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Case No: HC-2014-000426

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
CHANCERY DIVISION

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

Date: 24 May 2019

Before :

John Kimbell QC
(sitting as a Deputy Judge of the High Court)

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Between :

(1) PHYTOS STAVRINIDES **(2) STOVACO HOLDINGS LIMITED** **(3) BELLERIVE CORPORATION**	**Claimants**
- and –	
BANK OF CYPRUS PUBLIC COMPANY LIMITED	**Defendant**

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- -

ELDONS BERKELEY SOLICITORS for the **Claimants**
JAWDAT KHURSHID QC and CLARA BENN (instructed by **SIDLEY AUSTIN LLP**) for the **Defendant**

Hearing dates: 5, 6, 7, 8, 11 and 13 March 2019

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APPROVED JUDGMENT

John Kimbell QC (sitting as a Deputy Judge of the High Court):

INTRODUCTION

1. In early 2013, Cyprus found itself in the midst of a financial crisis. On 16 March 2013, a €10 billion bailout by the European Commission, the European Central Bank and the International Monetary Fund (collectively referred to at the time as 'the Troika') was announced. The bailout was rejected by the Cypriot parliament because of the stringent terms attached. Revised terms for the bailout were eventually agreed on 25 March 2013. One of the terms of the revised bailout was that the country's second-largest bank, the Cyprus Popular Bank, usually known as Laiki Bank ('**Laiki Bank'**) / ('**the Bank**'), was obliged to close.

2. By a decree published in the Official Gazette of the Republic of Cyprus on 29 March 2013 entitled "Sale of Certain Operations of Cyprus Popular Bank Co Ltd Decree of 2013" ('**the Decree'**) almost all of the assets of Laiki Bank, as they stood at 06.10 a.m. on 29 March 2013, were transferred to the Defendant ('**BOC**').

3. In England, Laiki Bank traded as Laiki Bank UK. The Bank operated as a branch of an overseas bank rather than a subsidiary incorporated in England. Its head office was in Mayfair. Its main branch was its Business Centre located in Finchley, North London but it also operated from branches in Birmingham and Palmers Green.

4. In these proceedings, the Claimants seek an order for specific performance to compel BOC to honour the terms of an agreement set out in a letter dated 15 March 2013 ('**the 15 March Letter'**), alternatively damages for breach of that agreement. On the face of it, the letter, which is on Laiki Bank headed note paper, confirms that Laiki Bank is prepared to accept the sum of £1.65 million (from the proceeds from the sale of a property) in full and final settlement of the indebtedness of the Claimants on six accounts. There is no dispute that if it is enforceable, the commercial effect of the 15 March Letter would be that the Bank agreed to write-off approximately £3 million of secured borrowing in the name of the Claimants.

5. If the 15 March Letter is genuine and binding on Laiki Bank, BOC accepts that it is legally obliged to honour it.

FACTUAL BACKGROUND

6. The First Claimant ('**Mr Stavrinides**') is a property developer.

7. The Second Claimant ('**Stovaco**') is a company incorporated in Cyprus in which Mr Stavrinides has a 25% share along with his sister. Mr Stavrinides' brother owns the other 50%. Stovaco owned a property on Mount Pleasant Road in London N17.

8. The Third Claimant ('**Bellerive**') is incorporated in the Seychelles and is 100% owned by Mr Stavrinides. Bellerive owned a development property in Bruce Grove, London N17.

9. In 2005, Stovaco became the one third partner in a limited liability partnership, Fritzkriston LLP ('**Fitzkriston**'). The other two thirds were owned by a company controlled by two brothers, Anthony and Christos Andreou.

10. The Claimants each had two accounts with Laiki Bank. The facilities associated with these accounts were treated by the bank as forming a linked group, usually referred to as the Stavrinides Group. Mr Stavrinides first applied for a facility for himself and Stovaco in July 2004.

11. The facilities offered by the Laiki Bank to the Stavrinides Group were for the purpose of providing funds for the development of properties in North London. Among those properties were development sites in Courtauld Road London N19 ('**Courtauld Rd**') and 3-9 Victorian Grove London N16 ('**Victorian Grove'**). Both of these sites were originally owned by Stovaco but they were acquired in 2006 by Fritzkriston with the assistance of a loan from Laiki Bank. That facility was secured by first legal charge over both properties and a cross-corporate guarantee from Stovaco.

12. Mr Stavrinides' home in Barnet is also subject to a second legal charge, which stood as additional security for his personal borrowing as well as that of Stovaco and Bellerive (via corporate guarantees).

The 2009 Facilities

13. By 2009 the following facilities ('**the 2009 Facilities'**) with a total value of £4.95 million were in place:

    a. A £745,000 bridging loan facility for Mr Stavrinides
    b. A £2.45 million bridging loan facility to Stovaco
    c. A £540,000 bridging loan to Bellerive
    d. A £1,215,000 bridging loan for Fitzkriston

    For each facility, there was a facility letter signed on behalf of Laiki Bank by both the Head of the Business Centre, Mr Peter Yianni, and by Mr Antoniou, a relationship manager.

14. The facilities each had a maturity date in the usual way. The only means of repayment of the 2009 Facilities was by the sale of the properties upon completion of the developments. However, the projects were all delayed, mainly due to difficulties with obtaining planning permission.

15. By March 2011, the 2009 Facilities had lapsed and the Bank began imposing excess charges and default rates of interest. Courtauld Rd was eventually sold in October 2011. This removed Fitzkriston's own direct liability but it remained a guarantor of Stovaco's remaining debt of £1.65 million.

16. In April 2012, contracts were exchanged for the sale of Victorian Grove. The purchase price was £2.75 million. The buyer was a company called MIS Properties Limited, owned by a Mr Bambos Charalambous. The contemporaneous exchanges between the Bank and the solicitors appointed by Fitzkrison made it clear that the proceeds of sale were to be applied to clear Fitzkriston's direct liabilities and reduce Fitzkriston's contingent liability as guarantor of Stovaco.

17. The sale of Victorian Grove did not proceed smoothly to completion. Completion finally occurred on 31 July 2013.

18. The events in issue in these proceedings occurred in the period 5 March 2013 – 17 September 2013.

The status of the 2009 Facilities in March 2013

19. Following the sale of Courtauld Rd but with the completion of the sale of Victorian Grove still outstanding, the sums outstanding on the Claimants' accounts as at 15 March were as follows:

Account Holder	Acc No.	Account Type	Balance (DR)
Mr Stavrinides	90027653	Loan	£884,782
	90018200	Overdraft	£73,973
Stovaco	90020019	Loan	£2,606,764
	1518012	Overdraft	£299,360
Bellerive	90027652	Loan	£660,485
	90027651	Overdraft	£101,408
Total			**£4,626,776**

20. The table shows clearly that if the 15 March Letter is valid and enforceable, Laiki Bank agreed to write off the remaining £3 million of secured debt in return for receiving £1.65 million.

The 15 March Letter

21. The original of the 15 March Letter was produced at trial. It is common ground that it was signed by Mr Antoniou who was employed as a relationship manager at the Business Centre in Finchley to which I have already referred. A copy of it marked 'C1' is attached to this judgment.

22. In September 2013, a copy of the 15 March Letter was found in the files of Laiki Bank. Two further copies were found at the same time. The first has a manuscript addition, a

short signature and a separate initial. The signature is small and in has a cross in it; the initial is a large swirl in the shape of an 'e'. A copy of this annotated version of the 15 March Letter is attached marked 'C2'. A further copy of the letter without the additional swirled 'e' signature was also found in the Laiki Bank's files. This is attached as 'C3'. It is evident that the C2 is a photocopy of C3 to which the swirled 'e' initial has been added.

23. The words added in manuscript on 'C2' and 'C3' are:

"as per conversation and confirmation with GMUK"

In his evidence, Mr Antoniou identified the small initial and the words added in manuscript on both C2 and C3 as his. He says he initialled the manuscript words to verify the approval of the General Manager of Laiki Bank at the time, Mr Argyrou. This approval was said to have been obtained by telephone. Mr Argyrou denies that he had any conversation about the proposal in the 7 March Letter or the 15 March Letter with Mr Antoniou.

24. The swirl in the shape of an 'e' on C2 is remarkably similar to the short form initial signature of Petros Yianni, the both Head of the Business Centre and Mr Antoniou's line manager at the time. Mr Yianni denies that initial on C2 is his. His evidence was that he had never seen the 15 March Letter before he left Laiki Bank on 8 July 2013 and had no knowledge of the agreement set out in it.

25. The 15 March Letter refers to two earlier letters said to have been received by Laiki Bank from Mr Stavrinides, one dated 5 March 2013 ('**the 5 March Letter'**) and the other dated 7 March 2013 ('**the 7 March Letter'**) relating to the same accounts. A copy of the 5 March Letter, marked 'A', is attached to this judgment. A copy of the 7 March Letter, marked 'B', is also attached. I will refer to the letters of 5, 7 and 15 March collectivley as '**the March Letters**'.

The Claimants' case

26. The Claimants' case is that the March letters are all genuine. The Claimants say that the 7 March Letter and the 15 March Letter together evidence a valid and binding agreement between the Claimants and Laiki Bank which was approved by the then General Manager, Mr Argyrou and the Head of the Business Centre, Mr Yianni and which they are entitled to enforce against BOC.

BOC's case

27. BOC's case is that the March Letters are all forgeries which were planted in the files of Laiki Bank sometime between 31 July 2013 and 17 September 2013. BOC says that neither Mr Antoniou nor Mr Yianni nor Mr Argyrou (nor any combination of them) had the authority to agree to the proposal in the 7 March Letter or issue the 15 March Letter. BOC alleges that the annotations on the C2 and C3 copies of the 15 March Letters falsely create the impression that Mr Yianni and Mr Argyrou approved the agreement set out in the 15 March Letter.

28. BOC relies on an internal memorandum dated 31 July 2013 ('**the July Memo**') as describing the true position as between BOC and the Claimants. The July Memo appears to be signed by Mr Antoniou himself as well as two more senior bank employees. The July Memo appears on its face to review the status of the Claimants' accounts on the day when the sale of Courtauld Rd completed and the sale proceeds were received. It makes no mention of the agreement to write off the Claimants' remaining indebtedness. On the contrary, the July Memo contains a recommendation for a 3 month extension of the Claimants' then facilities. This proposal is approved by the acting UK General Manager, Mr Costa, subject to conditions. A copy of the memo is attached marked 'D'. If it is a genuine document signed by Mr Antoniou, it flatly contradicts the Claimants' case.

The counterclaim

29. If the 15 March Letter is not binding on BOC, then BOC has a counterclaim for the sums due on the Claimants' accounts. The quantum of those claims is not admitted. As

at 28 February 2019, BOC's case is that the total indebtedness on the Claimants' accounts stood at £5,520,586.

The Claimants' response on lack of actual authority and the July Memo

30. The Claimants' response to BOC's case on lack of actual authority is that they are entitled to rely on the ostensible or apparent authority of Mr Antoniou.

31. The Claimant' response to the reliance by BOC on the July Memo is that it is a fabrication. The Claimants deny that Mr Antoniou signed the memo or wrote the second page.

Procedural matters

32. At the beginning of the trial, Mr Stavrinides sought an adjournment. He said that the Claimants had not been able to afford counsel's brief fee for trial. He said that he believed that some money might arrive from family members in Cyprus in a week or two which would enable him to brief counsel. He also indicated that he wished to argue that the Decree was invalid under Cypriot law and that he had recently attended a meeting which caused him to have doubts about BOC's title to sue in other respects. He asked for time to investigate both matters. No draft amendment to the defence to BOC's counterclaim was presented.

33. I refused the application. The proceedings were started over five years ago. The trial date had been notified to both parties as long ago as 12 September 2017 and both parties had recently attended a pre-trial review (represented by counsel) at which detailed directions were given for trial. In these circumstances, I held that it was not in accordance with the overriding objective for the trial to be adjourned at the last minute because of funding issues. I also held that it was far too late to ask for time to investigate potential issues about BOC's title to sue on the counterclaim.

34. On the second day of trial, having been shown two powers of attorney, I granted Mr Stavrinides permission under CPR 39.6 to represent Stovaco and Bellerive.

35. On the fourth day of the trial I granted Mr Swead of Eldons Berkeley Solicitors a special right of audience to represent the Claimants pursuant to the inherent jurisdiction of the Court and para. 192 of Schedule 3 of the Legal Services Act 2007. Although Mr Swead does not have higher rights of audience, he has had conduct of the case on behalf of the Claimants and was in a good position to assist the Court and the Claimants. Bearing in mind the guidance provided in Clarkson v Gilbert [2000] 2 F.L.R 839, I considered it appropriate to grant the application for the purposes of the trial. Mr Swead handled the cross-examination of the Defendant's witnesses with great skill and delivered admirably concise closing submissions on behalf of the Claimants.

36. Finally, I granted BOC permission to re-amend its defence to bring its pleaded case fully into line with the detailed case set out in its written opening submissions. The application was not opposed by the Claimants.

THE PRINCIPAL ISSUE

37. The principal issue for determination was thus whether there was a binding agreement reached between the Claimants and Laiki Bank in the form evidenced in the 15 March Letter. I say 'evidenced' because the Claimants' pleaded case was that the agreement recorded in the 15 March Letter was partly agreed orally at a meeting on the Bank's premises between Mr Antoniou and Mr Stavrinides. By the time of oral closing submissions, the Claimants' case had become somewhat modified to the agreement having been discussed orally but confirmed in writing in the form of the 15 March Letter. It was common ground that Laiki Bank had received the £1.65 million referred to in the letter on 31 July 2013.

THE FACTUAL WITNESS EVIDENCE

38. For the Claimants, the following witnesses were called:
    a. Mr Stavrinides
    b. Mr Panayiotis Antoniou
    c. Mr John Nicholas

39. The following witnesses were called by BOC:
    a. Mr Sophoklis Argyrou
    b. Mr Petros Yianni

c. Mr Panayiotis Georgallis

d. Ms Helena Karayiannis

Mr Argyrou

40. In 2013, Mr Argyrou was the UK General Manager of Laiki Bank. As such, he was the most senior person employed by the bank in the UK. He had worked for Laiki Bank for 14 years. He is now the Managing Director and Chief Executive Officer of Bank of Beirut (UK) Ltd. He was based in the Bank's head offices in Mayfair. The head office oversaw the work of the Bank's 167 employees. Mr Argyrou was an impressive witness. His evidence was measured and precise. He answered all questions put to him in a straightforward manner. He had a very clear recollection of the period in question.

41. He gave a vivid account of the two week crisis period from 15 March 2013 to 29 March 2013. During that period, as the terms of the bailout were negotiated between the Troika and the Cypriot Government, he had to report daily to the Bank of England on the precise state of Laiki Bank's finances. Laiki Bank's licence to trade in the UK was eventually withdrawn on 29 March 2013. His employment formally ceased on 9 May 2013 but he did not return to his office after 29 March 2013. After that date he was absent from the office on sick leave and annual leave.

Mr Yianni

42. Mr Yanni was Head of Laiki Bank's Business Centre in Finchley. Mr Yianni had started working for Laiki Bank in 2004. He transferred to Bank of Cyprus UK Limited on 8 July 2013. He was Mr Antoniou's line manager. His evidence was also measured and straightforward. Notwithstanding the nature of the allegations in this case, he did not attempt to bolster BOC's case by attacking the character of either Mr Stavrinides or Mr Antoniou. Mr Yianni described Mr Antoniou as "a likeable chap" and "a good relationship manager". His only criticism of him was the he "was not the most efficient" manager. Mr Yianni accepted that there was anger and sadness amongst the staff when it was announced that Laiki Bank had to close as part of the EU bailout. Mr Yianni struck me as a credible and honest witness.

Mr Georgallis

43. Mr Georgallis was Head of Branch Banking for Laiki Bank until it ceased to trade. He then became a Corporate Recoveries Manager. His evidence was limited to explaining where and in what circumstances the March Letters and the July Memo were found in the files of Laiki Bank. His evidence was straightforward and of assistance to the court.

Ms Karayiannis

44. Ms Karayiannis worked as Deputy Head of the Business Centre from 2005 until 30 August 2013 when she left the bank. She had only limited contact with the Claimants' accounts. Mr Antoniou reported to her from 8 July (when she took over from Mr Yianni as Head of the Business Centre) until he left on 31 July. She had signed the July Memo and was able to assist the Court in relation to it. She now works for another bank. She was a very precise and careful witness. I found her to be an honest and credible witness.

Mr Antoniou

45. Mr Antoniou began working for Laiki Bank in 1997 in the Harringay branch. He moved to the Finchley Road Business Centre in 2003. His wife also worked for the Bank, in Palmers Green. Both were made redundant when Laiki Bank closed in 2013. He admitted in cross-examination that this turn of events had left him disgruntled. Although it is appropriate to be cautious about what can safely be gleaned from a witness' demeanour, there is no denying that Mr Antoniou looked extremely uncomfortable in the witness box. Mr Khurshid QC, for BOC, accurately described Mr Antoniou's demeanour as sullen and his mode of answering questions as taciturn. He seemed to me to want to say as little as possible. The overall impression I gained of him was of someone who wanted to distance himself from the events in question as much as possible. Mr Swead's description of Mr Antoniou as 'measured' was not entirely inappropriate but did not really capture the essence of his demeanour.

Mr Stavrinides

46. Mr Stavrinides grew up in Cyprus but came to London in the 1970's where he has lived ever since. He is a businessman. He has fallen out both with his former business partners, Chris and Anthony Andreou and his friend Mr Bambos Charalambous. He has

been engaged at various times in litigation with them and their companies. Mr Stavrinides patiently endured one and a half days of detailed cross-examination. He listened carefully to questions and answered most of them directly and often with some humour. He was not evasive and at times demonstrated a remarkable memory for the detail of the finances for his various property development ventures. I also accept that he felt genuinely aggrieved about the default interest and other charges which had been applied to the Claimants' accounts.

47. The problem with his evidence was not so much the manner in which he answered questions but the substance of some of his assertions. All too often, assertions of his were contradicted either by his own statements made in other proceedings or by contemporaneous official documents such as Land Registry records or e-mails. I was left with the uncomfortable impression by the end of his evidence that whilst on a day to day basis Mr Stavrinides was an honourable and very likeable man, he was prepared to make assertions without much, if any, regard for the truth when he felt it best served his interests to do so. The most egregious example of this was his evidence that he had been on a "a very long holiday" in the summer of 2013 which lasted until "the end of September". It subsequently emerged that he had in fact been in London witnessing the service of court proceedings on 31 July 2013, had been in a court hearing with counsel before a Queen's Bench Master in mid-August 2013 and had returned from holiday on 17 September 2013.

48. Another example was his assertion in the proceedings brought against Mr Charalambous' company and Lorrells Solicitors that he had a "general authority to act for Fitzkriston as well as Stovaco" at a time when as he well knew the partnership was deadlocked. When confronted in cross-examination with this contradiction Mr Stravrinides did not seek to explain it away as a misunderstanding or a mistake.

Mr Nicholas

49. Mr Nicholas made a surprise appearance mid trial. He had not been scheduled to appear at all. However, in the course of cross-examination Mr Stavrinides said that his 7 March Letter had been written in Mr Nicholas' house one evening on Mr Nicholas' home computer. Given BOC's case that this letter was not genuine, it seemed rather

surprising that the involvement of a solicitor in the drafting of had not been referred to in correspondence, in a statement of case or in evidence.

50. Mr Swead sought permission to serve a witness statement from Mr Nicholas, who is at the same firm as Mr Swead. The Bank did not object to this course and Mr Nicholas was interposed at the end of the Defendant's evidence. It was not a comfortable experience for Mr Nicholas because he was confronted with a Solicitors Disciplinary Tribunal finding from 1995 that he had turned a blind eye to a mortgage fraud and had been struck off for a period of 7 years.

51. Mr Nicholas has known Mr Stavrinides for over 30 years and has socialised with him. Mr Nicholas' evidence was at times somewhat vague and my impression was that at times he was torn between assisting the court and assisting Mr Stavrinides. However, for reasons which I set out below, I accept his evidence that he assisted Mr Stavrinides with the 7 March Letter.

Mr Charalambous

52. No witness statement was served in respect of Mr Charalambous. However, BOC relied on a recording of phone call of a conversation between him and Mr Yianni which took place last year. The conversation was partly in Greek and partly in English. A transcript of the conversation was agreed between the parties. I also listened to the audio file. It is clear from the tone and content of the conversation that Mr Charalambous was not aware that the conversation was being recorded.

53. In the course of the conversation, Mr Charalambous said this:

> "I know exactly what he did. He found someone who was working at the bank. He found a disgruntled employee. Phytos gave him ten thousand to go and make a letter to accept one million six hundred and fifty thousand in full and final settlement of all these debts".

Mr Charalambous' characterised the Claimants' claim in these proceedings as "absolutely and utterly fucking dodgy" and described Mr Stavrinides as a "big rascal".

54. Mr Swead urged me to give little if any weight to this recording given (a) no witness statement had been served repeating the assertions and (b) Mr Charalambous was involved in litigation against Mr Stavrinides and so had every incentive to seek to damage him.

THE EXPERT EVIDENCE

55. Both parties instructed handwriting experts. The Claimants instructed Mrs Margaret Webb and the Defendants instructed Mr Michael Handy. The two experts agreed that Mr Antoniou signed C1. It was surprising that they were asked to provide on opinion on this point because it was not in fact in issue. The also agreed that C1 was on original Laiki Bank stationary.

56. Mr Handy concluded that there was 'very strong' evidence that Mr Antoniou signed the July Memo and 'strong evidence' that Ms Karayiannis did. Mrs Webb considered the evidence in relation to the July Memo to be inconclusive.

57. Mr Handy was asked to express a view on the 'e'-shaped swirl on C2 but was unable to reach a conclusion on whether it was made by Mr Yianni or not.

58. Neither expert was called to give oral evidence.

STANDARD OF PROOF

59. Mr Khurshid submitted on behalf of BOC that the standard of proof to be applied even when considering allegations of fraud, forgery and bribery was that of the balance of probabilities. He referred me to the recent judgment of Picken J in Kazakhstan Kagazy v Baglan [2017] EWHC 3374 (Comm) at paras 156 – 159 and the speech of Baroness Hale in In re S-B (Children) [2009] UKSC 17, [201] 1 AC 678 at paras. 6 – 13.

60. Mr Swead did not dispute this in terms but helpfully referred me to a number of authorities in which judges are remined to approach allegations of fraud and misconduct with great care. In particular, he relied on the comments of Carnworth LJ in Mohammad Jafari-Fini v Skillglass Ltd [2007] EWCA Civ 261. In that case, Carnworth LJ said that "When faced with rival explanations … one innocent and the other not, unless the court is concerned with known fraudsters, the court should start

with a strong presumption that the innocent explanation is more likely to be correct". He also helpfully referred me to the guidance on how to approach issues of this type provided by Eder J. in Otkritie International Investment Management Ltd v Urumov [2014] EWHC 191 (Comm) at [84] – [91].

ANALYSIS

61. In his evidence, Mr Argyrou referred to Laiki Bank as a 'community bank'. He meant by this that it is a bank whose purpose was to serve the needs of the Cypriot business community. His evidence was that the Bank had around 5,000 customers and 167 employees in 2013. He said that he spoke to Mr Yianni nearly every day.

62. There was evidence that the customer-manager relationships at Laiki Bank were in certain respects more informal than with traditional High Street Banks. Mr Yianni admitted, for example, that he would sometimes leave the Business Centre to play backgammon with clients in a café over the road.

63. At the same time, I heard evidence that the procedures within Laiki Bank were in some respects rather formal and bureaucratic. Mr Argyrou said that strict procedures were in place for fraud protection purposes. For example, internal credit approval forms were always signed by more than one person. The approval form for the original facilities granted in 2004 is, for example, internally signed-off by no less than eight people.

64. According to the unchallenged evidence of BOC's witnesses, it was not the practice in the Bank for documents to be emailed back and forth internally. Instead, each person would work on a document such a memorandum or credit application and then print it out and pass it to the next person via internal post. The internal procedure for approving new loans or amendments to existing facilities was therefore rather slow.

65. The levels of internal authorisation were low. The evidence of Mr Argyrou, on which he was not challenged in cross-examination, and which I accept, was that he was the only person at Laiki Bank permitted to write off customer debt. Mr Yianni and Mr Antoniou could not authorise debt write off at any level and even Mr Argyrou could only authorise a debt write off-of up to £10,000. Above that level, he had to produce an

application and refer the matter to Cyprus for approval. Mr Argyrou's evidence, which I also accept, was that write-offs in excess of £250,000 required the approval of the International Executive Committee in Cyprus.

66. Mr Khurshid was able to demonstrate by reference to sequences of documents in the trial bundles how the internal facility approval system within Laiki Bank operated. The approval procedure for a new facility or a significant variation to an existing facility was a four-stage process:

> **Stage 1**: The executive team would prepare a credit application. This sets out the current state of the accounts, what is being asked for and why. It is signed by three people at the Business Centre, typically the day to day relationship manager, the head of the Business Centre or his deputy and one other.
> **Stage 2**: The application is sent to senior management for comment / approval. They comment and initial in manuscript. Sometimes these comments are made on the application itself or sometimes in a separate document. If the senior management in Mayfair approve it goes to Cyprus.
> **Stage 3**: A Divisional Credit Evaluation
> **Stage 4**: A Loans Committee meeting in Cyprus.

Stages 1 and 2 were completed in the UK. Stages 3 and 4 took place in Cyprus. All communication with Cyprus was via the Mayfair Head Office.

67. Based on the examples I was taken to, the four-stage procedure typically took a few weeks to complete. The customer would know that the new facility or amendment had been officially granted when a new facility letter was sent out for signature. This offer letter would be signed on behalf of the bank by two managers and has a space the customer to accept by signing and returning the letter. The examples of the offer letters I was shown would refer both to the standard terms and conditions of the bank and any special conditions (such as security).

68. If the facility required security to be provided, that was something which was dealt with by the bank's legal department and external solicitors. Mr Argyrou's evidence which was confirmed by Mr Antoniou, which I accept, was that there was a legal team of a

dozen people based at the Finchley Business Centre, headed up Katie Michael-Minas, a qualified solicitor.

69. The bank's internal procedures were all very familiar to Mr Antoniou. He accepted in cross-examination that the financial level at which approval from Cyprus needed to be obtained was "quite low".

70. In an email exchange in April 2012, Mr Yianni had reminded Mr Antoniou of the Bank's attitude to internal limits:

> "You are well aware that the Bank's discretionary limits are tightly controlled and head office have no sympathy with us on this case"

Mr Antoniou's response was "I know discretionary limits are tightly controlled …"

71. It is apparent that the way in which the 15 March Letter and the annotated versions of it found in the Bank's files were produced do not comply with the Bank's own procedures in any material respect. For example:

    a. No internal memo or application was produced setting out the proposal to which it is a response. The sum to be written off was not even calculated, let alone explained.
    b. There is no record of any consideration of the pros and cons of the proposal by anyone at any level of management.
    c. The purported approval of "GMUK" is obtained by telephone and certified by Mr Antoniou rather than being indicated by a signature of Mr Argyrou himself.
    d. The proposal was not submitted to anyone in Cyprus for approval.
    e. Neither of the apparent signs of internal UK approval are dated.
    f. The 15 March Letter is not in a standard format signed by two managers.

72. To this list one could also add that, given the context of the write-off is a threat of proceedings and the proposal is said to be a "full and final settlement", it is surprising that there is no reference any comments being sought from Laiki Bank's in-house Legal Department.

73. Given the degree of disparity between the Bank's usual documentary procedures and Documents C1 – C3, it was in my judgment not surprising that all four of the witnesses called by BOC said that C1 – C3 made no sense to them at all.

74. As to the apparent evidence of authorisation or confirmation on C2 and C3, I have no hesitation whatsoever in accepting Mr Argyrou's evidence that what is set out in the 15 March Letter was never discussed with him.

75. I also accept Mr Yianni's evidence that he did not see the 15 March Letter before he left the Bank or discuss or approve its contents. I accept that the initial on C2 is not his.

76. I reject Mr Antoniou's evidence that he spoke to Mr Argyrou about the proposal and that he approved it. There was no reason for Mr Argyrou to depart so radically from the Bank's internal procedures. Whilst it is true that there was great uncertainty in March 2013 about the fate of the Bank as a result of the ongoing financial crisis in Cyprus, this meant that Mr Argyrou found himself under more, rather than less scrutiny.

77. In the two week period between 15 March and 29 March, in particular, Mr Argyrou had to account on a daily basis to the Bank of England. It is inconceivable, in my judgment, that in these circumstances he would have agreed to write off £3 million worth of debt without referring the matter to Cyprus, let alone do so over the phone with Mr Antoniou in the way apparently recorded in C2 and C3.

78. Mr Swead sought to persuade me that Mr Argyrou may have orally agreed to approve the write off because he was "extremely busy". If the Claimants' case had been that a relatively small write off had been agreed in circumstances which deviated to a modest extent from standard procedures, it may have gained some traction but the sum that they are submitting was written off by Mr Argyrou was a significant proportion of the Bank's net profits and 300 times his own limit of authority and the deviation from internal procedure was wholesale. Furthermore, the fact that Mr Argyrou was busy does not begin to explain why there was no analysis of what was being proposed for Mr Argyrou to consider, why he would not refer it to Cyprus for a decision or why the issue was not referred to the Bank's lawyers.

79. I also reject the suggestion that unspecified health problems somehow impaired Mr Argyrou's judgment and that his evidence was given out of loyalty to Laiki Bank.

80. The above considerations provide very strong support BOC's case that the manuscript statement initialled by Mr Antoniou on C2 and C3 is a fabrication and the swirl added on C2 and is a forgery. Both annotations were clearly designed to create the impression of independent approval to someone not aware of the standard practices of the Bank.

81. When confronted with the disparity between what is shown on C2 and C3 and the procedures of Laiki Bank which he was well of, Mr Antoniou's explanation was that "These were not normal times". However, the contemporaneous evidence of how the Bank continued to operate demonstrates that at least as far as its own internal procedures were concerned nothing had changed even after the bailout. It is correct that following the withdrawal of the Bank's licence to trade in the UK, there must have been a great sense of insecurity and unhappiness internally at the bank with people leaving and no new customers were sought. However, in relation to the handling of existing accounts, it is clear from the documents in the trial bundle that the bank continued to follow its normal procedures. For example, on 13 June 2013, Mr Antoniou himself prepared a typical internal memo on another customer reporting on the state of accounts and making a recommendation which was then passed to Mr Yianni and then Mr Costa for approval.

82. It is not just the way in which the 15 March Letter appears to have been handled which was so at odds with procedures but also its content which BOC points to as evidence that it is not genuine.

83. The £1.65 million expected from the sale of Victorian Grove was a fully secured sum. The Bank submits that to write off debts totalling £3 million on six accounts in return for receiving the proceeds from the sale of secured property makes no commercial sense. I accept that submission. It might have made sense, if the validity of the security had been challenged in some way but that was never suggested. For Mr Antoniou to assert as he did in his witness statement that the deal offered in the 7 March Letter and accepted in the 15 March Letter was a "good deal" for Laiki Bank was nothing short of

ludicrous. Unsurprisingly, in cross examination Mr Antoniou was not able to justify this assertion.

84. Having considered both how the 15 March Letter was handled up the point it was apparently signed and the nature of the transaction it appears to describe, I now turn to how it was handled by Mr Antoniou after the date which it bears.

85. I accept the evidence of Mr Yianni and Ms Karayiannis that Mr Antioniou did not mention the existence of the 15 March Letter to either of them at any time before he left Laiki Bank on 31 July 2013. He had every opportunity and every reason to do so. In an e-mail sent on 5 July 2013 to Avraam Costa and Ms Karayiannis, he referred to his intention to prepare memos for a number of bank customers including the "Stavrinides/Bellerive/Stovaco" group.

86. Mr Antoniou accepts that in accordance with his intention expressed on 5 July, he prepared the first page of the July Memo but says he did not prepare the second page or sign it. I reject that evidence for the following reasons:

    a. Given his last day working at the Bank was 31 July, it was inherently likely that as the relationship manager for the Stavrinides/Bellerive/Stovaco connection, he would want to complete and sign the memo he had promised to prepare before passing it to Ms Karayiannis for her approval and handing over responsibility to his successor.

    b. It must have been clear at least a few days beforehand that the completion of the sale of Victorian Grove was (finally) due to take place on Friday 31 July. It was originally due to take place on 23 July 2013 but had been delayed. A standard undertaking had been sought by Mr Antoniou from the solicitor handling the sale to remit £1,650,77.67 to Laiki Bank so it made sense to review the connection upon completion that week.

    c. I accept Ms Karayiannis' evidence that she signed the Memo on 31 July 2013 as recorded by her in manuscript on the document itself, which is something she commonly did.

d. There is no reason to doubt that Mr Costa also signed and dated his comments on 31 July 2013.

The overwhelming contemporaneous evidence points to the July Memo being exactly what it appears to be, namely, an internal assessment of the state of the Claimants' accounts and a recommended course of action for the next three months.

87. I found Mr Antoniou's attempt to distance himself from the July Memo and to cast doubt on its genuineness wholly unconvincing. He first sought to make something of the fact that there was a difference in the appearance of the page numbering on page 1 and page 2. This proved to be a bad point because Mr Antoniou was taken to a number of internal memos (including other memos signed by him) where an identical change in font and style occurred. It appeared to be a quirk with the word processing macro used at Laiki Bank. Far from casting doubt on the genuineness of the July Memo, this feature tended to show it was produced in the same way as all the others.

88. He also gave evidence that he couldn't have signed it because he left early that day to go to a passport office and therefore could not have known that funds had arrived before he left. This too was a bad point. Ms Karayiannis confirmed that she remembered Mr Antoniou left early that day because she was annoyed about it. However, that is no reason to suspect that he could not have been informed that morning that the sale had completed and signed off the report. It is not at all unusual for conveyancing solicitors to notify the parties and any bank holding security that a sale has completed with actual receipt of funds being confirmed a few hours later. Given the delays with the completion of the sale, it is inherently likely that the bank would have chased for news and been glad to record it in the memo as soon as it was received.

89. The only oddity about the July Memo is the Bank's own evidence that it was not located until 5 December 2014 and that it was found in a folder by chance next to a photocopier. However, as Mr Georgallis said in evidence, there was a shortage of staff at Laiki Bank after it closed its doors to new customers and some staff had to be brought over from Cyprus whilst experienced staff left to take up new jobs. It is not surprising if files became misplaced in these circumstances. In any event, the temporary

mislaying of the July Memo falls far short of providing any reason to doubt the authenticity of its contents, particularly after having heard convincing oral evidence from Ms Karayiannis who signed the document.

90. Mr Swead also submitted that it was suspicious that BOC had been unable to produce the electronic originals of the July Memo or the 15 March Letter. The point cut both ways in that the Claimants could not produce electronic originals of the 5 or 7 March Letters either. The fact that electronic originals of documents are no longer available did not in my judgment take the case of either side any further forward.

91. The fact that Mr Antoniou is the joint author of a memo which concludes by recommending that the facilities granted to Mr Stavrinides, Stovaco and Bellerive be renewed for a further three months clearly creates an enormous problem for the credibility and reliability of Mr Antoniou's evidence that he had himself confirmed in writing on 15 March that the entirety of the Claimants' remaining indebtedness was to be written off upon receipt of the sale proceeds from Victorian Grove.

92. In light of the foregoing assessment of the evidence about the Bank's procedures and how the decision apparently recorded in the 15 March Letter appears to have come into existence and the July Memo, I have no hesitation in concluding as follows:

    a. The 15 March Letter is not a genuine record of an agreement with Laiki Bank but is instead a false instrument created by Mr Antoniou.
    b. Neither Mr Argyrou nor Mr Yianni were aware of the 15 March Letter or approved it.
    c. Mr Antoniou falsely recorded a non-existent approval conversation with "GMUK".
    d. Mr Yianni did not sign C2.
    e. Mr Antoniou had no actual authority to sign the 15 March Letter or otherwise agree to the terms.
    f. Mr Antoniou signed the 15 March Letter knowing full well that he had no authority to do so.

g. None of the procedures required for the valid approval of a debt write off were followed.

93. I am not persuaded by BOC's case that Mr Antoniou must have come back to the Bank to plant C1 – C3 in the files where they were subsequently found. I consider it far more likely that the letters were put in the file where they were subsequently found in late July. I find that they were created on a date unknown between 15 March 2013 and 31 July 2013.

94. It follows from the above, I accept BOC's case that the 15 March Letter is a forgery and that Mr Antoniou did not have actual authority to agree the terms of the apparent agreement set out it in it.

Apparent (or Ostensible) Authority

95. Thus far in this judgment, I have only considered the status of the 15 March Letter and Mr Antoniou's actual authority.

96. Laiki Bank may be bound by the 15 March Letter notwithstanding the fact that Mr Antoniou, as I have held, had no actual authority to issue it and even if Mr Antoniou was acting fraudulently by producing a forged document. BOC will be bound if Mr Stavrinides is entitled to rely on the apparent (or ostensible) authority of Mr Antoniou.

97. The classic statement of the four conditions to be fulfilled by a person ('the contractor') seeking to enforce a contract against a company apparently entered into by an agent with no actual authority do so is to be found in the judgment of Diplock L.J. in Freeman & Lockyer v Buckhurst Park Properties (Magnal) Ltd [1964] QB 480 at 506. The putative contractor must show:

(1) That a representation that the agent had authority to enter a contract of the kind sought to be enforced was made to the contractor.
(2) That such representation was made by a person or persons who had "actual" authority to manage the business of the company either generally or in respect of those matters to which the contract relates.

(3) That the contractor was induced by such representation to enter into the contract, that is, that he in fact relied upon it.

(4) That under the memorandum or articles of association of the company the company was not deprived of the capacity to enter into a contract of the kind sought to be enforced.

98. Lord Diplock's statement Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd of the conditions to be satisfied if a plea of ostensible authority is to succeed was approved by the House of Lords in British Bank of the Middle East v Sun Life Assurance Co. of Canada (UK) Ltd [1983] 2 Lloyd's Rep 9 and has been applied in many subsequent cases, including most notably in Armagas Ltd v Mundogas S.A. [1986] 2 Lloyd's Rep 109; [1986] 1 A.C. 717 and First Energy (UK) Limited v Hungarian International Bank Ltd. [1993] 2 Lloyd's Rep 194. It is the first three conditions which are most often the subject of dispute.

99. In the standard case described above the issue is one of transactional authority i.e. was the agent who lacked actual authority to enter into the transaction held out by the principal as having the authority to do so. However, it is possible for a person to be held as having a more limited authority such as the authority to communicate to outsiders the fact that a decision has been approved by those who are authorised to approve it even if that persons does not himself have the authority to approve the transaction – see, for example, Kelly v Fraser [2013] 1 AC 450 at [12]. I will refer to this more limited type of authority as 'conduit authority' because the representation is merely that the agent is an authorised conduit for the principal's decision.

100. It is important to distinguish between representations of transactional authority and conduit authority because the remedy may be very different (assuming reliance can be proved). A person who relies on a representation of a transactional authority will *prima facie* be able to enforce the contract against the principal or claim expectation losses for breach. A person who relies on a representation of conduit authority will generally be limited to claiming reliance losses only. As Prof Worthington points out in her article '*Corporate Attribution and Agency: back to basics'* (2017) LQR 118 at 140, the "authorised" conveyance of information that an offer has been accepted is not the same as the "authorised" conveyance of a binding offer. I agree.

101. A number of further ancillary points of principle have emerged in the case law:

    a. English Law does not permit self-authorisation. A contractor may not rely on any representation by the agent as to his own authority. The contractor must point to some representation or holding out by the principal (or agent with actual authority) as to the authority of the agent in question. See Egyptian International Foreign Trade Co v Soplex Wholesale Supplies Ltd (The Raffaella) [1985] 2 Lloyd's Rep 36 at 41.

    b. The representation need not be express. It may be an implied representation arising from the principal permitting the agent to act in a particular role e.g. within the management of the company.

    c. It is irrelevant whether the agent had actual authority and equally irrelevant that the act in question constituted a fraud on the company.

102. When it comes to assessing reliance, the focus of the enquiry is obviously on the knowledge and belief of the representee. The editors of *Bowstead & Reynolds on Agency* say this (at para 8-024) about the reliance necessary to succeed with a case of ostensible authority:

> "*The reliance must have been reasonable. There are in turn two aspects to this. First, as already discussed, the grounds used to establish the representation of authority must be adequate to justify a belief that the agent had authority. Secondly, even where there are such grounds, there may be other evidence that undermines what would otherwise be an adequate representation of authority. The latter class of case is dealt with in Article 73*".

I agree.

103. Finally, Article 73 in the same work states an important limit on the operation of the principle of ostensible authority:

> *"No act done by an agent in excess of his actual authority is binding on the principal with respect to persons having notice that in doing the act the agent is exceeding his authority".*

The notice referred to Article 73 extends beyond express knowledge that the agent lacked authority. A court is entitled to infer from the circumstances that the person seeking to claim the benefit of the doctrine of apparent authority ought to have suspected that the agent lacked authority and was put on enquiry. Everything depends on the particular circumstances. In the Court of Appeal in Armagas Ltd v Mundogas S.A, for example, Goff LJ considered that the features of the transaction were so "extraordinary" and that the claimants in that case were put on enquiry as to the lack of authority of the agent. By contrast in First Energy v HIB, the Court of Appeal considered that the nature of the transaction and the status of the agent (a senior manager in charge of the Manchester branch of a bank) were such that it was unrealistic to suggest that the Claimant ought to have checked with a managing director in London that the transaction had been approved. Clearly, the more usual the transaction, the more likely it is that it will be held that the contractor is put on notice that the agent may lack authority.

104. There is a subjective and an objective component to reliance and whether or not a third party has notice. As to the objective component, I agree with and would adopt the following formulation from *Bowstead & Reynolds on Agency* (8-048):

> *"It seems that the proper approach in commercial cases is to apply the objective interpretation which one person is entitled to put on another's words and conduct in the light of facts known to the former … It is plain that the demands of commerce are a very significant factor in determining what a reasonable third party would do (note, not might do) given the information available to him".*

105. The subjective element is more straightforward. It comes down to the factual question – 'Did the contractor honestly believe the representation and subjectively rely on it?'

106. The two components are reflected in Steyn LJ's observation in First Energy v Hungarian International Bank Ltd. [1993] 2 Lloyd's Rep 194 (at p. 196) that it is one of the aims of the English law of contract is that the *reasonable* expectations of *honest* people ought to be protected.

The principles applied

107. The two key questions to be answered in this case are therefore:

    a. Did Laiki Bank represent to the Claimants that Mr Antoniou had (i) the authority to agree the proposal made in the 7 March Letter and write off the Claimants' upon receipt of the proceeds of sale from Victorian Grove (transactional authority) or (ii) the authority to communicate an acceptance by those who were authorised to do so (conduit authority)?

    b. If there was a representation of either type did Mr Stavrinides reasonably and honestly rely on it?

Although I have described the issue in this form, I also bear in mind what is said in *Bowstead and Reynolds* at para 8-050:

> *"The process of determining whether apparent authority is made out is ultimately a single process, rather than a rigid two step of finding a holding out and then inquiring as to the third party's state of knowledge"*

Was there a representation by Laiki Bank as to Mr Antoniou's authority?

108. In my judgment, on the evidence in this case, the Claimants come nowhere close to establishing that a representation of either the substantive or conduit type was made.

109. The only pleaded 'holding out' or representation is that pleaded in paragraph 11 (c) of the Reply:

> "Both Mr Yianni and Mr Antoniou were held out by the First Defendant as having authority to issue the letter dated 15 March 2013. They had signed facility and other such documents on behalf of the First Defendant in the past. In any event, Mr Antoniou had the authority of Mr Argyrou."

110. This is a very thin pleading. The first sentence does not identify when or how any representation was made that Mr Antoniou alone was held out as having the authority to issue the 15 March Letter. The fact that all previous facility letters were signed by both Mr Yianni and Mr Antoniou is, if anything, a point which counts against the Claimants because the 15 March Letter was only signed by one of them and the more junior of the two men. The third sentence of paragraph 11 (c) is not relevant to apparent authority at all.

111. There was no pleaded case that Mr Antoniou was held out has having the authority to act as a mere conduit. However, Mr Swead sought to rely on both types of representation in his oral closing submissions.

112. In my judgment, Mr Antoniou was held out by Laiki Bank as nothing more than a relationship manager. On e-mails sent to clients and their solicitors Mr Antoniou was described as a "Business Account Executive" but the Claimants rightly did not seek to make anything of this. Given his long relationship with the Bank, Mr Stavrinides was in my judgment well aware that Mr Antoniou was at the lowest level of management whose job was to deal with customers. When he had discussed issues on his account in the past he had done so in meetings with Mr Argyrou and Mr Yianni. When he had complained in 2011 about bank charges he was aware that the complaint had been referred up to Mr Argyrou for a decision.

113. Furthermore, Mr Stravinides' own evidence was that his main relationship was with Mr Yianni and not with Mr Antoniou:

> "The only person that I had faith and trust and I could talk to and ask anything from, it was Mr Peter Yianni. I met Mr Antoniou from Mr Peter Yianni. I didn't know him before. I never had a relationship with Mr Antioniou as I had with Mr Peter Yianni … the only person I was close to, it was Mr Peter Yianni"

114. All the previous offers from the Bank sent to the Claimants of revised or new facilities were signed by both Mr Yianni and Mr Antoniou and not just one of them. When such letters were sent they were not sent in the form of a communication that another organ or part of the Bank had come to the decision. The only letters sent by Mr Antoniou alone were concerned with more mundane matters. When the Bank internally approved an application for a new or revised facility, that decision was communicated in the form of a substantive offer signed by two levels of manager.

115. There is in my judgment simply no evidence to support the Claimants' case that any representation was made to the Claimants that Mr Antoniou acting alone had the authority to write off debts of any scale or even to communicate a decision of this type. To the contrary, the representation made by Laiki Bank to Mr Stavrinides and through him to the Second and Third Claimants in the course of their dealings was that the authority of bank employees was very circumscribed and that all significant decisions involving facilities of the size and type of the 2009 Facilities had to be referred up to Head Office in Cyprus via Mr Argyrou and then if approved an official letter was sent (signed by at least two managers).

116. I therefore hold that Laiki Bank did not represent either by its actions or in any other form that Mr Antoniou had the authority either to issue the 15 March Letter or to communicate the acceptance of the proposal made in the 7 March Letter.

Was there reasonable reliance?

117. In order to address the issue of reasonable reliance, it is necessary to consider it from the point of view of someone with the same background and experience as the Claimant. Mr Stavrinides is an experienced businessman. By the time of the events in issue in these proceedings Mr Stavrinides and his companies had been banking with Laiki Bank for more than a decade and had dealt with a number of corporate banking facilities in a total value of nearly £5 million.

118. In the course of cross-examination, it became clear that Mr Stravinides was familiar with the format of the bank's facility letters and the procedure for applying for new

facilities or amendments to existing facilities. When he was asked about the extension to the facilities in 2011 he admitted that he knew that the approval had to come from the head office in Cyprus and that he was kept abreast of the progress of the application. However, in relation to a subsequent renewal he gave a different answer:

> *"Q. But you knew it had to come from head office in Cyprus*
>
> *A. No, my understanding with the bank, I was speaking to Peter Yianni and Sophoklis Argyrou. I will never enquire how they get the approvals if they have to get the approvals. For me it was speaking to the top managers asking them what you needed, what you wanted, that they were coming back saying yes or not. It wasn't my position to ask how they do it."*

119. In my judgment, Mr Stavrinides' initial answer more accurately reflected his true state of understanding. By 2013 Mr Stavrinides had become very familiar with Laiki Bank's procedures in relation to facilities. He knew very well that decisions on significant changes to facilities of the type his companies operated (i.e. loans and overdrafts exceeding £1 million in total) were: (i) subject to a formal application and approval process (ii) that the process typically took a few weeks to complete and (iii) that the ultimate decision took place above the level of Mr Yianni and Mr Argyrou in Cyprus. In my judgment, for this reason alone any reliance by Mr Stravinides and the Claimants on the authority of Mr Antoniou to agree what was recorded in the 15 March Letter was unreasonable.

120. However, I would also hold that the 15 March Letter is such a surprising and extraordinary letter in its own terms that the Claimants were put on notice of Mr Antoniou's lack of authority to agree it or even convey that it had been agreed for two principal reasons:

    a. The 7 March Letter contains a threat of legal action against the Bank. It made allegations of negligence and unlawfulness. It used legal phrases such as "this letter is to be treated as pre-action letter" and "full and final settlement". A reasonable business person would in my judgment expect any such letter in

response to come from the Bank's legal department or an external lawyer instructed by the Bank and not from a local relationship manager.

b. The idea that a local relationship manager might have authority to agree to write off £3 million of secured debts in return for the receipt by the bank of funds which it was going to receive anyway in the form of a sale of a property over which it had a first legal charge is so extraordinary that Mr Stavrinides was in my judgment on notice that there was something wrong.

121. For those reasons, I hold that there was no reasonable reliance by Mr Stavrinides on any apparent authority of Mr Antoniou, even if he had been able to point to a representation by Laiki Bank of what I have called substantive or conduit authority.

The subjective component

122. Did Mr Stavrinides actually rely on the 15 March Letter? His response to receiving the letter was very strange indeed. On the face of it, he had written a letter on 7 March asking for his own business debts and those of two of his companies with a total value in excess of £3 million to be written off. His evidence was that he received the Bank's positive response in a matter of days. One might have expected him to share this good news with his brother and sister (the co-owners of Stovaco) and Mr Nicholas, who had assisted free of charge with the 7 March Letter and who was dealing with the sale of Victorian Grove but Mr Stavrinides' evidence was that he didn't tell anyone about the letter except Mr Charalambous until September 2013.

123. Mr Stavrinides' explanation for not telling his sister or brother was "We don't discuss these things". His explanation for not saying anything to Mr Nicholas was that he was "on annual vacation until the end of September". In cross examination, Mr Stavrinides then offered an alternative explanation which was "I felt the agreement was in place and it would materialise" and "I didn't think that it was important to tell him earlier".

124. I found Mr Stavinidies' explanations for not sharing the contents of the 15 March Letter wholly unconvincing. In my judgment, the true reason why Mr Stavrinides did not reveal the existence of the 15 March Letter to anyone except Mr Charalambous was that he knew very well that Mr Antoniou did not have the authority to issue it and he

wanted to wait as long as possible before seeking to rely on it. He had to wait in any event until 31 July when Mr Antoniou ceased working at the Bank but he also knew that the longer he waited the fewer people there might be left with the Bank who could challenge its authenticity or contents.

125. I do not accept BOC's case that all the March Letters are backdated forgeries created sometime after 31 July and then smuggled into the Bank's files. That seems to me far too far-fetched and unnecessarily complicated a conspiracy. In my judgment, the true position is somewhat more prosaic.

126. In late March 2013 Laiki Bank was in a state of great uncertainty. By the end of March, it was clear that it was not going to be able to trade any further.

127. Mr Stavrinides had a long-standing grievance about bank charges and penalty interest. He had raised the issue in 2011 and his request for an adjustment on the account had been refused by Mr Argyrou. In his 5 March Letter, I find that Mr Stavrinides returned to the theme again in the hope of a more sympathetic reaction. Although he had attempted to sound threatening by saying that he had shown all his statements to lawyers and that he had been advised that the charges and rates were unlawful, the form and content of the 5 March Letter suggests that it is written by someone who is not a lawyer and has not seen a lawyer. The request at the end is simply to 'reverse the charges and interest'. He was not on 5 March seeking damages or threatening proceedings. Although it is true that the post code is misstated as being EN4 9HD rather than EN4 9HT this strikes me as being far too flimsy a basis for suggesting that this letter is a forgery dating from a period after 31 July. I find the letter is genuine.

128. Mr Stavrinides appears then to have had a meeting with Mr Antoniou. He was hoping to meet the person he trusted, Mr Yianni, but he was away. It is unclear whether they met once or more than once but it was in March and at a time when Mr Antoniou was feeling disgruntled because both he and his wife were being made redundant after many years of service.

129. I accept the thrust of Mr Nicholas' evidence that Mr Stavrinides came to him rather flustered one evening in March 2013 and asked for some assistance with a letter he

wished to send to the Bank. I also accept Mr Nicholas' evidence that he was not asked to advise Mr Stavrinides on the content of the letter and just helped him write it out. He no doubt added the legal sounding phrases "full and final settlement", "this letter is to be treated as a pre-action letter" and "proceedings will be instituted against you without further notice to you". This is not normal use of language for non-lawyers such as Mr Stavrinides. I accept that Mr Nicholas did not spend much time on the letter and that neither he nor his firm charged Mr Stavrinides for the letter. Mr Stavrinides did not need Mr Nicholas to spend much time on it because it was not intended to be a genuine pre-action letter.

130. The letter of 7 March makes little sense in its own right for the following reasons:

    a. It offers no explanation as to why Mr Stavrinides' complaint should have progressed in the course of 48 hours from a request to have charges reversed to a proposal to have all debts written off.
    b. It refers to complaints about the handling of Fritzkriston properties and accounts only to say that no potential claim by Fitzkriston is included in the proposed settlement.
    c. The offer "I propose to pay the sum of £1,650,000 (from the sale proceeds of Victorian Grove)" makes no sense because (a) the property belonged to Fritzkriston which was a limited liability partnership and (b) Laiki Bank had a registered charge so any sale of the property could only proceed if the bank were provided with an undertaking to remit the proceeds.

131. The purpose of the letter was in my judgment simply to create the impression that Laiki Bank might be threatened with a large claim and to thereby create the pretext for the 15 March Letter.

132. Mr Stavrinides hoped that with Laiki Bank closing its doors and everyone leaving there was a chance that a letter in its files agreeing to write off debts might just prevent anyone seeking to pursue the outstanding sums or at the very least create sufficient embarrassment as to be a bargaining chip.

133. There are three particular facts which lead me to conclude that the letters of 7 March and 15 March constitute an attempted fraud by Mr Antoniou and Mr Stavrinides acting in concert:

    a. There is no other credible explanation for why what was found in the Bank's files was not just a copy of the letters but also a forged note of an approval by GMUK and another copy with a forged initial of Mr Yianni. These manuscript additions were specifically designed to deceive anyone looking into the files into thinking that the 15 March Letter had been approved by Mr Yianni and Mr Argyrou.

    b. Mr Antoniou had no explanation at all for why he did not immediately send the letter of 7 March to the Bank's legal department. He didn't even try to offer an excuse for his failure to refer what was on its face a clear threat of legal action on to the Banks own in-house legal department.

    c. Mr Stavrinides' failure to tell Mr Nicholas about the 15 March Letter until 17 September 2013. On the face of it, Mr Nicholas' assistance in writing the letter of 7 March had pulled off a most amazing result. Not only was Mr Nicholas a friend of 30 years standing who had helped him out by assisting with the drafting of the 7 March letter but he was also the solicitor dealing with the cancellation of all the security upon the sale of Victorian Grove.

134. In summary, I am satisfied that the letters of 7 March and 15 March constituted a dishonest try-on by two men who had their own separate grievances against Laiki Bank which as far as they could see in March was about to collapse. As such, even if Mr Stavrinides had been able to persuade me that it was objectively reasonable for him to have believed that Mr Antoniou had authority to agree to what is recorded in the 15 March Letter or the more limited authority to communicate the decision of the Bank, I find that he did not have any honest belief that Mr Antoniou had either form of authority. The Claimants' case on reliance thus fails.

Bribery

135. It is unnecessary for me to make any finding as to whether or not Mr Antoniou was paid £10,000 as a bribe for writing the 15 March Letter. There was no concrete evidence of any money being received or handed over and Mr Charalambous wasn't called to give evidence to provide details of when and how Mr Stavrinides told him about the bribery. All that is necessary is for me to find, as I do, that Mr Stavrinides did not have an honest belief in Mr Antoniou's authority to sign the 15 March Letter.

No consideration

136. It is also unnecessary for me to consider the Bank's alternative case that the 15 March Letter was unsupported by consideration.

The Counterclaim

137. In light of my findings, the Bank's counterclaim therefore succeeds in full. No challenge was made to the charges and interest which have been applied to the accounts. This is not surprising. It became clear in the cross-examination of Mr Stavrinides that he was well aware of the terms and conditions of the Laiki Bank provided for charges and interest to be applied at higher levels when facility limits were exceeded or the facility expired. The Claimants' pleaded case on quantum amounted to nothing more than a non-admission. The legality of the charges and interest applied to the accounts was not challenged.

138. In these circumstances, it was for BOC to prove its case. Appended to its closing submissions were a full set of statements for each account running to two lever arch files. I received no submissions from the Claimants challenging these documents or BOC's calculations. The counterclaims therefore succeed in the sums claimed. I would invite BOC to provide figures to be included in the order that reflect the sums due on the day this judgment is handed down.

DISPOSAL

139. In light of the foregoing, the claim is dismissed. The Counterclaim succeeds in full.