IN THE HIGH COURT OF JUSTICE **Claim No: CL-2022-000190**

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

COMMERCIAL COURT (QBD)

B E T W E E N :

BUTTONWOOD LEGAL CAPITAL LIMITED

Claimant

- and –

MR MOHAMED ABDEL RAOUF BAHGAT

Defendant

PARTICULARS OF CLAIM

A. PARTIES

1. The Claimant is a company registered at Quastisky Building, P.O. Box 4389, Road Town, Tortola, British Virgin Islands with registration number 1592999. The Claimant was formerly known as Argentum Associates Limited.

2. The Defendant is an individual resident at Aleksis Kiven Katu, 11a B 36, 00510, Helsinki, Finland.

B. THE LOAN AGREEMENT

3. On or about 12 January 2011 the Claimant and the Defendant executed by deed a loan agreement ("the Loan Agreement") under the terms of which the Claimant agreed to advance funds to the Defendant for the purpose of funding proceedings by the Defendant against the Arab Republic of Egypt ("the Proceedings").

4. The funds advanced pursuant to the Loan Agreement, together with further funding to which the Claimant consented as appears in paragraphs 25 to 30 below, allowed the Defendant to pursue his claim in the Proceedings. In particular, some of the funds advanced by the Claimant were used by the Defendant to pay arbitral fees which were

due from the Arab Republic of Egypt, without payment of which the Proceedings could not have continued. The Proceedings were concluded by the Final Award of the Permanent Court of Arbitration in The Hague on 23 December 2019 in PCA Case No. 2012-07 ("the Final Award"). By the terms of the Final Award, at paragraph 618, the Defendant was awarded:

a. Damages in the sum of US$43.77M as compensation for losses caused to him by breaches of:
    i. the Agreement Between the Government of the Republic of Finland and the Government of the Arab Republic of Egypt on the Mutual Protection of Investments, dated 5 May 1980 and entered into force on 22 January 1982 ("the 1980 BIT"); and
    ii. the Agreement Between the Government of the Republic of Finland and the Government of the Arab Republic of Egypt on the Promotion and Protection of Investments, dated 3 March 2004 and entered into force on 5 February 2005 ("the 2004 BIT").
b. His legal costs, in the amounts of EUR 650,584.85, £6,160,320.48 and US$900,000, representing 90% of the reasonable costs fixed by the Tribunal; and
c. Interest on the damages and costs awarded.

5. Following the Final Award the Defendant undertook enforcement proceedings in relation to the same. On or about November 2021, the Defendant settled the enforcement proceedings and received a payment of US$99.5m in respect of the said settlement.

6. The Loan Agreement included the following terms:
    a. The Claimant agreed to advance a total amount of credit of £2,309,336.14 ("the Total Facility Amount"), repayable together with interest at 16% APR by no later than the second anniversary of the Loan Agreement, pursuant to clause 6.1;
    b. In addition to repayment of such sums as were advanced to him from the Total Facility Amount and interest, the Defendant agreed to pay the following:
        i. An Arrangement Fee of £100,000; and
        ii. Pursuant to Clauses 1.1, 5.5 and Schedule 1, on successful conclusion of the Proceedings:

1. The sum of £1,539,557 (defined therein as the "Win Only Funding Fee"); and
2. Nine per cent of the award obtained by the Defendant in the Proceedings, after deduction from the award of the interest cost applicable under the Loan Agreement, capped at a maximum of £10m (defined therein as the "Win Only Award Fee").

c. By clauses 16.1 and 16.2, the parties agreed that the Loan Agreement was to be governed by the laws of England and the courts of England were to have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Loan Agreement.

7. The Loan Agreement was expressed, in error, to be regulated by the Consumer Credit Act 1974 ("the Act"). On a proper construction of the Loan Agreement and notwithstanding the governing law of the same it fell outside the spatial reach of the Act for the following reasons:
   a. The Claimant was not resident in the United Kingdom and did not carry on business from any establishment within the United Kingdom;
   b. With the exception of the first 4 payments, all sums advanced under the Loan Agreement were paid from accounts held in Hong Kong;
   c. The Defendant is and was at all material times a resident and national of Finland; and
   d. The Loan Agreement was executed by the Defendant in Finland.

8. Alternatively if, which is denied, the Act applied to the Loan Agreement, the same was an exempt agreement pursuant to section 16B of the Act, as it then applied, because the amount of credit exceeded £25,000 and the Defendant entered into the same wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by him.

PARTICULARS

(1) The subject matter of the Proceedings was a project to develop mining of iron ore in Aswan, Egypt ("the Aswan Project");

(2) The Defendant was the founder of the Aswan Project and invested approximately US$39.7m of his own funds into the same;

(3) The Defendant asserted, in the case he presented in the Proceedings, that he was the majority shareholder in the Aswan Development and Mining Company ("ADEMCO") and, by virtue of that shareholding, also the majority shareholder in the Aswan Iron & Steel Company ("AISCO") (paragraphs 363-364 of the Final Award). ADEMCO and AISCO were the companies set up to carry out the Aswan Project;

(4) The Defendant's claim in the Proceedings was wholly or predominantly for damages in respect of the failure of the Aswan Project by reason of breach of the 1980 BIT and/or the 2004 BIT by the Arab Republic of Egypt;

(5) In the premises the funding of the Proceedings was required by the Defendant in order to recoup the losses incurred by him as an investor in the Aswan Project and accordingly was entered into wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by him.

C. THE SUBSEQUENT NEGOTIATIONS

9. On or about 14 June 2012 the Claimant, acting by its chief legal officer, Mr. Zulfiqar Khan, contacted the Defendant's solicitor, Mr. Subir Karmakar to indicate a concern relating to the Loan Agreement, namely that the Claimant did not hold a consumer credit licence. Thereafter the parties discussed the removal of references to the Act in the Loan Agreement.

10. Further to the said discussion, the Defendant agreed, by letters dated 5 July 2012 and 13 September 2012, that "*I confirm that I am agreeable to …deletion of all references to the Consumer Credit Act 1974 from the text of the Loan Agreement. The Loan Agreement is not therefore regulated by the Consumer Credit Act 1974*".

11. On 24 September 2012 the Claimant received, and provided to the Defendant, legal advice from its solicitors, Messrs Bristows ("the Bristows Advice"), that the governing law of the Loan Agreement should be changed to that of the Cayman Islands, for the following reasons:

    a. The Loan Agreement was governed by English law and therefore English law consumer protection legislation (including the Act) may apply;

    b. Deleting the references to the Act from the text of the Loan Agreement would not be enough to take the Loan Agreement outside the scope of the Act;

c. The Loan Agreement was not an exempt agreement;

d. That if a creditor does not hold a consumer credit licence, a consumer credit contract falling within the scope of the Act will be unenforceable; and

e. That a waiver from the Defendant of any claim or defence that he may have arising from the fact that the Claimant was not licensed under the Act may protect the Claimant from claims as between the Defendant and itself but would not protect the Claimant from a finding that the Loan Agreement was unenforceable.

12. For the avoidance of doubt, it is the Claimant's position that, insofar as the Bristows Advice is inconsistent with the matters set out in paragraphs 7 and 8 above, it was incorrect and/or incomplete.

13. The Defendant refused to vary the Loan Agreement in the manner set out in the Bristows Advice. Funds continued to be advanced by the Claimant under the Loan Agreement until November 2013.

14. On 27 June 2014 Mr. Said Jahani, Mr. David Bennett and Mr. Hugh Dickson of Grant Thornton were appointed as Joint Provisional Liquidators ('JPLs') of certain entities in the Centaur group of companies. The Claimant forms part of the Centaur Group of companies; however, it was not put into a liquidation process as it was not insolvent and nor was it necessary to do so.

15. On 11 November 2014, the Claimant authorised representatives of Grant Thornton Australia Limited ("GTAL") and Mr. Zulfiqar Khan to act on behalf of the Claimant including but not limited to negotiating and agreeing to any future agreements between the Claimant and the Defendant.

16. On various dates between approximately December 2012 and March 2015 the Claimant (and, from around August 2014, GTAL on behalf of the Claimant) and the Defendant entered into negotiations concerning variation and/or replacement of the Loan Agreement. No such variation or replacement occurred. The Claimant does not provide particulars of the said negotiations in these Particulars of Claim because the majority of the communications were marked by the parties as, or alternatively were, "without

prejudice". Insofar as may be necessary, the Claimant will provide further particulars in the event that the parties reach agreement that without prejudice privilege has been or will be waived.

17. On 17 November 2016 Mr. Greg Fairley, Director of Capital Interchange Limited, contacted Mr Said Jahani and Ms Lisa Gibb of GTAL by email to inform them that he had been appointed by the Defendant to assist him in his negotiations with GTAL. Mr. Fairley was formerly an employee of the Centaur Group and had dealt with the Claimant's relationship with the Defendant in the course of his employment.

18. On 12 December 2016 Mr. Fairley provided to Mr. Jahani by email details concerning the current state of the Proceedings and indicated that further funding in the sum of £1.3m plus the cost of an ATE insurance premium was required.

19. On 21 December 2016 Mr. Jahani emailed Mr. Tom McDonald of Vannin Capital PCC ("Vannin"), providing summary details of the Proceedings and asking whether Vannin would be interested in co-funding the same.

20. Between January and February 2017 GTAL assisted Mr. Fairley and Vannin with the provision of information to allow Vannin to put forward a proposal to their investment committee.

21. On or around 7 April 2017 Vannin offered, and the Defendant accepted, outline terms as to its investment in the Proceedings.

22. On 18 April 2017 Mr. Jahani wrote by email to Mr. Fairley and the Defendant to indicate that Vannin had asked for a copy of the Loan Agreement and seeking the Defendant's permission to disclose it. Mr. Jahani noted that Vannin required the Loan Agreement for an inter-creditor deed which Vannin wanted the Claimant to sign as part of the funding agreement Vannin was seeking to agree with the Defendant. Mr. Jahani stated "*we need to come to a landing on exactly the final position between ourselves. In particular, if we reach an agreement I would like to ensure this is properly documented with some form of deed so there can be no further confusion or debate around each parties' entitlements if the case wins/settles*".

23. Mr. Fairley responded to Mr. Jahani by email on the same day, indicating that the Defendant gave permission to provide a copy of the Loan Agreement to Vannin and asking Mr. Jahani to supply a copy of the agreement he wanted the Defendant to enter into, stating that this "*should include calculations of amounts that Buttonwood would receive in accordance with the original agreement*".

24. Between 20 April 2017 and 25 May 2017, GTAL acting on behalf of the Claimant and the Defendant and Mr Fairley acting on his behalf, entered into negotiations concerning the content of the said agreement. The Claimant does not provide particulars of the said negotiations in these Particulars of Claim because the majority of the communications were marked by the parties as "without prejudice" and/or constitute without prejudice communications in substance. Insofar as may be necessary, the Claimant will provide further particulars in the event that the parties reach agreement that without prejudice privilege has been or will be waived.

D. THE DEED OF SETTLEMENT

25. On 25 May 2017 the Claimant and the Defendant executed a Deed of Settlement ("the Deed of Settlement"). Pursuant to the Deed of Settlement, the parties agreed, by sub-clauses 1(a) to (e):
    a. That they had entered into the Loan Agreement for the purposes of funding the Proceedings;
    b. That pursuant to the Loan Agreement the Claimant had advanced the sum of £1,423,288.57 (defined therein and here as "the Principal");
    c. That the Defendant had sought further funding for the Proceedings from Vannin, for which he had sought the Claimant's consent;
    d. That the parties are in dispute about their respective rights and obligations under the Loan Agreement; and
    e. That the parties have agreed, subject to the provision of the further funding from Vannin, to resolve their dispute on the terms of the Deed of Settlement with the intention that it should govern their rights and obligations in the future.

26. The Deed of Settlement was agreed to take effect subject to satisfaction of a condition precedent set out in clause 3.2, under the terms of which:
    a. The Defendant was to enter into an agreement with Vannin to fund the Proceedings with a limit of US$5m ("the Arbitration Funding Agreement"), in a form and substance satisfactory to the Claimant;
    b. The Claimant, Defendant and Vannin, amongst others, were to enter into a deed of priority establishing the order of priority of payment to each of the parties ("the Deed of Priority"), in a form and substance satisfactory to the Claimant; and
    c. The Defendant was to irrevocably instruct his lawyers instructed in the Proceedings, Messrs Fietta of 1 Fitzroy Square, London W1T 5HE ("Fietta") to pay any proceeds from the Proceedings in accordance with the Deed of Priority.

27. By clause 3.1, the Deed of Priority was agreed to have effect on and from the date the Claimant notified the Defendant that clause 3.2 had been satisfied or waived in the Claimant's sole and absolute discretion.

28. On or about 25 May 2017, the Defendant, Vannin and Fietta entered into the Arbitration Funding Agreement, under the terms of which:
    a. By clause 4.2, Vannin agreed to provide funding for the Proceedings up to a limit of US$5m;
    b. By clause 7.3, any proceeds of the Proceedings were to be dispersed according to the "waterfall" set out in sub-clause 7.3.1, in the following order of priority:
        i. Firstly:
            1. to Vannin in respect of the funds advanced by Vannin; and
            2. to Fietta in respect of certain fees payable under the terms of a conditional fee agreement entered into between the Defendant and Fietta;
        ii. Secondly, to the lawyers formerly instructed by the Defendant in the Proceedings, Messrs Saunders Law of 1-6 Essex St, London WC2R 3HY ("Saunders Law") in respect of the sum of £508,964.40;
        iii. Thirdly, to the Claimant in respect of the sum of £1,423,288.57 plus interest, as due under the Deed of Settlement (defined therein as "the

Buttonwood Receivable"), up to a cap of £1,663,606.00 (defined therein as "the Buttonwood Receivable Cap");

iv. Fourthly, to Vannin in respect of a Funding Premium as set out in clause 4.2 and to Fietta in respect of a success fee of £1m;

v. Fifthly:

1. to the Claimant in respect of (i) the success fee set out in clause 3.11, which recorded the sums agreed to be paid to the Claimant pursuant to the Deed of Settlement, namely the Win Only Funding Fee plus the Win Only Award Fee; and (ii) any part of the Buttonwood Receivable in excess of the Buttonwood Receivable Cap; and
2. to Saunders Law in respect of a success fee;

vi. Sixthly, the balance to the Defendant.

c. By clause 28.1, the Defendant and Fietta agreed to pay any proceeds from the Proceedings into Fietta's client Account and to distribute the same in accordance with the Arbitration Funding Agreement; and

d. By clause 28.2, it was recorded that the Defendant had given irrevocable instructions to Fietta to carry out the matters referred to in clause 28.1.

29. On or about 25 May 2017, the Claimant, the Defendant, Vannin, Fietta and Saunders Law entered into the Deed of Priority. The Deed of Priority recorded:

a. That Vannin were providing the Defendant with funding pursuant to the Arbitration Funding Agreement;

b. That the Claimant, Fietta and Saunders Law all separately held receivables against the Defendant in respect of the Proceedings; and

c. That each of Vannin, the Claimant, Fietta and Saunders Law agreed and (by clause 1.1) confirmed their respective priority of payment in terms identical to clause 7.3 of the Arbitration Funding Agreement.

30. By entering into the Deed of Priority and thereby giving its approval to clauses 7.3, 28.1 and 28.2 of the Arbitration Funding Agreement, the Claimant notified the Defendant that clause 3.2 of the Deed of Settlement had been satisfied or alternatively waived. Accordingly, from about 25 May 2017 the Deed of Settlement compromised the existing dispute between the parties as to their obligations under the Loan

Agreement and provided for the parties' obligations in relation to the funding of the Proceedings.

31. The Claimant also avers that, as stated at paragraphs 565 and 569 of the Final Award, the Defendant claimed, from the Arab Republic of Egypt, recovery of amounts due to the Claimant under the Loan Agreement and/or Deed of Settlement (although the Tribunal in its discretion decided that such costs should be borne by the Defendant).

E. CLAIM PURSUANT TO THE DEED OF SETTLEMENT

32. Pursuant to the Deed of Settlement the Defendant was required, by clauses 2.1, 4.1 and 4.2, on receipt of any proceeds derived from the Proceedings (including those realised by way of a settlement) ("the Proceeds"), whether those Proceeds were received by the Defendant or Fietta, subject to the terms of the Deed of Priority, to pay to the Claimant immediately:
    a. the Principal;
    b. interest on the Principal calculated at the rate of 16% per annum from the date of advance until the date of repayment in full, charged monthly, amounting to £5,153,854.24 as at 12 April 2022;
    c. the Win Only Award Fee of £1,539,557.00[1]; and
    d. the Win Only Funding Fee[2], in the sum of US$8,350,848.71 as at 12 April 2022, the same being denominated in US$ by reason of the settlement received by the Defendant (and amounting to £6,411,498.61 as at 12 April 2022, by application of the exchange rate of US$1.30248 to the £, based on that day's daily rate sourced from www.Oanda.com).

33. By clause 16.2 of the Deed of Settlement, the parties agreed that the courts of England will have exclusive jurisdiction to settle any dispute arising out of or in connection with the same.

[1] For the avoidance of doubt, the Win Only Award Fee was defined, in the Loan Agreement, as the Win Only Funding Fee.
[2] For the avoidance of doubt, the Win Only Funding Fee was defined, in the Loan Agreement, as the Win Only Award Fee.

34. As set out in paragraph 5 above, on or about November 2021 the Defendant and/or Fietta on the Defendant's behalf received a settlement in respect of the Final Award in the sum of US$99.5m. The Defendant has wrongfully and in breach of the said clauses 2.1, 4.1 and 4.2, failed to pay any of the sums set out in paragraph 31 above to the Claimant.

35. Further or alternatively, the sums particularised in sub-paragraphs 32(a) to (d) inclusive above are due and owing to the Claimant pursuant to clauses 4.1 and 9.1(a) and/or (b) of the Deed of Settlement.

PARTICULARS

(1) By clause 5.2 of the Deed of Settlement, the Defendant agreed to procure that Fietta would provide the Claimant with the information with respect to the Proceedings which it provides to Vannin contemporaneously to the provision of the same to Vannin;

(2) In November 2021 the Claimant made a request to Fietta for information about the Proceedings, which Fietta declined to provide, stating that their refusal was "*given the terms of the agreements and upon client instructions*";

(3) In the premises the Defendant instructed Fietta not to provide the said information, in breach of clause 5.2;

(4) Pursuant to clauses 9.1(a) and/or (b) of the Deed of Settlement, the Defendant's breach of clause 5.2 was an Acceleration Event, as defined therein, entitling the Claimant to issue a written notice (an Acceleration Notice) to the Defendant declaring that the Principal and accrued interest are immediately due and payable;

(5) By letter dated 19 January 2022 from the Claimant's solicitors to the Defendant, the Claimant issued an Acceleration Notice indicating that the sum of £6,329,911.99 (calculated as of 31 December 2021) was immediately due and payable;

(6) The Defendant has failed to pay the said sum.

36. The Defendant further agreed pursuant to clause 7(a) of the Deed of Settlement to indemnify the Claimant in respect, inter alia, of the Claimant's entire legal expenses in respect of any future actions, claims and proceedings in respect of any of the Released Claims which the Defendant may bring against the Claimant, which term included, by clause 6.1(a), any actual or potential actions, claims, counterclaims, causes of action, and/or rights of any kind whatsoever arising out of or directly or indirectly connected with the Loan Agreement. The Defendant further agreed pursuant to Clause 7(c) of the

Deed of Settlement to indemnify the Claimant in respect, inter alia, of any costs and expenses incurred by the Claimant in relation to or in connection with the Arbitration.

F. CLAIM PURSUANT TO THE LOAN AGREEMENT

37. Yet further or alternatively, if, which is denied, the Deed of Settlement is of no effect by reason of any failure to comply with clause 3.2 or any other reason, the Defendant is liable to the Claimant pursuant to the terms of the Loan Agreement.

38. Pursuant to the terms of the Loan Agreement, the Claimant advanced the total sum of £1,823,288.57, comprising the Principal plus the sum of £298,750.00 paid on the Defendant's behalf to Royal Luxembourg SOPARFI S.A. in respect of an ATE Premium, and a further £101,250.00 advanced in respect of a fund protection fee.

39. The Defendant was required to repay the said sum of £1,823,288.57, together with interest at 16% per annum by no later than the second anniversary of the Loan Agreement. The Defendant has failed to make the said repayment and accordingly the Claimant is entitled to and does claim the same, namely £1,823,288.57 plus interest of £7,124,040.25 (as at 12 April 2022), amounting to a total sum (as at 12 April 2022) of £8,947,328.82.

40. Further, the Defendant was required on successful conclusion of the Proceedings to pay to the Claimant the Win Only Funding Fee and the Win Only Award Fee and has wrongfully failed to pay the same. The Claimant is accordingly entitled to and does claim the same, amounting to the sums of £1,539,557.00 and US$8,119,897.20 respectively (the latter sum being denominated in US$ by reason of the settlement received by the Defendant, and amounting to £6,234,181.87 as at 12 April 2022, by application of the exchange rate of US$1.30248 to the £, based on that day's daily rate sourced from www.Oanda.com).

AND THE CLAIMANT CLAIMS:

(1) The sums due pursuant to the Deed of Settlement set out in paragraph 32;

(2) Alternatively the sums due pursuant to the Loan Agreement set out in paragraphs 39-40;

(3) Interest at 16% per annum pursuant to the Deed of Settlement and/or the Loan Agreement as applicable;

(4) Further or other relief;

(5) Costs on an indemnity basis as set out in paragraph 36, alternatively costs.

Statement of Truth

The Claimant believes that the facts stated in these Particulars of Claim are true. The Claimant understands that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth. I am authorised by the Claimant to sign this statement.

Signed……

Position: Partner, Willkie Farr & Gallagher (UK) LLP

IAIN MACDONALD
Gough Square Chambers
11 May 2022

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Claimant

- and –

MR MOHAMED ABDEL RAOUF BAHGAT

Defendant

PARTICULARS OF CLAIM

Claimant's address for service:

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