that the claim falls within one of the jurisdictional gateways set out in PD 6B 3.1.

110. Although the claimant's primary focus had been PD 6B 3.1(20) she had relied on PD6B 3.1 (3) as an alternative and Jethwa 1 challenges this. For this gateway to be made out the claimant had to satisfy me that there is a serious issue to be tried as between the claimant and CMC (as an anchor defendant) and that CFC is a necessary and proper party to that claim.

111. CMC have defended the claim and not challenged jurisdiction. If there is a serious issue to be tried in respect of the claim against them on the basis of the evidence advanced on the Application, they will be an anchor defendant for the purposes of founding jurisdiction. Having been satisfied that there is a serious issue to be tried in respect of whether the Migration Agreement, to which each of CMC, CFC and CFB were parties, was a transaction at an undervalue it must follow that each of CMC, as anchor defendant, CFC and CFB who were parties to it are necessary and proper parties to this claim. It follows therefore that the claimant will have satisfied their alternative gateway. That is sufficient for the claimant subject only to satisfying me in relation to forum.

112. If CMC have concerns about the manner in which that claim is pursued against them that is for them to address separately as they are not parties to the Application. Neither party focussed on this alternative gateway.

113. The parties' focus for the Application was on PD 6B paragraph 3.1 (20). A claim under section 423 requires the court to consider whether to exercise its discretion in favour of the claimant. It is well established that because of the potential exorbitant effect of such a claim in cases involving a foreign defendant, the court has to be satisfied that there is a sufficient connection between the claim and the jurisdiction when considering the exercise of its discretion.

114. Consequently, in respect of a claim under section 423, the claimant must not only satisfy the court that there is a real prospect of success in establishing the cause of action but also that there is a sufficient connection between the relevant claim against the defendant and England.

115. The issue of sufficient connection has to be considered both at the stage at which there is a challenge to the jurisdiction when it is necessary for the claimant to show that there is at least a serious issue to be tried that there is a sufficient connection with England (see *Orexim* at [55] to [59], *Re Paramount* per Lord Nicholls V-C at pages 239 to 240 and *Erste Group* per Gloster LJ at [119] to [126]). However, even if the claimant is able to satisfy the court on the Application the question of whether there is a sufficient connection would be revisited at trial on the facts as found as part of the exercise of the court's broad discretion when determining the section 423 claim.

116. Accordingly, it is necessary to consider whether there is a real prospect that is more than merely fanciful that there is a sufficient connection with England such as to permit the claimant to pursue the claim to trial in this jurisdiction.

117. When considering whether there is a sufficient connection the court needs to consider all the circumstances with the importance or weight that is attached to any particular factor or circumstance varying from case to case. A factor or circumstance that tips the balance one way on one case may carry less weight or significance on another claim. Looking at particular authorities and/or the weight of the number of authorities where sufficient connection was found or not found is therefore of limited value. Each claim

has to be considered on its own facts and circumstances. Indeed, as the claimant noted there are authorities where despite the connections appearing to point away from England the court has nonetheless exercised the jurisdiction in relation to a foreign party.

118. The factors or circumstances to be considered when determining whether there is a sufficient connection with England inevitably overlap with the factors or circumstances which the court considers to determine whether England is clearly and distinctly the more appropriate forum for the claim.

119. When considering forum, the court is considering where the case can most suitably be tried for the interest of all the parties and for the ends of justice (*Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460 ("**The Spiliada**")). In commercial cases there may be no particular forum that can be described as the natural forum. It is for the claimant to satisfy the court that England is clearly or distinctly the appropriate forum.

120. For both exercises the types of factors to be considered would include residence, domicile, nature and purpose of the Offending Transactions, where they took place, and related litigation including related foreign insolvency proceedings. It will include considering questions about law and jurisdiction clauses, and where any relevant business was conducted. But the nature of the connection is not limited to those factors. The question of forum looks at much broader issues including how the dispute might be conducted which may bring in considerations such as the location of witnesses, documents, language and costs. In all cases issues such as fragmentation and partition, and whether similar remedies are available in the other jurisdiction will be relevant factors to consider. For both exercises however, the court is ultimately considering all the factors or circumstances in the round.

121. And whilst the test for sufficient connection requires the court to consider whether there is a more than merely fanciful prospect of a sufficient connection, forum is an exercise of the court's broad discretion. Given the extensive overlap between the factors and factual evidence for sufficient connection and forum I will look at those together. The court is looking to identify the forum with which the claim has the most real and substantial connection and for a single jurisdiction in which the claims may be most suitably tried. The factors to be considered will vary from claim to claim as will the weight to be applied to them.

Connections/Forum:

122. CFC argue that that there is not a sufficient connection with this jurisdiction and that England is not clearly and distinctly the more appropriate forum. They say that the authorities are clear that the focus is on England being clearly and distinctly the more appropriate forum. CFC argue that where therefore things were say evenly balanced that would point away from England as being clearly and distinctly the more appropriate forum.

CMC and Jurisdiction clauses:

123. A factor that carries considerable weight in relation to these parties when assessing both sufficient connection and forum is the position of CMC.

124. Not only is CMC an English registered company that has defended the claim in this jurisdiction, but it has ensured that there are English law and jurisdiction clauses (in some cases one way) in each of the commercial agreements which it has entered into with each of the claimant, CFB and CFC. Indeed, they appear to have been standard terms. Each of CFB and CFC have irrevocably agreed to any disputes being subject to the jurisdiction of the English courts. The same irrevocable agreement to submit to the jurisdiction of the English courts is included in the CMC Account with the claimant.

125. The law and jurisdiction clauses included in each of the CFB IBA, CMC Account, CFC IBA and the Migration Agreement are immensely broad. The Migration Agreement for example says:

> 3.5 This Agreement and any dispute or claim, whether contractual or non-contractual, in connection with it or its subject matter or its information shall be governed by and construed in accordance with the laws of England and Wales without regard to the choice of law principles.
>
> 3.6 The parties irrevocably agree that, subject as provided below, the Courts of England and Wales shall have exclusive jurisdiction over any dispute. The parties agree that the Courts of England and Wales are the most appropriate and convenient courts to settle disputes and accordingly no party shall argue to the contrary. Nothing in this clause shall prevent CMC Markets from taking proceedings relating to a dispute in any other court of competent jurisdiction. To the extent allowed by law, CMC Markets may take concurrent proceedings in any number of jurisdictions.

126. There is a clear intention flowing through all CMC's contractual agreements which appear to be relevant to this claim that any dispute pursued by a counterparty whether contractual or non-contractual, in connection with those agreements or their subject matter or information are to be determined in accordance with English law and in this jurisdiction. Each of the counterparties to those agreements including CFC agreed to those provisions on an irrevocable basis. Generally, the court will construe jurisdiction clauses widely and generously and as a matter of common sense or business sense assume that without the clearest words the parties did not intend to fragment the jurisdiction in which their disputes were to be determined.

127. Whilst the mere fact of an English law and jurisdiction clause may not be sufficient of itself to satisfy either the sufficient connection test or the forum test it adds considerable weight to the argument that there is a sufficient connection and or that England is clearly or distinctly the appropriate forum. That is given more weight in this claim when other parties to the claim each of whom were subject to an equivalent jurisdiction clause, have not challenged the jurisdiction. There is considerable weight to be attached to the commercial contractual agreements reached between the parties as to law and jurisdiction. This is a factor that weighs against CFC on the Application.

128. Further both CFC and CMC argued in favour of the jurisdiction of the English courts based on the existence of English law jurisdiction clauses, albeit unsuccessfully, in the Dubai CFI. That appears to me to be a further factor that weighs against CFC on the sufficient connection and forum issues. Indeed, the change of position might be considered opportunistic.

129. Whilst the same might have been said of the claimant who in the face of those jurisdiction clauses sought to pursue her claim against CFB in Dubai that seems to me to be a matter for the Dubai courts. In this claim she has issued her claim having regard to those jurisdiction clauses and CMC, who have the benefit of them, perhaps unsurprisingly, did not challenge the jurisdiction and have defended.

The parties:

130. The claimant and her family are based in and reside in the UAE. As set out above her current connection with England is passing. She transferred money from the UAE and Switzerland to trade on the CMC platform. Her investments were therefore made from the UAE even though she then traded on an English platform. However, such returns as she received were paid from England and were received into her UAE/Swiss bank accounts. The British nationality of her husband and child does not assist her on forum or connection. However, although it appears that her own connection with England is passing, she is not contending that the claim should be pursued in the UAE.

131. CFC and CFB are both UAE companies. CFC is regulated in the UAE and has no business or clients in the UK, a position confirmed in the CFC IBA. When both CFC and CFB entered into the IBAs they confirmed that they would introduce clients based in the UAE and that they would only promote and market the CMC platform in the UAE. The directors, shareholders and managers, Mr Mohebi, Mr Krishen and Mr Jethwa are based in the UAE. Any commissions paid by CMC to CFB or CFC were sent from CMC in England and received by CFB and CFC in the UAE.

132. CMC is a publicly listed English registered Company. The CMC platform is in England and any investments made by the claimant would have been made on/through the CMC platform in England. Any monies returned to the claimant or paid to CFB for commission would have been paid from CMC in England. CMC will have been paid its fees in England. Any commission payments made to CFC after the Offending Transactions would have been paid from CMC in England.

133. It appears likely therefore that both the claimant and CFC's witnesses will be based in the UAE whilst CMC is likely to have English based witnesses. The ease and convenience of witnesses might point towards the UAE for CFC but not for CMC. The documents and communications to which I have been referred including the Offending Transactions, are all in English and it appears therefore that the language of the dispute is English. This might point towards England.

134. In general terms none of these are strong factors either way. The court needs to take into account when considering the location of the parties and the witnesses that the claimant has chosen to commence her claim in England, CFB has not engaged in the claim at all, and CMC is an English registered company with the benefit of an English law and jurisdiction clause. Further the location of witnesses is not a significant factor when in most cases evidence can be given remotely by video link. No party focussed on any of these issues for the purposes of forum.

The Transactions:

135. CMC signed the CFB IBA, CMC Account, Migration Agreement and CFC IBA in England, and issued the Notice of Termination in relation to the CFB IBA from England. But each of CFB and CFC as counterparties to the IBAs and the Migration Agreement signed those agreements in the UAE and the claimant signed her CMC Account in the UAE.

136. The nature of the business under the IBAs was the introduction of UAE clients of CFB and CFC to CMC in England. The CMC Account involves trading investments on the

CMC platform. And the Migration Agreement transferred UAE clients between CFB, CMC and CFC but for the purpose of setting up further agreements with CFC to enable them to trade on the CMC platform.

137. The consequences of the business dealings between the parties as set out above is that for each payment or receipt in one jurisdiction there is a corresponding payment or receipt in the other jurisdiction. For these purposes these are neutral factors and/or factors which can be used as additional support for either jurisdiction.

138. The claimant submits that the assets that are the subject of the claim are the commissions which have been paid or will be paid by CMC. She says they are English assets. Certainly, the commissions generated by the investments on the CMC platform are generated as a consequence of those investments as are any fees for CMC and it seems likely they would be English assets. But it seems to me the real assets are the migrated CFB clients who invest on the CMC platform pursuant to a direct contractual arrangement with CMC albeit with an agency arrangement with CFC and generate the entitlement to commission for CFC and fees for CMC. They are in the UAE. The consequence of the migration is that the clients of CMC who generate the commissions and fees will be investing under an agency agreement with CFC. And given the terms of the Migration Agreement it is likely that each of those CMC clients will have entered into an agreement with CMC on similar terms to the CMC Account including the English law and jurisdiction clause. If the Offending Transactions are unravelled the income stream arises in England but assuming it has been paid it will have been paid to CFC in Dubai.

139. Other than the English law and jurisdiction clauses which carry particular weight in this case these factors are otherwise neutral.

The prior disputes:

140. The Dubai CFI was for the losses which the claimant says she suffered as a consequence of the unregulated conduct of CFB. The failed investments were made on the CMC platform. The claimant had a direct contractual relationship with CMC through the CMC Account. The claimant pursued the Dubai CFI in Dubai despite the English law and jurisdiction clauses. She obtained the Dubai judgment and commenced enforcement proceedings in Dubai. CFB commenced proceedings for its own insolvency in Dubai leading to the Liquidation judgment and the Liquidation Order. CFC argue that the claimant's pursuit of her claims in Dubai and the existence of enforcement proceedings and the Liquidation Order should carry some weight when considering both sufficient connection and forum.

141. However, I consider that the claimant's pursuit of the Dubai CFI in Dubai carries very limited weight given it was pursued notwithstanding the English law and jurisdiction clauses. Further, as set out above CFC and CMC sought to challenge jurisdiction on the basis of the jurisdiction clauses and CMC has not challenged jurisdiction in these proceedings.

142. So far as the insolvency proceedings are concerned, they are UAE proceedings, in respect of a UAE company, CFB, but they appear to have run their course. The Liquidation Order has been made. The lack of progress in the liquidation and the inability to go further appears to rest with Mr Mohebi, a director of CFB. This does not

appear to me to be a strong factor in favour of the UAE particularly in light of the position in relation to insolvency remedies in the UAE.

143. However, equally I do not consider that the English enforcement proceedings and the English judgment debt provide any additional support for this jurisdiction. They are parasitic upon and arise out of the Dubai judgment.

Fragmentation:

144. A well-recognised and powerful factor that points strongly in favour of this jurisdiction for the determination of the claim is the risk of fragmentation or partition. Ideally the court is looking to identify a jurisdiction in which the claims against all of the defendants may most suitably be tried in the interests of all the parties.

145. CFC submitted that even though CMC had defended the claim the court could and should still set aside service on CFC. They say it would then be a matter for the claimant to decide whether to commence a claim against CFC in the UAE and what she should do about the claim against CMC. I consider the position in relation to possible claims in the UAE below.

146. However, the fragmentation of disputes is inherently unattractive. It risks not only increased time and costs but also inconsistent or irreconcilable decisions in different forums. CMC had not challenged the jurisdiction, have defended and are entitled to expect to be able to defend the claim against them here. CFB have not engaged at all, but they are still a defendant. Only CFC seeks to challenge the jurisdiction.

147. If service against CFC is set aside this claim will still continue against CMC (and for relief against CFB) in England. The claimant may choose to take steps to pursue a claim in the UAE against CFC if service is set aside. But that seems to me to be the least attractive course of all. Different claims in different jurisdictions seeking similar relief and which are likely to all be determined as a matter of English law given the breadth of the English law clauses (although CFC argued that a claim in Dubai would be considered as a matter of UAE law) does not appear to me to be an approach that is consistent with the interests of justice as between the parties.

148. And whilst of course the UAE can determine matters of English law just as the English courts can determine matters of UAE law when one is considering complex and technical company and insolvency law issues such as section 423 as a matter of English law that may lean towards England being the more appropriate jurisdiction.

UAE law:

149. The questions of UAE law in the end are rather narrow and without any disrespect to the experts I intend to summarise them quite shortly without reference to the detail of their reports.

150. As a matter of UAE law liquidation has two phases. Once a Liquidation Order is made a company is in phase 1. This appears to be something of a half-life where third parties/creditors can still seek to take action to enforce their claims against the company. The claimant can still therefore take action against CFB to enforce the Dubai judgment, but CFB is not trading or otherwise active. Although CFB is now the subject of a

Liquidation Order its status appears to be similar to that of a company that has ceased to trade. It is not described as being in liquidation despite it following on from the Liquidation judgment and the appointment of a liquidator. Phase 1 appears to be similar to the process by which a company ceases to trade and starts to wind up its affairs.

151. The experts explain that although Liquidation judgment has determined that the company should be dissolved and appointed an expert accountant as liquidator to take the steps set out in the Liquidation Order, CFB would not move to phase two until the Liquidation order and dissolution had been registered in the commercial register. The Liquidation judgement sets out the steps which Mr Mohebi was required to take to enable the expert accountant to complete phase 1. Despite over two years having passed since the Liquidation Order was made registration has not taken place. It does not appear that Mr Mohebi has taken the steps required to enable the dissolution and registration to take place to enable CFB to move from phase 1 to phase 2. There is no indication when the work necessary might be complete and when CFB might move to phase 2. The experts agree that phase 1 one runs from the date of the Liquidation Order until the opening of the enforcement file following dissolution and registration.

152. It is only after that registration that CFB will move into phase 2 and the liquidator appointed under the Liquidation Order will take over control and management of CFB. It is at that stage that liquidator will be able to take action in relation to the affairs of CFB for the benefit of its creditors.

153. At present therefore the claimant can take action against CFB to for example enforce the Dubai judgment. The experts also agree that it would be open to the claimant to commence her own bankruptcy claim against CFB. This would be a new/fresh bankruptcy application and not within the current liquidation. It appears she would have to start again. But the claimant is not shut out from any action as appeared to be suggested on her behalf, it is simply that she cannot use the existing Liquidation Order.

154. As a consequence, the experts agree that the claimant would either have to wait for Mr Mohebi to undertake the work required for the expert accountant liquidator to be able to open an enforcement file and register the liquidation or take fresh action herself.

155. However, although the claimant can issue a fresh or new bankruptcy claim in the UAE, the experts agree that access to any remedies that are broadly equivalent to section 423 will only be available at phase 2 once the CFB liquidation has been registered.

156. It appears that the experts agree that there is no direct equivalent to a section 423 claim by a creditor or victim outside a liquidation. It appears therefore that the claimant is not able to access the remedy she is pursuing by this proceedings in the UAE in a straightforward or simple way if at all.

157. I note that the insolvency proceedings commenced by Mr Mohebi took nine months from inception to Liquidation Order. Assuming an equivalent timeline, if the claimant wanted to commence a similar claim or persuade a liquidator to do so she would first have to obtain a Liquidation Order. Assuming that took say 9 months she would then have to work through the process of getting from phase 1 to phase 2. Mr Mohebi has not achieved that in two years. Whilst there may be reasons for that delay clearly the process of obtaining a Liquidation Order and Judgment will take time and the claimant will therefore have to incur the time and costs of taking fresh bankruptcy proceedings

in the UAE simply to get to a position where a liquidator may take some action to investigate the affairs of CFB.

158. Once CFB is in phase 2 the liquidator takes up their role and thereafter has control over the assets of the company for the benefit of the creditors. It is only at stage two that the Liquidation Order becomes effective against third parties.

159. The experts agree that there are claims which can be advanced by the liquidator which are the broad equivalent of the claims that could be advanced in this jurisdiction. As one might expect there are mechanisms and protections for creditors who allege that the debtor has taken action to frustrate or prejudice the creditors' claims.

160. The experts agree that the "New Bankruptcy Law" in the UAE provides a legal process for unravelling transactions undertaken by a debtor if for example the disposition was harmful to creditors. This included for example transactions at an undervalue. These are claims to be advanced by the liquidator not the creditor. There are in addition rights within the UAE Civil Transactions law which enable creditors to challenge transactions. But none of these can be pursued until the company has entered the second stage of the liquidation process.

161. The time periods for challenging impugned transactions in the UAE were 6 months and 2-years depending on the relationship between the parties. However, the real issue between the experts was the date from which the 6 month or two-year period ran and whether that meant that in this case the right to challenge the Offending Transactions may have already elapsed. It is not necessary to reach any concluded view on that issue but if there is a risk that any claim in the UAE might not be possible yet or at all that is obviously a factor to take into account. If the claimant's claim in the UAE has the risk of being defeated on what is essentially a time bar issue the court will take that into account.

162. Whilst it is apparent that the claimant might ultimately be able to access remedies which are not dissimilar to those available in this jurisdiction, they are only available within the liquidation process in the UAE. Those remedies therefore are not available to the claimant now or yet if at all. In order to access them she would need to incur the costs and time of fresh bankruptcy proceedings in the UAE first.

Conclusion on sufficient connection and forum

163. Drawing these various threads together it seems to me that many of the connections with either this jurisdiction or the UAE are neutral having an equal and opposite counterpart. That is often the case where parties are undertaking business across jurisdictions. It does mean that where parties irrevocably agree to determine their disputes in a particular jurisdiction that that factor should carry particular weight. The neutrality or equality of the many of the factors in this claim do still demonstrate some connection with this jurisdiction which add weight to the other factors which more clearly weigh in favour of there being a sufficient connection with this jurisdiction. For example, the payment of the commissions to CFC which appears to be the focus of the remedies are monies which accrue to CFC's benefit through the CMC platform and are then sent to them by CMC.

164. However, the existence of the English law and jurisdiction clauses and the position of CMC in this case are a most significant factors to take into account when considering the question of sufficient connection.

165. Although CFC is a UAE company CFC had entered into the Migration Agreement and the CFC IBA with English law and jurisdiction clauses. They are commercial parties, and they do not say that the jurisdiction clauses do not say what they mean. They themselves sought to uphold the CMC English jurisdiction clauses in the Dubai CFI. CMC is an English company which has chosen to have its disputes with CFC determined in this jurisdiction, it has defended this claim. While not binding, that is particularly strong factor in favour of there being sufficient jurisdiction.

166. In this case given the lack of weight or neutrality of many of the other factors I am satisfied that these factors provide a sufficient connection with this jurisdiction that is more than merely fanciful. I am satisfied that on basis of the evidence advanced on the Application I can be satisfied that there is serious issue to be tried on the question of sufficient connection.

167. Again, so far as forum is concerned many of the factors are neutral or do not point strongly in favour of either England or the UAE but they add weight to my overall conclusion. However, the combination of the following factors seem to me to be particularly strongly in favour of England (i) the position of CMC generally, (ii) the English law and jurisdiction clauses, (iii) the risk of fragmentation particularly where the claim will proceed against two of the defendants here in any event and (iv) the fact that there is no precise equivalent relief in the UAE but in order to pursue the closest equivalent claim, if that is possible at all will require the claimant to take a number of additional steps and incur substantial time and costs – possibly years to get to the point she is at now.

168. I am satisfied that on the evidence available that the claim can be suitably tried for the interests of all the parties and the ends of justice in England. England is clearly and distinctly the more appropriate forum.

Conclusion

169. I am therefore satisfied that there is a serious issue to be tried in relation to the claim, that the claimant is able to satisfy me that CFC are a necessary and proper party under PD 6B paragraph 3.1(3) and that there is a serious issue to be tried that there is a sufficient connection with the jurisdiction under PD6B paragraph 3.1.(20), and finally that England is clearly and distinctly the more appropriate forum. The Application therefore fails.

170. This judgment will be handed down remotely by email. The parties should seek to agree any consequential matters but if they cannot I would intend to address those issues on paper in accordance with Chapter 12 Chancery Guide.