



IN THE HIGH COURT OF JUSTICE
IN THE BUSINESS & PROPERTY COURTS OF ENGLAND & WALES
LONDON CIRCUIT COMMERCIAL COURT

BETWEEN:

BARONS CAPITAL PARTNERS SA
(formerly **BARONS FINANCIAL SERVICES SA**)

Claimant

-and-

BLUE ISLANDS LIMITED

Defendant

PARTICULARS OF CLAIM

The Parties

1. The Claimant is a company incorporated in and organised under the laws of the Republic and Canton of Geneva, Switzerland with a business address and registered office at ICC-H (Ground Floor), Route De Pre-Bois 20, Case Postale 103, CH-1215 Geneva 15, Switzerland carrying on a financial intermediation business. Mr Kohn is the Chairman and Managing Partner of the Claimant.
2. The Defendant is a company incorporated in and organized under the laws of Alderney in the Bailwick of Guernsey with an address at Blue Islands Hangar, Le Bourg, Forest, Guernsey GY8 0AN.
3. At all times material to the claim, the Parties were acting in the course of a business.

Summary

4. In summary, this is a debt claim, or alternatively a claim for damages, for monies owed by the Defendant to the Claimant and which at all material times, and despite requests for payment, the Defendant has failed to pay. The claim is brought pursuant to a written agreement which grants exclusive jurisdiction to the courts of England and Wales.



The Agreement

5. On 21 February 2019, Mr Kohn emailed various individuals at Blue Islands providing a copy of a 31 page Information Memorandum (“**The Adria IM**”) the Claimant had produced when they were engaged to sell an airline company previously to give the Defendant “*an insight into the work we typically produce when engaged to advise and assist our clients*” (pp. 1-34, **Annex 2**). Later the same day, Mr Kohn emailed various individuals at Blue Islands to ask for *inter alia*, “*financial statements*” (pp. 489-496, **Annex 2**) from the Defendant and on 27 February Mr Kohn asked for a “*financial model... with projections to 2022*” (p. 497, **Annex 2**) and an alternative model assuming “*all aircraft are leased, with the appropriate lease rates*”. On 25 March 2019 Mr Kohn also emailed various individuals at Blue Islands to remind them to “*look at the Adria IM we sent you that will give a good idea on the information that we need to complete the IM*” (p. 35, **Annex 2**).
6. Both parties therefore had knowledge, before entering into the written contract of the type, quantity and detail of information that would be reasonably requested in the event that the Defendant retained the Claimant as their exclusive corporate finance advisor.
7. The parties entered into a written agreement on or around 26 March 2019 attached to these Particulars of Claim at Annex 1 (“**the Agreement**”) whereby the Defendant engaged the Claimant as its exclusive corporate finance advisor.
8. In summary, the Agreement:
- 8.1 Appointed the Claimant as the Defendant’s exclusive corporate finance advisor in respect of the Defendant's strategic options for the sale of all its outstanding shares or, any other transaction having substantially the same objective;
- 8.2 The Claimant was to be remunerated as follows (no VAT is applicable on any sums):
- (a) £25,000 on signature of the Agreement pursuant to clause 5 of the Agreement; **and**
 - (b) £5,000 advance payment on signature for reasonable out-of-pocket expenditure pursuant to clause 8 of the Agreement; **and**



- (c) £7,000 per month thereafter for 3 months by way of a retainer pursuant to clause 5 of the Agreement; **and**
- (d) An advance of out-of-pocket expenses of £5,000, and reimbursement for all reasonable out-of-pocket expenditure, on receipt of invoice, subject to the Defendant's approval, which would not be unreasonably withheld, pursuant to clause 8 of the Agreement; **and**
- (e) ***Either*** a Success Fee pursuant to clause 3 of the Agreement in the event of a transaction for all of the outstanding shares of the Defendant company being closed; *Or*, a Breakaway Fee of £150,000 if the Defendant terminated the agreement before its expiry date on 26 March 2020.

Express Terms

- 9. Express terms of the Generic T&Cs materially included the following:
- 10. The preamble defines the Defendant as "**CLIENT** or **BP**" and the Claimant as "**BFS**" and "*the Transaction*" as "*the sale of all of the outstanding shares of **BI**, and, or, any other transaction having substantially the same objective*"
- 11. Clause 1: "***BFS** agrees to advise and assist the **CLIENT** inter alia, but not limited to:*
 - a) *reviewing the **Transaction**;*
 - b) *collating all necessary business data, including market research and data on **BI**, its competitors and the relevant industry sectors;*
 - c) *reviewing the business plan of **BI**;*
 - d) *establishing a confidential valuation range of **BI** for internal use by the **CLIENT**;*
 - e) *managing, negotiating, structuring and executing the **Transaction**;*
 - f) *sourcing and liaising with the potential investors and acquirers of **BI**.*

***BFS** will provide its services to the **CLIENT** with all due care, skill and ability and will use all reasonable endeavours to promote the interests of the **CLIENT**."*
- 12. Clause 2: "*The **CLIENT** hereby agrees to provide promptly all information that is reasonably requested by **BFS** in connection with the engagement of **BFS** as set out herein. The **CLIENT** acknowledges that any material delay after the date agreed between the **CLIENT** and **BFS**, in providing the requested information may delay the **Transaction** and may result in additional retainers being requested by **BFS** and/or a reasonable extension of the Exclusivity Period...*"



13. Clause 3: “The **CLIENT** appoints **BFS** as its exclusive financial advisor for a term of twelve (12) months from the date of the **CLIENT**'s countersignature hereof (the “**Exclusivity Period**”). If a **Transaction** is completed, or an agreement or letter of intent for any **Transaction** is entered into during the **Exclusivity Period**, or within twelve (12) months of the expiry of the **Exclusivity Period** or earlier termination pursuant to paragraph 6, where such **Transaction** occurs due to any contact or actions of **BFS** under this engagement (the “**Tail**”), the **CLIENT** shall pay **BFS**, at and as part of any closing of any such **Transaction**, a success fee in cash calculated as follows:
- 2.5% of the Aggregate Consideration of any Transaction up to £16 million
 - 4% of the Aggregate Consideration of any Transaction above £16 million up to £18m
 - 5% of the Aggregate Consideration of any transaction above £18m
- with a minimum success fee of £200,000.”
14. Clause 5: “The **CLIENT** will pay **BFS** a retainer of £25,000, and VAT if applicable, payable at the date of the **CLIENT**'s countersignature of this agreement and one month thereafter £7,000 per month for 3 (three) months.”
15. Clause 6: “A breakaway fee in the amount of £150,000 and VAT if applicable (the “**Breakaway Fee**”), will be due to **BFS** if the **CLIENT** terminates this agreement before the expiration of the term of this agreement as defined in paragraph 3. Upon termination by the **CLIENT**, the payment of the whole **Breakaway Fee** shall become immediately due and owing. For the avoidance of doubt, (i) **BFS** shall continue to receive success fees in accordance with paragraph 3 above the **Tail**, if a **Transaction** is completed, or an agreement or letter of intent for any **Transaction** is entered into prior to termination by the **CLIENT**, or within twelve (12) months of such termination, or where such **Transaction** otherwise occurs because of the actions of **BFS** under this engagement; and (ii) any part of the agreed retainers set out in paragraph 5 unpaid as at the date of termination by the **CLIENT**, shall immediately become due and owing. The termination in order to circumvent this agreement is not permitted.”
16. Clause 7: “The parties acknowledge and agree that the **Breakaway Fee** is a genuine, fair and reasonable pre-estimate of **BFS**' anticipated loss resulting from an early termination of this engagement by the **CLIENT**.”
17. Clause 8: “The **CLIENT** agrees to reimburse **BFS** for all of its reasonable out-of-pocket expenses arising out of this engagement on receipt of invoice. An advance of £5,000 and VAT if applicable, is payable



upon countersignature of this agreement and any further expenditure incurred by the **CLIENT's** approval, which will not be unreasonably withheld.”

18. Clause 12: “The **CLIENT** agrees that its press releases reporting any **Transaction** will state that **BFS** acted as the financial advisor of the **CLIENT**.”
19. Clause 13: “This agreement supersedes all prior agreements, arrangements and understandings between the parties and constitutes the entire agreement between the parties relating to the subject matter hereof (save that neither party seeks to exclude liability for any fraudulent pre-contractual misrepresentation upon which the other party can be shown to have relied). No addition to or modification of any provision of this agreement shall be binding upon the parties unless made by a written instrument signed by a duly authorised representative of each of the parties.”
20. Clause 14: “The parties to this agreement shall act towards each other in good faith and in particular neither the **CLIENT** nor any of its officers or shareholders shall so conduct themselves so as to, in the reasonable opinion of **BFS**, circumvent **BFS** (themselves or through the medium of any associated or connected party) or otherwise unfairly limit **BFS'** ability to take part in any **Transaction** or bring it to a successful conclusion during the Exclusivity Period or circumvent or limit **BFS'** entitlement to the payment of a success fee pursuant to the terms of paragraph 3.”
21. Clause 15: “In the event that any one or more of the provisions or portion thereof contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, the same shall not invalidate or otherwise affect any other provisions of this Agreement, and this Agreement shall be construed as if the invalid, illegal or unenforceable provision or portion thereof had never been contained herein.”
22. Clause 17: “This Agreement shall be governed and construed in accordance with English law and each of the parties to this Agreement hereby submits to the exclusive jurisdiction of the courts of England and Wales.”

Implied Terms

23. Further, or alternatively, the Agreement contained a term implied on the basis of the obvious but unexpressed intentions of the parties, and/or business efficacy, and/or the reasonable meaning of the contract in light of its commercial purpose that the Defendant



would not issue any press releases which undermine the objective stated in the agreement of concluding the sale of all of the outstanding shares of the Defendant company and/or any other transaction having substantially the same objective.

24. Further, or alternatively, the Agreement contained a term implied on the basis of **s.14 of the Supply of Goods and Services Act 1982**, and/or law, and/or the obvious but unexpressed intentions of the parties, and/or business efficacy, and/or the reasonable meaning of the contract in light of its commercial purpose that the Defendant would pay the Claimant for any and all Works done as part of the Project and within a reasonable period of time.
25. Further, or alternatively, the Agreement contained a term implied on the basis of **s.15 of the Supply of Goods and Services Act 1982**, and/or law, and/or the obvious but unexpressed intentions of the parties, and/or business efficacy, and/or the reasonable meaning of the contract in light of its commercial purpose that the Defendant would pay the Claimant a reasonable charge for the supply of services to the Defendant.
26. Further, or alternatively, the Agreement contained a term implied on the basis of the obvious but unexpressed intentions of the parties, and/or business efficacy, and/or the reasonable meaning of the contract in light of its commercial purpose that the Agreement could not be suspended for a significant period of time without payment of the Breakaway Fee and/or payment of a reasonable sum for the supply of services by/ Works done by the Claimant for the Defendant.
27. Additionally, the Agreement included an implied term that any late payments for Services attracts statutory interest of 8% over the Bank of England base rate under **s.1 of the Late Payment of Commercial Debts (Interest) Act 1998** and rights to compensation for the costs of recovery pursuant to **s.5A** as the Agreement concerned the supply of Services and the Claimant and the Defendant were acting in the course of a business (**s.2**).

Performance of the Agreement

28. The Claimant has performed its obligations under the Agreement in so far as it was able to do so in light of the Defendant's actions, including visits to Guernsey for meetings, requesting and reviewing information, producing a financial model, and a summary



Information Memorandum.

29. The Defendant made payments to the Claimant as follows:
- 29.1 £25,000 on signature of the Agreement pursuant to Invoice reference 20199104 in accordance with clause 5 of the Agreement; **and**
- 29.2 £5,000 on 27 March 2019 pursuant to Invoice reference 20199107 by way of advance payment for reasonable out-of-pocket expenditure in accordance with clause 8 of the Agreement; **and**
- 29.3 £7,000 in May, June and July 2019 by way of a retainer pursuant to clause 5 of the Agreement; **and**
- 29.4 for the Claimant's reasonable out-of-pocket expenditure, on receipt of invoice from the Claimant.



Breach of the Agreement

30. The Defendant has breached the Agreement, as provided in the paragraphs below.
31. The Defendant has failed to pay to the Claimant, at all, nor within the required period, the Breakaway Fee of **£150,000**, or alternatively, any reasonable sum for the supply of services/ Works, which was required if the Defendant terminated the agreement, or suspended it for a significant period, before its expiry date of 26 March 2020, in breach of the express terms of the Agreement and/or in breach of the implied terms that the Defendant would not suspend the agreement for a significant period without payment and/or would pay the Claimant a reasonable charge for the supply of services to the Defendant or for Works done by the Claimant; and/or
32. The Defendant issued a media statement on 11 July 2019 (the "**Statement**"). A copy of the Statement is at **Annex 3**. This quoted the Defendant's Director and Shareholder Mr Tim Coates (speaking on behalf of his father, who is a majority shareholder of the Defendant company) as saying:

"I can assure our Blue Islands customers that it is business as usual as we continue to invest in the next exciting phase of the airline's expansion, and a sustained promise for customer service to be at the core of our business values. There are currently no

plans to sell the business."



In making this statement the Defendant thereby breached the Defendant's obligations of good faith pursuant to Clause 14 of the Agreement; and/or thereby unfairly limiting the Claimant's ability to bring a transaction to a conclusion in breach of Clause 14 of the Agreement; and/or the Defendant breached the implied term preventing the Defendant from issuing any press releases which undermine the objective stated in the agreement of concluding the sale of all of the outstanding shares of the Defendant company and/or any other transaction having substantially the same objective; and/or

33. The Defendant has continuously not responded to requests and failed to provide information promptly to the Claimant in response to the Claimant's reasonable information requests. There was a lack of on-going information provided to the Claimant, explained further below, and no invitation extended to the Claimant to attend meetings with competition lawyers, Aurigny, and Stobart; and no updates of the same promptly or at all. This behaviour breached the Defendant's obligations under Clause 2 of the Agreement. Emails regarding requests for information which were not responded promptly or at all are provided within **Annex 2** attached. In particular, as is clear from the emails provided in **Annex 2**, these information requests related to:

33.1 Providing information which was required for the IM. For example, a list of some key information required for the IM was provided by the Claimant to the Defendant on 26 March 2019 (pp. 36-37, **Annex 2**), the Claimant repeatedly chased for basic information, for example for details of auditors/ legal advisors on 24 April 2019 (pp. 55-57 and pp. 58-61, **Annex 2**), and the IM was not sent out until 5 June 2019 (pp. 453-488, **Annex 2**) as a result of the Defendant's delays in sending necessary information to the Claimant.

33.2 Providing financial models and financial statements. For example, the Claimant made requests for financial statements (pp. 489-496, **Annex 2**), models with projections to 2022 (p. 497, **Annex 2**), and audited statements for 2016, 2017 and 2018 (p. 498, **Annex 2**). The Defendant only provided financial statements for 2018 on 2 May 2019 (pp. 104-106, **Annex 2**), Profit/loss statements for 2019, 2020, 2021 and updated financial models on 29 May 2019 (pp. 270-305, **Annex 2**).



- 33.3 Approval of an Executive Summary. For example, the Claimant mentioned the requirement of an Executive Summary on 5 April 2019 (p. 659, **Annex 2**), a draft was provided on 10 April 2019, after numerous chasers and updated versions, the Executive Summary was not sent out until 17 April 2019 (pp. 674-675, **Annex 2**) as a result of the Defendant's delays in providing information to the Claimant.
- 33.4 A letter to Aurigny. A draft was provided on 15 April 2019 (pp. 676-695, **Annex 2**), and the Claimant was not authorised to send it until 14 May 2019 (pp. 725-742, **Annex 2**), notwithstanding numerous chasers in April and May by the Claimant, as a result of the Defendant's delays in providing information to the Claimant.
34. The Claimant expressly noted issues with delays and lack of willingness on the Defendant's part to provide information to the Claimant numerous times, including by various emails in May, June and July 2019 (pp. 743-765, **Annex 2**).
35. The Defendant has side-lined the Claimant in numerous ways, including (for example) by the correspondence dated 26 July 2019 (at **Annex 3**) in which they called for "*a 12 month hiatus to the sale process*", thereby terminating the Agreement and/or committing an anticipatory breach and/or actual repudiation as follows:
- 35.1 By breaching the Defendant's obligations of good faith pursuant to Clause 14 of the Agreement; and/or
- 35.2 By breaching the 12-month exclusivity period granted to the Claimant to act as the Defendant's financial advisor and enter into a transaction for the sale of all shares or equivalent transaction, pursuant to Clause 3 of the Agreement; and/or
- 35.3 By unfairly limiting the Claimant's ability to bring a transaction to a conclusion contrary to Clause 14 of the Agreement; and/or
36. The Defendant ultimately stopped engaging with the Claimant on the subject matter of the Agreement on or around early August 2019, thereby bringing the Agreement to an end.

Admission

37. The Defendant's Director and shareholder representative, Mr Tim Coates, admitted in a



telephone conversation with Mr Eric Kohn (there on behalf of the Claimant) that the Statement referred to in Paragraph 32 was a mistake (a note of that conversation is attached to these Particulars of Claim at **Annex 4**). It is to be inferred from that statement that the Defendant admits breaching the Agreement in that respect.

Termination

38. In light of paragraphs 30 to 36 of these Particulars of Claim, the Defendant has terminated the Agreement expressly and/or by conduct; and/or discharged the Agreement by renunciation of its obligations/ liabilities under it and/or by impossibility created by its own act, and/or total or partial failure of performance.

Debt Claim

39. The Claimant made oral and written demands as detailed within **Annex 5** attached to these Particulars of Claim. The Claimant sent an invoice dated 29 July 2019 to the Defendant for £150,000, attached to these Particulars of Claim at **Annex 6**.

40. Despite the Claimant's demands, the Defendant has failed to pay the sums of £150,000 and remains indebted to the Claimant to that extent.

Breach of Contract Claim

41. Further or alternatively, the Defendant's breaches, as enumerated above, have directly caused loss to the Claimant by depriving him of the sum of **£150,000**.

42. Accordingly, the Claimant claims damages in the amounts set out above, totalling **£150,000**, or in such sum as the Court sees fit.

Claim For Interest/ Costs of Recovery

43. Further, the Claimant is entitled to and claims interest on the above sums of 8% over the Bank of England base rate (providing an interest rate of 8.5% at all material times to date) under **s.1 of the Late Payment of Commercial Debts (Interest) Act 1998**.

44. Alternatively, interest is claimed pursuant to the Agreement and/or pursuant to **s.35A of the Senior Courts Act 1981** at such rate and for such period as the Court in its discretion



considers fit.

45. The Claimant also claims compensation by way of a fixed sum of £150,000 of sums over £10,000, plus further reasonable costs in recovering the sums due and owing which are not met by the fixed sum(s) pursuant to **s.5A of the Late Payment of Commercial Debts (Interest) Act 1998.**

Declaration regarding the Claimant's rights as agent

46. Further, and in any event, in the premises and pursuant to clause 3 of the Agreement, the Claimant avers it is entitled to and claims a declaration that if the sale of all of the outstanding shares of Bl, and/ or, any other transaction having substantially the same objective (referred to as "**the Transaction**" in the Agreement) is completed by the Defendant anytime:

46.1 between 26 March 2020 and 26 March 2021 ("**within 12 months of the expiry of the Exclusivity Period**"); and/or

46.2 "**within 12 months of the date of termination**", calculated as 12 months from any date which is found by the court to be the effective termination date; and/or

46.3 between 26 March 2019 and 26 March 2020 ("**the Exclusivity Period**");

then the Defendant is liable and shall pay the Claimant a success fee ("**the Tail**") in cash calculated as follows:

- (1) 2.5% of the Aggregate Consideration of any Transaction up to £16 million; and
- (2) 4% of the Aggregate Consideration of any Transaction above £16 million up to £18m; and
- (3) 5% of the Aggregate Consideration of any transaction above £18m; and
- (4) with a minimum success fee of £200,000.

AND THE CLAIMANT CLAIMS:

- (1) The sum of £150,000; and/or



- (2) Damages; and /or
- (3) A declaration that the Defendant is liable and shall pay the Claimant a success fee referred to in the Agreement as “the Tail” in the event that the sale of all of the outstanding shares of BI, and/ or, any other transaction having substantially the same objective, is completed within a period of time to be specified by the court, in accordance with clause 3 of the Agreement between the Parties; and
- (4) Interest as set out at above; and
- (5) A fixed sum of £100 plus further reasonable costs in recovering the sums due and owing which are not met by the fixed sum(s) pursuant to **s.5A of the Late Payment of Commercial Debts (Interest) Act 1998**; and
- (6) Any further or other relief as the Court considers appropriate; and
- (7) Costs.



SARAH BOUSFIELD
ROBERT DOUGANS, PREISKEL & CO LLP

Statement of Truth

RJD the Claimant

I believe that the facts stated in this Particulars of Claim are true.

FULL NAME:

ROBERT JAMES DOUGANS

SIGNED:

RJD

Position or Office Held:

Partner-Preiskel & Co LLP

Served this date 6th December 2019 by Preiskel & Co LLP, solicitors for the Claimant.