Neutral Citation Number: [2024] EWHC 436 (Comm)

Case No: CL-2023-000323

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT

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

Date: 29 February 2024

Before :

THE HON MR JUSTICE BUTCHER

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Between :

CONTAX PARTNERS INC BVI	**Claimant**
- and -	
(1) KUWAIT FINANCE HOUSE (KFH-KUWAIT) **(2) KUVET TURK BANK (KFH-TURKEY)** **(3) KUWAIT FINANCE HOUSE BAHRAIN (KFH-BAHRAIN)**	**Defendants**

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William Edwards instructed by **Jones Day** for the **First and Second Defendants** and by **Charles Russell Speechlys LLP** for the **Third Defendant**
David Kinnear and Michael Reason (direct access) appeared to represent **Contax Partners LLC**

Hearing date: 30 January 2024

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APPROVED JUDGMENT

This judgment was handed down by the court remotely by circulation to the parties' representatives by email and released to The National Archives. The date and time for hand-down is deemed to be 29 February 2024 at 10.30am

Mr Justice Butcher :

Introduction

1. This was the hearing of an application to set aside an order which I made on 9 August 2023 entering judgment against the Defendants in the terms of a purported Kuwaiti arbitration award.

2. The nature of the case made by the Defendants is unique in my experience, and involves allegations of fraud on the court, as well as on others, which are very disquieting and of the utmost seriousness.

3. On 21 June 2023, an arbitration claim was commenced, ostensibly by the Claimant ('Contax BVI') against the Defendants, which are three companies in a banking group. The claim sought to enforce, under s. 66 Arbitration Act 1996, what was said to be a Kuwaiti arbitration award dated 28 November 2022 ('the Award') which was said to have been rendered in pursuance of an arbitration agreement between Contax BVI and the Defendants dated 31 August 2021. Contax BVI was said, in the Claim Form, to be represented by H&C Associates. The Claim Form was signed by Hamza Adesanu.

4. The application was supported by a witness statement of Mr Adesanu, in which he identified himself as 'Solicitor at H&C Associates'. This stated that it was made on behalf of Contax BVI, which was 'an Oil and Gas company, with offices in the Kingdom of Bahrain and operations in more than fifteen countries', and which 'has been represented by Mr Filippo Fantechi who is the Claimant's Managing Director, an Italian citizen who has lived in Bahrain for almost 15 years.'

5. The witness statement stated that since September 2019 Contax BVI had been attempting to liquidate its Gold Investment account held by the Defendants, and (apparently) specifically by KFH – Turkey. The witness statement said that the KFH group companies had owed Contax BVI some €53 million. It was then said that this had been the subject of an arbitration under the auspices of the Kuwait Chamber of Commerce and Industry Commercial Arbitration Centre ('KCAC') which had resulted in the Award of 28 November 2022. It was further said that the Defendant had sought to appeal that award to the Commercial Court of Appeal in Kuwait, and the Upper Court had endorsed the Award.

6. The witness statement continued, by reference to a witness statement of a Mr Sarkhou, that it 'is extremely difficult to enforce judgments against Sovereign Wealth Funds … owned businesses or investments in the Middle East', which it was said the KFH group was. It was then said that it was sought that the Award should be enforced in the same manner as a judgment. In addition to that witness statement, there was a 'Claim Outline', which contained the same material as Mr Adesanu's witness statement.

7. There was also a witness statement of Filippo Fantechi dated 5 June 2023. This said that he was the Managing Director of Contax BVI, and that the witness statement was made 'in support to the application for recognition and enforcement of the judgment that has been determined in [the KCAC] on 28th November 2022.' This witness statement said, in line with Mr Adesanu's, that Contax BVI had been seeking to liquidate its investment in a Gold Investment product offered by the KFH group, marketed in its Kuwait and Bahrain branches, and managed by KFH – Turkey. The witness statement said that the CEO of KFH - Kuwait, Mr Abdulwahab Iesa

Alrushood, had suggested to Mr Fantechi that the dispute should be arbitrated in the KCAC, and that on 31 August 2021, an arbitration agreement had been entered into between Contax BVI and the Defendants; there had then been an arbitration; the Award had been made on 28 November 2022; and it had been endorsed by the Commercial Court of Appeal in Kuwait.

8. Exhibited to this witness statement were a number of documents, and specifically:

(1) What was said to be the arbitration agreement, in Arabic and in an English translation, dated Muharram 23, 1443 AH, corresponding to 31 August 2021, and apparently signed by Hamad Abdul Mohsen Al-Marzouq, Chairman of the Board of Directors of the KFH Group, and by Mr Fantechi;

(2) The Award, to which I will return;

(3) What was identified as the Kuwait Commercial Court of Appeal decision, dated 1 February 2023;

(4) A profile of Contax BVI;

(5) Identification documents of Mr Fantechi, including his passport;

(6) Contax BVI's registration certificate and list of directors;

(7) Documents relating to KFH group accounts and products; and

(8) A document, in Arabic and in translation, said to be a statement of Mr Mohamed Sarkhou, saying that attempts to enforce the Award and Court of Appeal ruling in Kuwait had been unsuccessful.

9. This application was put before me, in the ordinary way, on a without notice basis, for consideration on the papers, in early August 2023. Judges of this court have to consider very many paper applications of this type and others. I recall considering this one with some care, in that I did not find it all very easy to understand. I gave, I would say in retrospect, undue allowance for difficulties apparently arising from documents being prepared by people who were not native English speakers and/or whose grasp of English procedure was not perfect. It did not, however, occur to me that any of the documents might be fabrications. I was not on the lookout for fraud, and did not suspect it. In relation to such applications, the court always regards it as being a safeguard that, as the application has been made without notice, the defendant(s) may apply to set aside any resulting order enforcing the award, and that such an order will include, as standard, a provision that it may not be enforced until after a specified period following service of the order on the defendant(s), or until any application made by the defendant(s) within that period is finally disposed of.

10. Accordingly I made an order on 9 August 2023 ('the August Order'), giving Contax BVI leave to enforce the Award under s. 66 Arbitration Act 1996, and entered judgment in the terms of the operative part of the Award. The order provided that the Defendants might apply to set the order aside, within 28 days after service, and that the order might not be enforced until after the end of that period or until any application to set aside made within that period had been disposed of.

11. What then happened is that H&C Associates purported to serve the August Order and supporting documents at the offices of a company in the KFH group, Ahli United Bank, at 35 Portman Square, London W1 on 9 August 2023. After the lapse of 28 days following that purported service, during which no application to set aside had

been made, H&C Associates applied for Third Party Debt Orders ('TPDOs'), in relation to the judgment debt, which was specified as now amounting to £70,634,614.04, against Citibank UK, HSBC PLC, Barclays Bank Plc, and JP Morgan Chase NA. These applications were issued on 15 September 2023, and were apparently signed by Mr Fantechi as 'Judgment creditor'. Interim TPDOs were made by Master Stevens on 1 October 2023. The certificates of service of these orders, dated 9 October 2023, named Johan van Huyssteen, as an 'Associate' of H&C Associates, as the person certifying their contents as true. On 27 October 2023 Master Stevens made a final TPDO in relation to Barclays Bank, ordering that it should pay Contax BVI £3,176,376.30.

12. It was, as the Defendants say, as a result of the freezing of bank accounts in compliance with the Interim TPDOs that they came to know of the proceedings. On 2 November 2023 the First and Second Defendants applied to court, without notice, to prevent payment under any of the TPDOs until the Defendants could apply to set aside the August Order. The Defendants' case was that that Order had not been validly served on them. But, 'more than this, … there was never an arbitration at all.' Their skeleton argument said: 'That the award is an out-and-out fabrication might seem at first blush unlikely – but substantial parts of it have been taken from Picken J's judgment in *Manoukian v Société Générale de Banque au Liban SAL* [2022] EWHC 669 (QB) ('*Manoukian*') and someone claiming to be the managing director of the Claimant has very recently met the Third Defendant's solicitors and informed them that he knows nothing about the supposed arbitration.'

13. On 2 November 2023 Henshaw J made an order which was intended to 'hold the ring' pending a hearing by the Defendants to set aside the August Order, which was to be

listed for a first hearing on an expedited basis and in any event on or before 17 November 2023.

14. On 6 November 2023, a Notice of Change was filed on CE file (although dated 2 November 2023), indicating that H&C Associates had ceased to act for Contax BVI, which would be acting for itself. It gave an email address, Contaxpartus@gmail.com, and specified that this was 'For Legal Service'. It also gave a postal address as follows: 'Contax Partners dba//Contax Partners BVI 1 Washington Mall, Boston, MA 02108-USA'.

15. On 8 November 2023, an Application Notice was issued, purportedly on behalf of the Claimant (ie Contax BVI), seeking the setting aside of Henshaw J's order. This was said to be signed by 'A Georgiou', as 'Authorised Officer for and on behalf of Contax Parnters (sic) Inc.'

The Applications to set aside the August Order

16. On 9 November 2023, the Defendants informed Contax BVI, at the Contaxpartus@gmail.com address, that they would shortly be issuing applications to set aside the August Order, and that the likely hearing date of that application would be 17 November 2023. The Defendants issued their applications to set aside the August Order on 10 November 2023, and served them on the same day on the email address which had been given in the Notice of Change. Those applications were listed before me on 17 November 2023. In support of those applications, the Defendants put in evidence, as follows (in non-exhaustive summary):

(1) A witness statement of Mr Thomas of Jones Day, which stated that his clients had instructed him that the arbitration proceedings were a fabrication. He produced a

comparison between parts of the Award and Picken J's judgment in *Manoukian* showing passages lifted and adapted from the latter to the former. He exhibited a letter from the Secretariat General of the KCAC confirming that no cases had been brought in that forum against any of the Defendants; a letter from the Kuwait Ministry of Justice, Court of First Instance, confirming that there was no record of any proceedings between the parties between 2000 and November 2023; and a letter from the State of Kuwait Ministry of Justice, stating 'Contax Partners Inc (BVI) has no legal disputes against Kuwait Finance House'.

(2) Witness Statements from Mr Raed Ajawi and Mr Rashid Alkhan, each named in the Award as having given evidence and as having been cross-examined, to the effect that they had no knowledge of the arbitration and had not participated in any such proceedings.

(3) A statement from Filippo Fantechi dated 9 November 2023, stating that Druces LLP had been instructed to act on his behalf and on behalf of Contax BVI. The witness statement said that he had been totally unaware of these proceedings or of the underlying arbitration proceedings/award until he received a phone call from the Third Defendant's legal department on 1 November 2023. The witness statement continued that he was not aware of any claim by Contax BVI against the KFH Defendants or against Ahli United Bank; he had not authorised or participated in any such arbitration or these proceedings; and Contax BVI had not instructed H&C Associates, on this matter or at all: 'I do not know who they are and have no communication with them.' He said that Contax BVI does not have an address at 1 Washington Mall, Boston, or an email address contaxpartus@gmail.com. There was

also a witness statement from Mr Stephen Ronaldson, a partner of Druces LLP, which said that he had met Mr Fantechi in person.

(4) A statement of Mazin Al Mardhi, a partner of Charles Russell Speechleys LLP, based in that firm's Bahrain office. He gave evidence that he had contacted Prof. Ashraf Shams El Din, named as counsel for the Defendants in the Award and the Appeal Judgment. Prof Ashraf Shams El Din had confirmed that he was unaware of any alleged proceedings involving KFH Group and had not participated in any such proceedings. He had also contacted Dr Mukerrem Basar, named as an expert witness for Contax BVI in the Award, who had confirmed that he had had no involvement in the case.

17. On 15 November 2023, an email was received by the court from contaxpartus@gmail.com, apparently signed by 'Shloumo Ezzra', saying that, since 5 November 2023 'we have been acting in person and we are based in the USA'; that they were preparing to engage an English solicitor/counsel and seeking an adjournment. The court indicated that any application to adjourn would be considered at the hearing on 17 November 2023.

The hearing on 17 November 2023

18. The hearing on 17 November 2023 went ahead remotely. Mr Edwards appeared for the Defendants. No one representing those who had contacted the court via the contaxpartus@gmail.com address appeared or sought to appear. Counsel, instructed by Druces LLP, appeared on behalf of the Claimant on instructions from (as Mr Edwards put it) 'the real Mr Fantechi'. At that hearing, I indicated that it appeared, from the material which the Defendants had referred to, that the Defendants' solicitors and counsel did not have copies of all the documents which had been before me on

the without notice paper application in August 2023 and which were on CE file, and in particular they had not had sight of the alleged arbitration agreement which had been submitted on that occasion. The court made this material available to the Defendants' solicitors.

19. I further made an order setting aside the TPDOs. This was on the limited but sufficient basis that the August Order had not been properly served on the Defendants or any of them, and accordingly the TPDOs should not have been made. I gave directions for the final hearing of the Defendants' application to set aside the August Order. These included that the Defendants might serve further evidence (to deal with the documents which had been made available from the Court's files) by 24 November; the Claimant was to serve its evidence by 8 December; the Defendants were to serve any responsive evidence by 15 December; and there should be a final hearing, on an expedited basis, in January 2024.

Developments after the hearing of 17 November 2023

20. The Defendants served further evidence, including the following:

(1) A further witness statement of Mr Thomas of Jones Day. This exhibited an opinion of Mr Ahmed Abdel Aziz Al-Adwani, a qualified and practising Kuwait lawyer, to the effect that the Award and Court of Appeal judgment could not be genuine as it is mandatory under Kuwaiti law for the Award and the judgment to be in Arabic; and that the Court of Appeal judgment could not be genuine as there are no Kuwaiti Court of Appeal judges with the names used in the purported judgment.

(2) A witness statement of Mr Hamad Abdulmohsen Al-Marzouq, the Chairman of the First Defendant, and the ostensible signatory of the alleged arbitration agreement

dated 31 August 2021. Mr Al-Marzouq's witness statement says that he had not previously been aware of the existence of this agreement; he had not signed it; and the signature used was not his.

(3) A further witness statement of Mr Filippo Fantechi. This said that the identification and company profile documentation which had been produced to the Court in August 2023 appeared to be genuine. He said that he was astonished to see those documents and had no idea how they had come to be exhibited to the application to enforce the Award. He was concerned that it was documentation which had been obtained for the purposes of opening a bank account with Revolut, and which had been misappropriated for fraudulent purposes.

(4) A further witness statement from Mr Al Mardhi, to the effect that the 'statement' of Mr Mohamed Hamza Sarkhou exhibited to Mr Adesanu's witness statement in support of the application to enforce the Award was not a court document, did not record any court-ordered enforcement step as having been taken, and did not give any evidence of any proceedings for enforcement having been commenced in Kuwait, Bahrain or Turkey.

21. On 22 November 2023 an Application notice was issued, purportedly on behalf of Contax BVI, seeking the setting aside of my order of 17 November 2023. Once again it was signed by 'A. Georgiou' as 'Authorised Officer for and on behalf of Contax Parnters (sic) Inc'.

22. No evidence was served on behalf of Contax BVI in pursuance of the directions in my Order of 17 November 2023.

23. The expedited hearing of the Defendants' application to set aside the August Order was due to come on on 30 January 2024. The Defendants' Skeleton Argument was served on 25 January 2024. During the night before the hearing was to take place, there were sent, by 'Shloumo' from the contaxpartus@gmail.com email address, to the court and the Defendants, two witness statements, and a notification that counsel, Mr David Kinnear, would appear at the hearing that day. When the hearing came on, both Mr Kinnear and Mr Michael Reason appeared to make representations. I will explain on whose behalf in due course.

The arguments on the hearing of the application to set aside the August Order

24. At the hearing the Defendants sought the setting aside of the August Order on two main grounds: that the arbitration claim was commenced without authority; and that the supposed arbitration agreement and Award did not exist.

25. As to the former, the Defendants submitted that there was no dispute as to the identity of Contax BVI, or of its officers, or, in particular, that Mr Filippo Fantechi was its majority shareholder and managing director. He, the Defendants said, had now made it clear that neither he nor anyone authorised to act for Contax BVI had authorised the commencement of the Arbitration claim. While proceedings commenced without authority were not a nullity, they were liable to be struck out. Here, had the court been aware of the absence of authority in considering the without notice application to enforce the Award it would not have made the August Order. That Order must accordingly be set aside.

26. As to the latter, no authority had been found dealing with a case in which the alleged award was an out and out fabrication. But as the entire jurisdiction to enforce rests on there being an arbitration agreement and an award, if those documents are

fabrications, then there can be no question of judgment being entered in terms of such an award, and leave to enter judgment in such terms should be set aside. I agree with the submission that that must be the consequence if the arbitration award which it is sought to enforce is a fabrication, and was not the result of an arbitration.

27. As I have already said, Mr Kinnear and Mr Reason appeared to make submissions in opposition to the Defendants' application to set aside the August Order.

28. What Mr Reason said was that he and Mr Kinnear were not instructed by or on behalf of Contax BVI. He said that they were instructed on behalf of Contax Partners LLC ('Contax LLC'), a company formed in Wyoming, on 16 October 2023. He said that Contax LLC had taken an assignment of the debt under the August Order from Contax BVI, in exchange for (a) a sum of US$3.25 million payable to a 'legal representative' of the Assignor in Kuwait, and (b) a share of 40% of the amount recovered (payable in like manner). A copy of the Deed of Assignment was produced during the hearing. It was, on its face, signed by Filippo Fantechi on behalf of Contax BVI as Assignor, and by Georgio Antonis as 'Director' of Contax LLC and Kevin Gregory, 'Secretary' of Addax Petroleum Ltd, on behalf of the Assignee.

29. The witness statement evidence which had been supplied in the early hours of 30 January 2024 and to which Mr Kinnear and Mr Reason referred consisted of two witness statements. One was of Kevin Gregory and the other of Johan van Huyssteen. I read these witness statements *de bene esse*, even though, as I will say, there was no good reason for their having been served as late as they were.

(1) Mr Gregory said that his involvement was as Secretary of Addax Petroleum Ltd, which is a Director of Contax LLC, along with Filippo Fantechi and Contax BVI. H&C Associates have acted for Addax Petroleum in other matters over the years. Mr

Gregory, without properly identifying the source of his information, stated that Mr Fantechi had contacted H&C Associates on 2 May 2023 for assistance in enforcing the Award; and had asked H&C Associates to open a UK bank account and later a US bank account, to receive payment of the Award. Mr Gregory said that Addax Petroleum Ltd had opened an account for Contax BVI in the first week of June 2023, with TSB Bank, and that for that purpose Mr Fantechi had provided a sample signature card, and had remitted a small sum from his bank account in Bahrain to the TSB account, to verify that the account was opened and working properly. A copy of a TSB bank statement was exhibited showing a receipt of £110 from Mr Fantechi on 8 June 2023.

(2) Mr Gregory went on to state that Mr Fantechi's lawyer, by which he meant Nabeel Saeed, apparently a Bahraini Attorney at Law and Legal Consultant, had then sent a General Power of Attorney signed by Mr Fantechi and apparently dated 5 June 2023. On its face this Power of Attorney was in favour of Mr Saeed, but in a covering letter to H&C Associates dated 8 June 2023, Mr Saeed had said that this Power of Attorney was 'transferr[ed] jointly to your firm'. Mr Gregory also said that Mr Fantechi had subsequently asked H&C Associates to assist him in setting up a SPV, to take the benefit of the enforcement of the Award, namely Contax LLC, of which the shareholders were Contax BVI, Mr Fantechi and Addax Petroleum Ltd.

(3) Mr Gregory also said, again without any proper identification of the source of this account, that there had been a phone call with Mr Al Marzouq of KFH on 9 September 2023, during which Mr Al Marzouq had, in effect, recognised the existence of the debt to Contax BVI.

(4) Mr van Huyssteen's witness statement says that he is a Director of H&C Associates. He gives various explanations of the nature and functioning of H&C Associates. He also refers to a report of a handwriting consultant Ms Margaret Webb. This supposed report states at the bottom 'Provisional opinion only not intended for legal purposes.' It examines certain signatures of Mr Al Marzouq and Mr Fantechi, and then says, 'Despite examining copies rather than originals, it is impossible to provide a conclusive opinion on copies whether the questioned signature is a forgery.' As Mr Edwards submitted, 'Despite' there seems to mean 'As a consequence of'.

30. The thrust of Mr Kinnear's submissions was simple. Given the nature of the Defendants' case and evidence, someone must be lying. It was not just or appropriate for the court to proceed to resolve the Defendants' application to set aside the August Order without there being an opportunity for cross-examination of the principal participants. It was not only in the interests of Contax LLC but in the public interest that the true facts of what occurred should be revealed. There should therefore be an adjournment to permit such cross-examination.

31. Mr Edwards responded that his clients' interests were simply in ensuring that the Award, if, as they say, it was bogus, should be set aside; and not with being able to dot every i or cross every t as to what had happened. Given how matters had evolved, Mr Edwards submitted that the approach the court should take on this hearing was effectively the same as that which it would adopt on a summary judgment application. The court could proceed to decide whether the Award should or should not be set aside if there was a dispositive matter in relation to which there was no triable issue. If, however, the issue of whether the Award should be set aside depended on a matter as to which there was a triable issue, then the court should order a trial of that issue or

issues, and make, no doubt, orders permitting oral evidence. I considered that approach to be a just and convenient one, and it is the approach I intend to adopt.

32. Before turning to consider whether there is a relevant triable issue, it is appropriate to deal at somewhat greater length with one further matter. This is that, as I have said, the witness statements served on behalf of Contax LLC were served very shortly before the hearing.

33. Mr Reason said that the reason for this had been that Contax BVI (and, as I understood what he said, those representing Contax LLC) had thought that, given that an application had been issued, ostensibly by Contax BVI, on 22 November 2023, to set aside my order of 17 November 2023, there did not have to be compliance with the terms of that order as to service of evidence. Mr Reason did not contend that that was a good reason for any evidence not having been served in accordance with that order, and he was right not to. Even if the grounds of the application to set aside the order of 17 November 2023 been arguable, there should have been compliance with its provisions as to the service of evidence unless and until it was set aside. In fact, however, the grounds included in the application for setting aside the order of 17 November 2023 were bad. Specifically, the main ground put forward was the suggestion that Contax BVI had had only one day's notice of the hearing because, it said, it was only notice given by the court itself which counted. It was therefore suggested that there had not been adequate notice, notwithstanding that the application notices had been served by the Defendants on Contax BVI (at the address given in the Notice of Change) more than three days before the hearing. Under PD58 para. 9, however, in the absence of other order, documents in the Commercial Court are to be served by the parties not the court.

Analysis

34. I turn therefore to the two grounds on which the Defendants seek the setting aside of the August Order.

Authority to bring the proceedings

35. I regard the position in relation to who had and was properly exercising authority on behalf of Contax BVI at the material times as not being clear. One aspect of this is that I am uncertain as to what role Mr Fantechi was, as a matter of reality, playing and what instructions he was, in reality, giving, at the various stages before November 2023. Had this issue stood alone as the basis on which the Defendants sought the setting aside of the August Order, I would have considered that there was here a triable issue, and would have ordered a trial of it, making provision for oral evidence and the possibility of cross-examination of witnesses.

Was the Award genuine?

36. The Defendants contend that, whatever the position in relation to authority to commence the proceedings, there is no real doubt, and no triable issue, that the Award is not genuine and is a fabrication. In my view, this is indeed the case.

37. In the first place, without reference to disputed witness statements, such as those from Mr Fantechi, the material before the court indicates that it is very unlikely that the alleged arbitration agreement is genuine. No original has been produced. There is no documentary (in which I include electronic) evidence of the existence of this alleged agreement before June 2023, when it was exhibited to the witness statement of, or supposed to be of, Mr Fantechi in support of the application to enforce the Award.

Even if regard is had to the handwriting evidence of Ms Webb, it establishes nothing because it is based on copies.

38. Secondly, there are very strong grounds for concluding that the Award itself is a fabrication. These can be grouped under five heads.

(i) The language of the Award

39. The Award, which is in English, has substantial passages which are taken, with some modifications, from the judgment of Picken J in *Manoukian*. While Mr Kinnear suggested at one point that this is something which could only be concluded with the assistance of expert evidence, I do not accept that. It is in my judgment obvious that that is the case from a comparison of the two, and a consideration of the nature of the text which appears in each.

40. I will give five examples. The first relates to paragraph 4 of the judgment and paragraph 6 of the Award. The trial before Picken J had been expedited because of the risk of capital controls being introduced as a result of the Lebanese economic crisis. That accounted for paragraphs 3-4 of his judgment which appears in almost identical terms in paragraphs 5-6 the Award. Thus:

Award	**Picken J's judgment**
[5] … As a result, his position is (or was heading into the trial) precarious: any delay in the resolution of the present proceedings could potentially deny Contax Partners Inc BVI an effective remedy. It was for this reason, indeed, that the trial which took place before me was expedited: Contax Partners Inc BVI issued the proceedings on 1 December 2021; pleadings closed on 4 April 2022, and expedition was ordered at a hearing which took place on 21 June 2022.	[3] … As a result, his position is (or was heading into the trial) precarious: any delay in the resolution of the present proceedings could potentially deny Mr Manoukian an effective remedy. It was for this reason, indeed, that the trial which took place before me was expedited: Mr Manoukian issued the proceedings on 19 December 2020; pleadings were closed on 6 April 2021, and expedition was ordered at a CMC which took place on 8 June 2021.

Award	**Picken J's judgment**
[6] In further consequence of the need for expedition, I indicated at a hearing which took place on 7th December 2021 that Contax Partners Inc BVI claim was successful, specifically his primary case that the Banks are contractually obliged to effect the transfers to where he wish. I made an order, indeed, to that effect. In the circumstances, this judgment does not deal with other aspects at all or, at least, in any particular detail.	[4] In further consequence of the need for expedition, I indicated at a short hearing which took place on 25 February 2022 that Mr Manoukian's claim was successful, specifically his primary case that the Banks are contractually obliged to effect the transfers. I made an order, indeed, to that effect. In the circumstances, this judgment does not deal with other aspects either at all or, at least, in any particular detail.

41. Picken J's judgment contains an assessment of the witness evidence. An almost identical assessment appears in the Award, as follows:

Award	**Picken J's judgment**
9. The second factual witness called by KFH was Mr Rashid Khalid Alkhan (Head of Wealth Management KFH Bahrain). Dr Jamil Abdulbaqi Al Sagheer took issue in closing observation that Mr Alkhan gave his evidence candidly. He submitted, indeed, that Mr Alkhan was prepared to give evidence that was untruthful and contradictory. Although I don't wholly accept that this was the case, the submission isn't entirely without merit since it was notable, amongst other effects, that he was unfit to give a satisfactory explanation as to why he'd signed a particular document but not others, suggesting kindly incredibly that he signed all documents which he entered notwithstanding the fact that none of the other transfer requests in the documents are signed. Likewise, it's unclear why Mr Alkhan only mentioned that he'd kept a note of all of the transfer requests made by his clients when he was being cross-examined and not in his	5. It is appropriate that I say something about each of the factual witnesses and record, in particular, that, in my view, each of them did their best in their evidence to assist the Court. 8. Specifically, as for Mr Manoukian himself, his evidence was concerned with his consequential loss claim for lost investments. That is not an issue which I need address given that I have decided that Mr Manoukian succeeds with his primary case. Be that as it may, it was not suggested, either in cross-examination or during the course of closing submissions, that, in giving this evidence, Mr Manoukian was anything other than straightforward. … 9. The other factual witness called by SGBL was Mr Elie Jeffy, the Head of its Private Banking Unit. Mr Toledano QC took issue in closing with Mr Wilson QC's observation that Mr Jeffy gave his evidence candidly. He submitted, indeed, that Mr Jeffy was prepared to

Award	Picken J's judgment
substantiation statement; the more so, since no similar spreadsheet had been disclosed or bared in the course of these proceedings.	give evidence that was untruthful and contradictory. Although I do not wholly accept that this was the case, the submission is not entirely without merit since it was notable, amongst other things, that he was unable to give a satisfactory explanation as to why he had signed a particular document but not others, suggesting somewhat implausibly that he signed all documents which he received notwithstanding the fact that none of the other transfer requests in the documents are signed. Likewise, it is unclear why Mr Jeffy only mentioned that he had kept an analysis of all of the transfer requests made by his clients when he was being cross-examined and not in his witness statement; the more so, since no such spreadsheet had been disclosed in the course of these proceedings.

42. The evaluation of the expert evidence in the Award (at paragraphs 13-17) is manifestly based on that of Picken J (at parasgraphs 11-15). This is well illustrated by the following passages:

Award	Picken J's judgment
15. A number of matters were raised in this connection. I do not propose to rehearse all of them. It suffices to give a single example. This was the suggestion made by Dr. Miikerrem Onur Basar that a particular custom (as will appear, custom is important in this case) was a custom which had come into being since end of November 2019 (and so, again as will appear, after Contax Partners Inc BVI had made their first transfer requests). As Dr Jamil Abdulbaqi Al Sagheer rightly submitted, that simply cannot be relevant as a matter of Turkish law (and, indeed, common sense) since what matters is the custom which	13. A number of matters were raised in this connection. I do not propose to rehearse all of them. It suffices to give a single example. This was the suggestion made by Dr Moghaizel that a particular custom (as will appear, custom is important in this case) was a custom which had come into being since November 2019 (and so, again as will appear, after Mr Manoukian had made his first transfer requests). As Mr Toledano QC rightly submitted, that simply cannot be relevant as a matter of Lebanese law (and, indeed, common sense) since what matters is the custom which existed at the time that Mr

Award	Picken J's judgment
existed at the time that the Claimant Contax Partners Inc BVI first entered into a contractual relationship with the Banks. Notwithstanding this, it was only with a marked reluctance that Dr. Hasan PULASLI the Defendant Turkish Law Expert ultimately accepted that the alleged new custom which he had identified was of no relevance at all.	Manoukian first entered into a contractual relationship with the Banks. Notwithstanding this, it was only with a marked reluctance that Dr Moghaizel ultimately accepted that the alleged new custom which he had identified was of no relevance at all.
16. That said, I also agree with Dr Jamil Abdulbaqi Al Sagheer when he submitted that there were aspects of Dr. Hasan PULASLI evidence which were likewise open to criticism. It was notable, for example, that on a few occasions, Dr Hasan PULASLI referred in cross-examination to having spoken to various Turkish academic, Professor Dr. Mustafa ATES – Dean Kutahya Dumlupinar University Islamic Law, about certain points and obtained his agreement that what he (Dr PULASLI) was saying about his writings was right. That evidence is incapable of being tested and hinted at a somewhat partisan approach. However, ultimately, at least when asked questions at the level of principle, Dr PULASLI for the most part did not engage and sought to assist the Court in his answers.	14. That said, I also agree with Mr Wilson QC when he submitted that there were aspects of Mr Najjar's evidence which were likewise open to criticism. It was notable, for example, that on a few occasions, Mr Najjar referred in cross-examination to having spoken to a Lebanese academic, Professor Nammour, (whose writings, as will appear, are relevant in this case) about certain points and obtained his agreement that what he (Mr Najjar) was saying about his writings was right. That evidence is incapable of being tested and hinted at a somewhat partisan approach. However, like Dr Moghaizel, ultimately, at least when asked questions at the level of principle, Mr Najjar for the most part engaged and sought to assist the Court in his answers.

43. The issues in the case apparently the subject of the Award appear clearly to be derived from Picken J's summary of the issues in his case. Thus:

Award	Picken J's judgment
The issues	**The issues**
22. At least at the start of the trial, the parties were agreed that the following issues arose:	39. At least at the start of the trial, the parties were agreed that the following issues arose:
(i)whether an international transfer right exists under the contract with each of the Banks (the 'Contractual Transfer	(i) whether an international transfer right exists under the contract with each of the Banks (the 'Contractual Transfer

Award	Picken J's judgment
Right Issue') - and, in (ii) the case of KFH Group, whether a particular exclusion clause is applicable; (iii) further or alternatively, whether an international transfer right exists as a matter of Turkish, Kuwait, and Bahrain law (the 'General Transfer Right Issue') - and, again in the case of KFH Group, whether a particular exclusion clause is applicable; and the whole Banks Group is liable for the transfer Individually and/or Collectively. (iv) alternatively, in the event that an international transfer right does not exist, in the case of KFH-Turkey, whether it acted in abuse of its rights or in bad faith by exercising its discretion in bad faith or in abuse of rights, by making payments as a result of factors such as nepotism, favouritism or the status of the client; and (v) the impact of any article of law in these jurisdictions Kuwait's the Banking Law of 1968, Turkey Banking Law No. 5411 and Currency No. 1567, and Bahrain Central Bank of Bahrain and Financial Institutions Law 2006 (' CBB Law') or any Global Banking Standard that tender and deposit procedure on Contax Partners Inc BVI's Claim. 23. There were other issues also, specifically an issue concerning the appropriate currency applicable in the Turkish Banking Jurisdiction context, but it was agreed that it was irrelevant since the guarantor of all transaction are banks operating under the umbrella of Kuwait Finance House regardless if its location, such issues did not need to be determined. As a result, I say no more about them.	Right Issue') - and, in the case of Bank Audi, whether a particular exclusion clause is applicable; (ii) further or alternatively, whether an international transfer right exists as a matter of Lebanese law (the 'General Transfer Right Issue') - and, again in the case of Bank Audi, whether a particular exclusion clause is applicable; (iii) alternatively, in the event that an international transfer right does not exist, in the case of SGBL, whether it acted in abuse of its rights or in bad faith by exercising its discretion in bad faith or in abuse of rights, by making payments as a result of factors such as nepotism, favouritism or the status of the client; and (iv) the impact of the Article 822 tender and deposit procedure on Mr Manoukian's claim. 40. There were other issues also, specifically an issue concerning the appropriate currency applicable in the Article 822 context, but it was agreed that such issues did not need to be determined. As a result, I say no more about them.

44. A further passage indicates that, if the Award were genuine, it would mean that the arbitration had played out in a way which was uncannily – one might fairly say miraculously – similar to what had happened in front of Picken J. Thus:

Award	**Picken J's judgment**
31.In his written closing submissions, Prof. Ahraf Sham El-Din had maintained an argument that, even if there were a transfer right (whether contractual or under the general law), this would nonetheless still permit the Banks to meet Contax Partners Inc BVI's claim by invoking transfer internal banks circular in Turkey. However, when addressing the Court orally, Prof. Ashraf Sham El-Din explained that the Banks no longer took that position. He accepted, indeed, that the (Tender and Deposit) Issue would not fall to be considered if the Court were to decide either the Contractual Transfer Right Issue or the General Transfer Right Issue in Contax Partners Inc BVI's's (sic) favour. Prof. Ashraf Sham El-Din went on to explain that, in the circumstances, the Banks' reliance on such element was limited to Contax Partners Inc BVI's's alternative claim in debt, in the event, that the Court were to decide that there was no transfer right and so that specific performance should not be ordered.	129. In his written closing submissions, Mr Wilson QC had maintained an argument that, even if there were a transfer right (whether contractual or under the general law), this would nonetheless still permit the Banks to meet Mr Manoukian's claim by invoking Article 822. However, when addressing the Court orally, Mr Wilson QC explained that the Banks no longer took that position. He accepted, indeed, that the Article 822 (Tender and Deposit) Issue would not fall to be considered if the Court were to decide either the Contractual Transfer Right Issue or the General Transfer Right Issue in Mr Manoukian's favour. Mr Wilson QC went on to explain that, in the circumstances, the Banks' reliance on Article 822 was limited to Mr Manoukian's alternative claim in debt, in the event, that the Court were to decide that there was no transfer right and so that specific performance should not be ordered.

45. These examples, which could be multiplied, largely speak for themselves. I consider the following features to be important:

(1) The text of the Award, in significant measure, derives from the text of Picken J's judgment. This is obvious inter alia from: (i) the use of exactly the same, far from standard, defined terms (eg 'General Transfer Right Issue'); (ii) the use of English

legal terms (eg 'claim in debt', 'exclusion clause', 'specific performance'); (iii) exactly the same phraseology being used, including the argot of English judgments ('be that as it may', 'the submission is not entirely without merit', 'that said', 'fall to be considered'); (iv) the use of the same punctuation, even when it was not obvious, and arguably incorrect (eg in paragraph 129 of Picken J's judgment, '…in debt, in the event, that the Court…', both commas also appearing in the Award).

(2) The issues identified in the Award as arising in the arbitration were the same, largely word for word, as those which arose in Picken J's case.

(3) The almost identical assessment of factual and expert evidence could not, in my view, have been the result of chance.

(4) The mirroring of the terms of Picken J's judgment in the Award is not the result of the adoption of transposable legal reasoning. In many instances it relates to what is supposed to have happened during the course of the two sets of proceedings. In the example I have given in paragraph [44] above, if the Award were genuine, it would involve a second case in which, although a case had been maintained in written closing submissions, it was not maintained in oral closing submissions because it was accepted that if the Court were 'to decide either the Contractual Transfer Right Issue or the General Transfer Right Issue' in the claimant's favour it would not fall to be considered. It is to my mind inconceivable that there were two cases in which there was a concession, at exactly the same stage, of a similar argument, on the basis of a recognition that if one or other of two issues (identically expressed in each case) was decided in the claimant's favour, then that argument did not need to be considered.

(ii) Evidence of Kuwaiti law

46. Evidence has been adduced by the Defendants from Mr Al-Adwani, to the effect that the putative Award does not comply with basic requirements of Kuwaiti law, and in particular Article 183 of the Civil Procedure Law, including that it is in English, rather than Arabic; does not contain a summary of the agreement to arbitrate; and is not signed by all the arbitrators. This enhances the improbability that it is an award issued under the auspices of the KCAC.

(iii) The Kuwaiti judgment

47. There is, on examination, no indication that this purports to be a translation. Instead, it is, supposedly, an original Kuwaiti judgment. However: (i) such a judgment would be required to be in Arabic; and (ii) it would be most unlikely to have the format which the supposed Kuwaiti judgment has, which follows the drafting style and language of an English court order. Furthermore, the evidence of Mr Al-Adwani is that the names of the judges who purportedly issued the ruling do not belong to members of the Court of Appeal in Kuwait, and the titles 'Junior Judge' (which appears on page 4) and 'Secretary of the Court' (which also appears on page 4) are not used in the Kuwaiti judicial system.

(iv) Positive evidence

48. Even without considering the evidence of employees of the Defendants, there is evidence that individuals named in the Award as having been involved in the arbitration, were not so involved. In particular there is evidence that Professor El Din, supposedly counsel for the Defendants in the arbitration, was not involved in any such arbitration; and that Dr Basar also had no involvement in such a case. This evidence can be taken with the letters from the KCAC and the Kuwait Ministry of Justice, indicating that there has been no relevant dispute or arbitration.

(v) Negative evidence

49. The Award and the Kuwaiti judgment refer to a considerable number of documents. None of these has been produced. Had there been a genuine arbitration, it is to be expected that these documents could be produced, if not by Contax BVI, then from the file of the arbitral body or from the arbitrators.

Conclusion

50. These matters lead me to the conclusion that there was no arbitration agreement or arbitration, and that the Award and the Kuwaiti judgment are fabrications. I do not consider that there is a triable issue in relation to this.

51. For these reasons, I will set aside the August Order entering judgment against the Defendants in the terms of the purported Award.

52. The result of this decision is that there are a considerable number of unanswered, but serious, questions, and in particular as to who was responsible for the fabrications which I have found to have been made, and whether there is culpability (and if any whose) as to the way in which the application for permission to enforce the purported Award was presented to the court. Those are matters which are likely to require investigation hereafter.