Neutral Citation Number: [2022] EWHC 1649 (Comm)

Case No: CL-2021-000457

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

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

Date: 28 June 2022

Before :

THE HONOURABLE MR JUSTICE HENSHAW

- -

Between :

LEX FOUNDATION	**Claimant**
- and -	
(1) CITIBANK N.A. **(2) CITIBANK UK LIMITED**	**Defendants**

- -
- -

Philip Jones (instructed by **Mackrell Solicitors**) for the **Claimant**
James MacDonald QC (instructed by **Clifford Chance LLP**) for the **Defendants**

Hearing date: 7 April 2022
Draft judgment circulated to the parties: 7 June 2022

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Mr Justice Henshaw:

(A) INTRODUCTION

1. The Defendants ("***Citibank***") apply, by notice dated 30 September 2021, for summary judgment pursuant to CPR rule 24.2 dismissing the whole of the claims brought against them by the Claimant ("***Lex Foundation***").

2. Lex Foundation's claim is for an account, and payment, of the sum of €10 billion, which it claims was transferred in April 2021 by Deutsche Bank AG ("***Deutsche Bank***") into an account held by Lex Foundation at the First Defendant's London branch. Citibank, in its Defence, denies that any such transfer was ever sent by Deutsche Bank or received by Citibank.

3. Citibank's application is supported by the first witness statement of Christopher Yates, a partner in Citibank's solicitors, Clifford Chance. Lex Foundation has not served any evidence in response, and did not serve a Reply.

4. For the reasons set out below, I conclude that Lex Foundation has no realistic prospect of showing that the alleged transfer took place, and that there is no other compelling reason why the case should proceed to trial. Citibank are entitled to summary judgment.

(B) MAIN FACTS

5. Lex Foundation's claim as set out in its Particulars of Claim may be summarised as follows:

    i) Lex Foundation claims to be a company which "*manages the funding of high value humanitarian projects on behalf of the United Nations and funds dedicated to research in science and medicine*".

    ii) Lex Foundation alleges that on 22 April 2021, €10 billion was transferred by SWIFT transfer from an account of Regulus Capital Partners Limited

("***Regulus***") with Deutsche Bank to an account which Lex Foundation held with the First Defendant from 11 February 2021 to 27 April 2021 ("***the Account***").

iii) Lex Foundation claims that the €10 billion was "*intended to be the first tranche of €100 billion payable to the claimant for the purposes of investment in UN-approved projects*".

iv) Lex Foundation relies on various purported SWIFT notifications as purporting to evidence the transfer, and alleges that the funds were paid into a "*global or treasury*" account operated by Citibank.

6. The evidence adduced by Citibank indicates the factual position to be as summarised below.

7. Lex Foundation was incorporated on 10 December 2018. Its three directors are Mr Olgun Halil Shah ("***Mr Shah***"), his wife and his son. The Registrar of Companies commenced but then discontinued a strike-off action against Lex Foundation in 2020. Lex Foundation filed dormant company accounts for the years ended 31 December 2019 and 31 December 2020 showing net assets and net reserves of zero.

8. Lex Foundation's registered office at the date of its incorporation was an address in Weybridge, Surrey, which is the same as the residential address of two of Lex Foundation's directors. Lex Foundation later, on 16 April 2020, moved its registered office to a serviced office address in Mayfair. Citibank's internet searches have identified no website, internet presence or email address for Lex Foundation, nor any connections between Lex Foundation and its directors and the United Nations, humanitarian work, or science and medicine. Lex Foundation is not mentioned on the UN's website.

9. The Account was opened on 11 February 2021. Mr Shah told Citibank that the Account would initially be funded with US$10 million of his own funds "*and then with 50% of profit sharing of a $1bn trading agreement he has in place with a Swiss Family Office*".

10. The Account was opened in connection with an existing private banking relationship between Citi Private Bank and a member of the Saudi ruling family ("***the Prince***"). Lex Foundation's records filed at Companies House indicate that the Prince was appointed as a director on 22 June 2019 and resigned on 28 April 2021 (i.e. six days after the alleged transfer into the Account).

11. Citibank's notes of calls indicate that on 8 April 2021 a member of the Prince's staff called Citibank, to say that Mr Shah had told the Prince that €10 billion had been transferred to the account. The Prince's staff member expressed shock at the amount. The staff member provided Citibank, by WhatsApp, with a pdf copy of a purported MT-199 SWIFT message dated 7 April 2021, which she said Mr Shah had given to the Prince ("***SWIFT-1***"). A SWIFT MT-199 is a message between banks of an informative nature. SWIFT messages are sent and received using the SWIFT (Society for Worldwide Interbank Financial Telecommunications) system.

12. SWIFT-1 purported to show that Deutsche Bank was ready to transfer €10 billion to the Account from an account held at Deutsche Bank by Intrepid Capital Funding Ltd (**"*Intrepid*"**).

13. Citibank's evidence is that it searched its SWIFT records and found that it had not received SWIFT-1. Citibank called Mr Shah seeking explanations, noting that an advice of €10 billion from Intrepid Capital, an unknown entity to Citi and unknown connection to Lex Foundation, would need to be fully understood and vetted. The call notes indicate that Mr Shah responded to the following effect:

> "I asked if [Mr Shah] could send me details but he was insistent that all will be shared on receipt of the pre advise. He did say that Intrepid is a[n] entity owned by the Swiss Family Office previously mentioned (and whom I was told had gone away) and they will be supplying the cash on behalf of a consortium of families - never mentioned before. He also said that the funds are controlled by the BIS and ECB ("powers above") whom he had to be fully vetted by. He said the funds would be held in the Lex Foundation and used as collateral for a medium term note programme, which is where the funds were generated from. He said he will start on the write up on and will be sure to share the contract between the family office and Lex when the advise is received."

14. Searches done subsequently indicate that Intrepid was incorporated on 12 November 2020 with a registered office at a serviced office in Covent Garden. Fourteen other companies were incorporated at about the same time, sharing the same directors and registered office address.

15. On 19 April 2021 Mr Shah emailed Citibank making reference to a second SWIFT message ("***SWIFT-2***"). Mr Shah did not provide a copy of SWIFT-2, but provided a tracking code and stated that "*given the special nature of the contemplated transaction*", SWIFT-2 was being tracked by "*a US federal agency*".

16. Citibank closed the Account on 27 April 2021 with a zero balance. Mr Shah on the same day sent Citibank an email attaching two purported MT-103 SWIFT messages ("***SWIFT-3***") dated 22 April 2021. A SWIFT MT-103 message is a message recording an interbank cash transfer.

17. The SWIFT-3 messages purported to be from Deutsche Bank and to confirm that €10 billion had been transferred from an account at Deutsche Bank held by Regulus (whereas SWIFT-1 had indicated a readiness to transfer from an account held by Intrepid). Regulus was one of the fourteen companies incorporated at about the same time as Intrepid, with common directors and sharing a registered office address in Covent Garden. Mr Shah's email stated:

> "Again I have had the funds transfer independently tracked. I suspect there is some internal politics in Citibank. Let's work this out together, because this is not going to end with closing the Lex Foundation account."

18. On 19 May 2021 Mr Shah emailed Andrew Bailey (Governor of the Bank of England), copying Jane Fraser (Citigroup's CEO). Mr Shah claimed that his "*sources in intelligence advised me that [Citibank] has taken steps to use the funds for its own benefit*" and threatened to report the matter to the Foreign and Commonwealth Office and Serious Fraud Office. As a proposed solution, Mr Shah suggested that the Bank of England should credit the Account with €10 billion, and said that if it did so, he would transfer a further €90 billion into the Account. Mr Shah added:

> "To promote financial stability further, I propose that you open an account for Lex Foundation at the Bank of England and I will arrange to remit a further €500,000,000,000.00 (Five Hundred Billion Euros) to that account from other legitimate sources. Thereafter, I propose to exchange some or all of the cash for Gilts, thereby providing liquidity, which will benefit the British economy.
>
> I propose to acquire 10% of the fully diluted stock of Citigroup by means of an issue of new shares, that will provide Citigroup with new capital, as opposed to acquiring stock in the market. Apparently, Citigroup would like to use our money, so I would like to get something in return for it.
>
> … I am committed to playing my small part in supporting the global financial system…".

19. On 25 May 2021 Mr Shah emailed Ms Fraser and Sunil Garg (the First Defendant's CEO) saying that unless Citibank credited the Account with €10 billion by close of business on 28 May 2021, he would create a "*shitstorm that is going to wreak havoc on your bank and end your careers*". Mr Shah said he planned to hold Ms Fraser and Mr Garg "*personally responsible for the attempted theft of these funds*".

20. On 26 May 2021 Mr Shah sent a letter to Ms Fraser, he copied *inter alia* to Mr Garg and the Governor of the Bank of England, including the following passages:

> "By now you should have realised that the dishonest dealings between Deutsche Bank and other financial institutions, including your own, have come to the attention of security services and evidence is being made available to law enforcement agencies. The extent of the dishonesty goes well beyond the €10 billion remitted to the Lex Foundation. I have been advised that it extends to around €400 billion. I have reason to believe that there are grounds to invoke RICO in this case. That will make your bank culpable in an affair that substantially exceeds the market capitalization of Citigroup.
>
> …
>
> The evidence against your bank is inescapable. I write this letter to propose a solution. That is my profession; I find ways to win in no-win scenarios. I also create no-win scenarios. If you cooperate with me and my associates, this could be your

Kobayashi Maru moment. I could be your white knight or your worst nightmare; the choice is yours.

I have engaged lawyers who will be writing to your legal department as a pre-action formality. I intend to seek injunctive relief in the High Court of England. Then this scenario will go public.

My proposed solution, that will also apply in principle to the other financial institutions which colluded with Deutsche Bank, can be summarised as follows:

1. Citibank reactivates the account of Lex Foundation in order that it can conduct its legitimate humanitarian affairs.

2. Citibank immediately credits €10,000,000,000 to the account of Lex Foundation.

3. Citibank replaces Mrs Lesley Hodgson with Mr Adrian Cosby (Special Operations) as the relationship manager of Lex Foundation.

4. Citibank agrees to receive a further €90,000,000,000 into the account of Lex Foundation and responds accordingly to a SWIFT pre-advice from Deutsche Bank.

5. Lex Foundation issues a non-disclosure and waiver of claim to Citigroup through our respective legal representatives.

6. Citibank yields all illicit gains from transactions involving Deutsche Bank to the appropriate regulatory bodies and/or central banks by way of a voluntary fine.

7. By a private placement of shares, Citibank sells 10% of its fully diluted common stock (with detachable warrants) to each of two family offices (Lex Foundation and SpiritShifting AG); thereby raising capital for its legitimate banking business.

As shareholders of the bank, naturally it would be in our interest to do everything in our power to protect the bank and its reputation.

The Lex Foundation takes its name from the root of the Greek name Ἀλέξανδρος (Aléxandros), meaning "protector of mankind". To that end we undertake our mission with fearless vigour, because we are doing God’s work. History has shown that boundless power is bestowed upon the meek when love of humanity is in their hearts. Do not underestimate it. If financial institutions have to be sacrificed for the greater good, so be it. However, we aim to serve as agents to maintain stability of the

> global financial system. It is the dishonesty of bankers that puts the system at risk.
>
> I hope this letter receives an appropriate response. You may feel more comfortable to meet me in person at your offices in London to discuss the way forward."

21. On 29 May 2021 Citibank's solicitors wrote to Mr Shah stating that Citibank never received the alleged transfer and that SWIFT-1 was forged.

22. Also on 29 May 2021, proceedings were commenced in the Chancery Division against Lex Foundation and Mr Shah by Mr Sunil Gupta and an associated company ("***the Gupta Proceedings***"). The claimants in the Gupta Proceedings allege that Lex Foundation and Mr Shah defrauded them of US$14 million. In their defence and witness evidence in those proceedings, Mr Shah and Lex Foundation deny the claims, and rely on Lex Foundation's alleged deposit of €10 billion into the Account with Citibank as in some way representing (in part) the US$14 million paid by the Gupta claimants and as demonstrating that Lex Foundation has substantial assets. Mr Shah claims in a witness statement in the Gupta Proceedings that he is an undercover agent for security services, and gives as an example of his work a mission in 2017 "*to transport $700 million in cash contained in boxes stored in a cave in Afghanistan…The money was used by the CIA to bribe a Taliban Chief…*". In a separate statement in the proceedings Mr Shah alleges that the Prince had colluded with Mossad agents to take control of the alleged €10 billion. In May and June 2021, the claimants in the Gupta Proceedings obtained worldwide freezing injunctions and *Bankers Trust* orders against Lex Foundation, Mr Shah and his wife.

23. On 9 July 2021 Mr Shah sent a letter to Clifford Chance demanding that Citibank unequivocally confirm that it held the cash sum of €10,000,000,000.00 in favour of Lex Foundation. He also stated:

> "The European Central Bank has confirmed to me directly that the funds were transmitted to Citibank on 22 April 2021 and that Citibank has acknowledged the fact to the European Central Bank. It has also confirmed to me that the Bank of England is fully aware of the remittance of funds and both these institutions are in discussions with Citibank to settle the matter out of court."

Mr Shah attached to this letter two further pdfs purporting to be MT-199 SWIFT messages dated 25 June 2021 from Deutsche Bank confirming payment of the alleged transfer of €10 billion to Citibank on behalf of Regulus ("***SWIFT-4***").

24. On 20 July 2021, Mr Shah emailed Ms Fraser and Mr Garg direct, attaching a letter from Lex Foundation's then direct access counsel which enclosed pdf copies of SWIFT-1, SWIFT-3 and SWIFT-4.

25. Lex Foundation issued the present proceedings on 28 July 2021.

26. There was further correspondence between Clifford Chance and Lex Foundation's then direct access counsel. In a letter of 6 August 2021, Clifford Chance set out

reasons for believing that the various SWIFT messages supplied by Mr Shah were forgeries. I set out the following passages from this letter because they raise a number of points which Lex Foundation did not answer:

> "In pursuit of its allegations, your client initially sought to rely on a "SWIFT pre-advice" dated 7 April 2021 as evidencing the alleged transfer on 22 April. As explained to Mr Shah in our letter of 29 May, this document is a forgery. Deutsche Bank have confirmed that the SWIFT message is not genuine and that the account number has been used in a number of fraudulent documents. Further, the document was never received by our client via SWIFT.
>
> In apparent recognition of the force of our client's position, Lex Foundation now seeks to rely on another set of SWIFT messages as evidencing the alleged transfer. These "SWIFT confirmations", dated 25 June 2021 and provided to us by Mr Shah on 9 July, contain a number of discrepancies from the original SWIFT message relied upon - they cite a different Deutsche Bank account number, from a different Deutsche Bank account name, with a different bank address, SWIFT code/BIC and transaction reference number (the "Second SWIFT Messages"). No explanation has been provided for these differences.
>
> Deutsche Bank have confirmed to our client that they did not issue the Second SWIFT Messages, and that they contain indicators consistent with a conclusion that they have been fraudulently generated.
>
> Further, the analysis of the Second SWIFT Messages that we have conducted with our client strongly suggests that the Second SWIFT Messages upon which your client is seeking to rely are forgeries. In particular:
>
> (a) they were never received by our client via SWIFT;
>
> (b) they are missing key information that would be required for a MT103 payment instruction, most notably the payment amount and date; and
>
> (c) the UETR number (Unique End-to-end Transaction Reference) provided does not exist in the SWIFT GPI (Global Payments Innovation) tracker tool. A UETR number is automatically generated when a payment instruction is created; it is therefore noteworthy that the UETR cited does not exist in the tracker tool.
>
> …

> We have today been informed by our client that you wrote to Jane Fraser, CEO of Citigroup, Inc., copying Sunil Garg, CEO of Citibank, on 20 July 2021 attaching the above SWIFT messages, together with yet a further SWIFT message (the "Third SWIFT Message") which you purport to be a SWIFT "cash transfer" from Deutsche Bank to Citibank.
>
> Deutsche Bank have also confirmed that the Third SWIFT Message is not genuine and was not issued by Deutsche Bank. Further, our client never received this message via SWIFT, and repeats the point made above regarding the UETR number not existing in the tracker tool."

27. Lex Foundation's then direct access counsel responded on 24 August 2021, not responding directly to Clifford Chance's points but instead asking Citibank for further information and documents.

28. On 27 August 2021 Mr Shah wrote to his then direct access counsel, copying the Governor of the Bank of England, Christine Lagarde (President of the European Central Bank), Lisa Osofsky (the Director of the Serious Fraud Office), Ms Fraser and Mr Garg. The letter included the following points:

> "The transfer of EUR 10 billion to Lex Foundation originated from a fund (the "Fund") held by Deutsche Bank referred to as a "Special Status Fund", comprised in large part of money derived from Chinese and Russian heritage assets. 28% of the Fund is M1 money and the remaining is M4 money. It also includes Iranian money, given to the Iranian regime by the US government and derived from secret commercial dealings between the US government and Iranian regime (contrary to sanctions).
>
> The aggregated assets were used as collateral and traded in MTN programs; hence constituent deposits bear FED transaction codes, which identify specifically which trading program, when where and who undertook the trade.
>
> Thousands of pallets of cash US dollar notes reside in depositories around the world; including London, Moscow, Oman, Hong Kong and Istanbul, some of which I have personally inspected. The safe keeping receipts are issued by the depositories in favour of Deutsche Bank.
>
> The documentation that accompanies these deposits show that the physical cash is held in the accounts of Iranian gentlemen, who are agents of Iranian intelligence. I have had dealings with these gentlemen, some located in Tehran and another in Dubai. During my negotiations with one of the custodians based in Tehran, he was replaced with a higher ranking agent. He was able to produce up to date documentation from Deutsche Bank, which reflected the details of the new account holder.

This indicated to me that the account was live i.e. the relationship between Deutsche Bank and the Iranian custodian was not a historic one. This transaction was approved by the FED and managed by the CIA. I hold classified material relating to these monies: bills of landing, safekeeping receipts, bank account numbers, FED ID codes.

These monies are payments to the Iranian regime for their commercial dealings with the United States government. These constitute part of the funds in Deutsche Bank from which the EUR 10 billion was sent.

The money given to the Iranians is M1; that means that the notes were not only been printed by the US Treasury, they were registered as money, so they are part of the money supply in circulation, unlike for example, the US dollar notes given by the CIA to the Taliban chief, with whom I had financial dealings.

I have been approached by Chinese State Security, which has offered me "unlimited" resources and assistance in supporting their interests in the Special Status Funds in Deutsche Bank and UBS. The Chinese have a plethora of classified material on the banking cartel's dealings with their assets.

…

A cartel of bankers led by Deutsche Bank and including Citibank, Barclays, HSBC, JP Morgan, Bank of NY Mellon, have systematically drained monies out of the Fund from which Lex Foundation received EUR 10 billion. The theft has been facilitated by agents of the CIA.

…

I am an undercover agent for security services. I was given the mission to receive EUR 100 billion (x2) into my humanitarian foundation for approved projects, which includes a number of African infrastructure and economic development projects. I played out the process of transferring the first tranche of EUR 10 billion and was confronted by the disingenuous antics of Citibank and the modus operandi described above. ...

I have access to the Citibank system screen. I provided copies of the Citibank system showing the money in the Citibank system. In the black screen screenshot, the algorithms are generated by Citibank servers, which communicated with Deutsche Bank servers via the SWIFT GPI system.

> I am aware that Citibank attempted to wipe the SWIFT from the system in Brussels, but have been unable to do so, because another federal agency has blocked it.
>
> …
>
> Several days after the money arrived in Citibank, Andrew Bailey sent a letter on behalf of Citibank to the European Central Bank requesting clearance to trade with these funds. I also have access to telecommunications intercepts that place the Bank of England and Serious Fraud Office in meetings with Citibank concerning Lex Foundation.
>
> In addition to the evidence I can disclose, there is a plethora of evidence that will emerge in the course of Lex Foundation's action. This will inevitably become a criminal matter and the careers of certain public officials will end badly. I will make sure of it.
>
> …
>
> One has to consider the possibility that I am being used to trigger the crash of the prevailing global financial system, to enable those higher up the food chain to reset the debt system.
>
> …
>
> I want it on record that I tried to resolve this matter discretely for the sake of stability of the global financial system. I am not responsible for what happens next.
>
> This is not a "bargaining tool" as Clifford Chance called it; it is a tactical nuclear weapon, and I am going to use it.
>
> Please accept this as my instruction to present this letter to Clifford Chance. I reserve the right to use this correspondence in legal proceedings and/or publish it."

29. Lex Foundation's then direct access counsel came off the record on 15 September 2021, and its current solicitors came on the record.

30. Deutsche Bank has written to Citibank about the alleged SWIFT messages in the following terms.

    i) On 3 September 2021, Ms Jane Gow, Special Counsel UKI LRE and Financial Crime at Deutsche Bank, London wrote a letter to Citibank about SWIFT-3 as follows:

    > "We write with reference to your letter dated 01 September, in which you inform us that Citibank was presented with a SWIFT message MT103 dated 22 April 2021 as evidence of an alleged transfer of EUR 10 billion. Lex Foundation Limited has

> alleged that this SWIFT message was issued by Deutsche Bank to Citibank when transferring these funds on its behalf. Deutsche Bank has made enquiries with its Anti- Fraud Team in Germany and can confirm that the SWIFT message MT103 allegedly issued by Deutsche Bank is not authentic and was not issued by Deutsche Bank."

ii) On 27 September 2021, Ms Gow wrote a further letter to Citibank, in relation to SWIFT 1, SWIFT-3 and SWIFT-4, saying:

> "Further to our letter of the 03 September, we can additionally confirm that the SWIFT messages dated 7 April, 22 April and 25 June, provided to us by Citi Bank, have also been analysed by our Anti- Fraud team. These messages are not authentic and were not issued by Deutsche Bank. Deutsche Bank has no record of a client relationship with Lex Foundation Ltd, Regulus Capital Partner Ltd, or Intrepid Capital Funding Ltd."

iii) On 28 September 2021, Mr Owain Dennis of the Fraud Risk Management, AFBC (UKI) at Deutsche Bank sent an email to Citibank about SWIFT-1 saying:

> "As per our telephone call, DB can confirm that the SWIFT message dated 7 April 2021 you are in possession of was not issued by Deutsche Bank and the contents of this message contain false information.
>
> The reference number "DE41670700240058175100" is known previously by DB to have been included in a number of attempts to defraud individuals on fake documents bearing the Deutsche Bank logo which we have seen in the UK and overseas. The reference number is not a recognised DB client account."

31. Citibank filed its Defence on 29 September 2021 and the present application on 30 September 2021.

(C) PRINCIPLES

32. CPR 24.2 provides as follows:

> "The court may give summary judgment against a claimant or defendant on the whole of a claim or on a particular issue if –
>
> (a) it considers that –
>
> (i) that claimant has no real prospect of succeeding on the claim or issue; or
>
> (ii) that defendant has no real prospect of successfully defending the claim or issue; and

(b) there is no other compelling reason why the case or issue should be disposed of at a trial."

33. In *The LCD Appeals* [2018] EWCA Civ 220, the Court of Appeal quoted with approval the following considerations applicable to summary judgment applications, taken from passages in *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch) and *Swain v Hillman* [2001] 1 All ER 91 at 94:

i) the court must consider whether the claimant has a "*realistic*" as opposed to a "*fanciful*" prospect of success: *Swain v Hillman* [2001] 1 All ER 91;

ii) a "*realistic*" claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: *ED & F Man Liquid Products v Patel* [2003] EWCA Civ 472 § 8;

iii) in reaching its conclusion the court must not conduct a "*mini-trial*": *Swain v Hillman*;

iv) this does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: *ED & F Man Liquid Products v Patel* § 10;

v) however, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: *Royal Brompton Hospital NHS Trust v Hammond (No 5)* [2001] EWCA Civ 550;

vi) although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: *Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd* [2007] FSR 3;

vii) on the other hand, it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may

turn up which would have a bearing on the question of construction: *ICI Chemicals & Polymers Ltd v TTE Training Ltd* [2007] EWCA Civ 725; and

viii) a judge in appropriate cases should make use of the powers contained in Part 24. In doing so, he or she gives effect to the overriding objective as contained in Part 1. It saves expense; it achieves expedition; it avoids the court's resources being used up on cases where this serves no purpose; and it is in the interests of justice. If the claimant has a case which is bound to fail, then it is in the claimant's interest to know as soon as possible that that is the position: *Swain v Hillman* [2001] 1 All ER 91 § 94.

34. If an applicant for summary judgment adduces credible evidence in support of the application, the respondent then comes under an evidential burden to prove some real prospect of success or other reason for having a trial: *Sainsbury's v Condek* [2014] EWHC 2016 (TCC) § 13.

35. A respondent to a summary judgment application who claims that further evidence will be available at trial must serve evidence substantiating that claim: *Korea National Insurance Corp v Allianz* [2007] 2 CLC 748 (CA):

> "It is incumbent on a party responding to an application for summary judgment to put forward sufficient evidence to satisfy the court that it has a real prospect of succeeding at trial. If it wishes to rely on the likelihood that further evidence will be available at that stage, it must substantiate that assertion by describing, at least in general terms, the nature of the evidence, its source and its relevance to the issues before the court. The court may then be able to see that there is some substance in the point and that the party in question is not simply playing for time in the hope that something will turn up. It is not sufficient, therefore, for a party simply to say that further evidence will or may be available, especially when that evidence is, or can be expected to be, already within its possession, as is the case here. …" (§ 14 per Moore-Bick LJ)

36. In appropriate cases, summary judgment can be granted or a claim can be struck out even where there is an allegation of fraud or forgery, though the court must be very cautious about doing so. Sir Igor Judge PQBD in *Wrexham Association Football Club v Crucialmove Ltd* [2006] EWCA Civ 237 (in a passage later approved by Sir Terence Etherton CHC in *Allied Fort Insurance Services Ltd v Ahmed* [2015] EWCA Civ 841 § 81) said:

> "[57] I do not underestimate the importance of a finding adverse to the integrity to one of the parties. In itself, the risk of such a finding may provide a compelling reason for allowing a case to proceed to full oral hearing, notwithstanding the apparent strength of the claim on paper, and the confident expectation, based on the papers, that the defendant lacks any real prospect of success. Experience teaches us that on occasion apparently overwhelming cases of fraud and dishonesty somehow inexplicably disintegrate. In short, oral

> testimony may show that some such cases are only tissue paper strong. As Lord Steyn observed in *Medcalf v Weatherill* [2003] 1 AC 120 at paragraph 42, when considering wasted costs orders:
>
> > 'The law reports are replete with cases which were thought to be hopeless before investigation but were decided the other way after the Court had allowed the matter to be tried'.
>
> And that is why I commented in *Esprit Telecoms UK Ltd and others -v- Fashion Gossip Ltd*, unreported, 27 July 2000 that I was
>
> > 'troubled about entering summary judgment in a case in which the success of the claimant's case involves, as this one does, establishing allegations of dishonesty and fraud, which are strongly denied, and which cannot be conclusively proved by, for example, a conviction before a criminal court.'
>
> [58] This collective judicial experience does not always, or inevitably, provide a compelling reason for allowing the case to proceed to trial, nor for that matter require the judge considering the application to reject the conclusion that there is no real prospect of a successful defence of the claim if he is satisfied that there is none. That is not what the Rules provide, and if that had been intended, express provision would have been made. It is however a factor constantly to be borne in mind, if and when, as here, the reason for concluding summary judgment is appropriate is consequent on a disputed finding, adverse to the integrity of the unsuccessful party."

37. By way of examples, in *Johnson v Cammack* [2013] EWHC 4845 (Ch) Briggs J struck out one of two probate claims on grounds that "*none of the documentary evidence looked at individually or in the aggregate is sufficient to give a real prospect of success to the claimant…they are all probable forgeries and…the claimant has no real prospect of establishing otherwise at trial"* (§ 19). In *Foglia v Family Officer Ltd* [2021] EWHC 650 (Comm), Cockerill J granted the claimant summary judgment against a defendant, Mr Cerri, on claims alleging fraud, holding that the defendant "*has no positive case which even theoretically explains the facts"* alleged (§ 111), having acknowledged that according to the authorities *"very considerable caution is required*" (§ 13). Cockerill J also stated:

> "102. I bear very much in mind that it is highly unusual for such a claim to be decided summarily. While I would not accede to the submission advanced … that, given Mr Cerri's fiduciary position, and absence of history as a fraudster, the standard of proof is essentially the criminal standard, I do agree that I certainly should not drift into simply deciding this case on a normal civil burden of proof as if this were a trial – a route

> which [the claimant's] approach, which did tend to that of a mini-trial, might encourage.
>
> 103. I conclude that in approaching this application I must bear in mind that while at trial the civil burden of proof applies, caution is even at that point exercised in reaching a conclusion that fraud is proven, perhaps particularly in the context of professionals and fiduciaries, and that I must be satisfied that (bearing in mind the possibilities for further evidence) Mr Cerri's prospects of success are truly fanciful as opposed to real. While I may look critically at the evidence (and some of the evidence which I have rehearsed above does give room for doubt that Mr Cerri really falls to be treated as an entirely honest businessman), bearing in mind the stage of the proceedings the approach of looking to see if any honest explanation is possible, as at the pleading stage, is almost certainly a sound cautionary check."

38. In *King v Stiefel* [2021] EWHC 1045 (Comm) Cockerill J summarised the position in this way:

> "21. The authorities therefore make clear that in the context of summary judgment the court is by no means barred from evaluating the evidence, and concluding that on the evidence there is no real (as opposed to fanciful) prospect of success. It will of course be cautious in doing so. It will bear in mind the clarity of the evidence available and the potential for other evidence to be available at trial which is likely to bear on the issues. It will avoid conducting a mini-trial. But there will be cases where the Court will be entitled to draw a line and say that -even bearing well in mind all of those points - it would be contrary to principle for a case to proceed to trial.
>
> 22. So, when faced with a summary judgment application it is not enough to say, with Mr Micawber, that something may turn up. ……
>
> 24. The reality is that while the court will be very cautious about granting summary judgment in fraud cases, it will do so in suitable circumstances, and there are numerous cases of the court doing so. This is particularly the case where there is a point of law; but summary judgment may be granted in a fraud case even on the facts. I have done so in a case heard very close in time to this application: *Foglia v The Family Officer and others* [2021] EWHC 650 (Comm) …
>
> 25. In terms of the approach to summary judgment in fraud claims [the fourth defendant] commended to my attention the judgment of Stuart Smith J in *Portland Stone Firms Ltd v Barclays Bank plc* [2018] EWHC 2341 (QB) at [25] – [29], in

> the context of the approach to be taken when faced with an application to strike out a claim in fraud. In summary:
>
> i) The Court should bear in mind that cogent evidence is required to justify a finding of fraud or other discreditable conduct, reflecting the court's conventional perception that it is generally not likely that people will engage in such conduct.
>
> ii) Pleadings of fraud should be subjected to close scrutiny and it is not possible to infer dishonesty from facts that are equally consistent with honesty.
>
> iii) However, in view of the common feature of fraud claims that the Defendant will, if the underlying allegation is true, have tried to shroud his conduct in secrecy, the Court should adopt a "generous" approach to pleadings.
>
> 26. … As just noted, under CPR 24 evidence is admissible to show that the pleaded allegations are fanciful – albeit that the court will be very cautious about rejecting a claimant's factual case at the summary judgment stage."

39. More recently, in *Rahbarpoor v Suliman* [2021] EWHC 2686 (Ch), Clare Ambrose (sitting as a Deputy High Court Judge), after citing *Easyair*, underlined the need for caution, saying:

> "26 The defendants refer to *Fashion Gossip Ltd v Esprit Telecoms UK Ltd & Ors* [2000] EWCA Civ 233, where the Court of Appeal suggested that where there are allegations of dishonesty which cannot be conclusively determined, for instance by a conviction, then the court should not make a finding summarily and that all the facts and every nuance needs explanation. Both sides also referred me to the decision of Cockerill J in *Foglia v The Family Officer Ltd & Ors* [2021] EWHC 650 (Comm).
>
> 27 All these cases show that a court must show very considerable caution in granting summary judgment where dishonesty is critical to the claim in question, especially where each side will effectively be saying that the other is lying. This is the paradigm case for having a trial, where each side's witness evidence can be challenged. However, *Foglia* and *Easyair* do suggest that the court may properly be willing to grasp the nettle where there is firm, unanswerable contemporaneous evidence suggesting that the defence to the allegation of dishonesty has no real prospect of success. So, for instance, in Foglia, summary judgment was allowed where contemporaneous emails provided several separate answers to any defence to the allegation of fraud."

(D) APPLICATION

40. I consider first the evidence about the source and purpose of the €10 billion alleged to have been transferred to Citibank on 22 April 2021, and then the evidence about its alleged transmission by Deutsche Bank and receipt by Citibank.

(1) Source and purpose of funds

41. As noted earlier, Lex Foundation itself filed dormant company accounts for the years ended 31 December 2019 and 31 December 2020 showing net assets and net reserves of zero. Intrepid and Regulus were incorporated in December 2020, only five months before the alleged transfer of €10 billion from Regulus' account to Citibank. There is no evidence of either company having any business or assets.

42. Mr Shah's explanation as to the source of the funds was originally that Intrepid was owned by a Swiss Family Office, with whom Mr Shah had a trading agreement (§ 9 above). Mr Shah also said the Swiss Family Officer would be supplying the cash on behalf of a consortium of families, and that the funds had been generated from a medium term note programme (§ 13 above). No documents or corroborative evidence of any kind have ever been put forward in support of this story.

43. Mr Shah then stated, in the correspondence referred to in §§ 15, 20 and 28 above, that the transaction was a special one being tracked by a US federal agency; that Lex Foundation was serving "*as agents to maintain stability of the global financial system*"; that the money derived mostly from "*Chinese and Russian heritage assets*" and partly from money given to the Iranian regime by the US government derived from secret commercial dealings contrary to sanctions; and that Mr Shah (or Lex Foundation) had been given the mission to receive €100 billion (x2) for approved projects such as African infrastructure and economic development. Again, no documents or corroborative evidence of any kind has been put forward to verify any of these claims.

44. Lex Foundation submits as follows:

i) It was Citibank's own client. Lex Foundation was permitted to open an account with Citibank only after undergoing a KYC/AML (know your customer/anti money laundering) verification procedure. It must be assumed (given the size, reputation and regulatory obligations on Citibank) that the process was thorough and rigorously applied. It is therefore not credible for Citibank to allege that Lex Foundation has no real business – that would necessarily have been apparent in the KYC/AML process.

ii) In any event, Lex Foundation was at the least a credible prospect as the manager of large-scale humanitarian projects. It had a member of the Saudi royal family on the board. Its director, Mr Shah, provided evidence that he was a man of significant personal wealth with in excess of US$10M in liquid funds.

iii) Citibank points to Lex Foundation's lack of assets, according to its accounts, but has failed to credit to Lex Foundation its single most important asset – the sum of €10 billion it was due to receive into its account with Citibank.

iv) Lex Foundation has made clear that Regulus was not the ultimate source of the funds but merely the conduit by which they were sent. Citibank's point about it being a shell company without significant funds therefore carries no weight.

v) Generally, Lex Foundation has set out its case in its Particulars of Claim, verified by a statement of truth. It is entitled to rely on that document as evidence as to the truth of its claim (CPR 32.6(2)). Citibank's attack on Lex Foundation's case (and the documents at the heart of that case) is superficial and insufficiently cogent to cross the high threshold required for summary judgment in a case where fraud/dishonesty is alleged. Lex Foundation's evidence raises significant questions which can only satisfactorily be resolved at trial or, at the least, after further investigation.

vi) The superficiality of Citibank's evidence means that there is no question of any evidential burden of proof being placed on Lex Foundation. The absence of a witness statement from Lex Foundation does not elevate Citibank's case to one that crosses the threshold for summary judgment.

45. Taking those points in turn:

i) It is somewhat telling that Lex Foundation's response to Citibank's contention that Lex Foundation has no real assets or business is not to produce evidence of either, but instead to rely on Citibank's verification procedures to suggest that Citibank must have concluded that they existed. Citibank's case, as set out in its Defence, is that the account was opened in connection with an existing private banking relationship between Citi Private Bank and the Prince, who was at the relevant time a director of Lex Foundation and an acquaintance of Mr Shah. At the time of opening the account, Mr Shah stated that the account would be funded with US$10million of his own funds, producing an (alleged) screenshot as proof of funds. However, after the account had been opened, the funds did not materialise and the Prince resigned as a director of Lex Foundation. Reliance on Citibank's procedures accordingly does not assist Lex Foundation.

ii) The fact that Lex Foundation was somehow able to persuade the Prince to be a director for a short period does not demonstrate that Lex Foundation was in any sense a credible prospect as the manager of large-scale humanitarian projects. The evidence which Lex Foundation says Mr Shah provided, to show that he was a man of significant personal with wealth in excess of US$10M in liquid funds, was an email from Mr Shah himself dated 14 December 2020 and its attachment. The email asserted that Mr Shah owned a series of valuable assets, including a house in Surrey said to be worth £14.5 million, investments worth of the order of £2 million and US$4.5 million, and cash with Barclays of US$10 million plus £600,000.

The attachment was a screenshot of a Barclays webpage stating account balances, including £600,000 in a savings account and US$10 million in an account numbered 84671477. It is notable that the latter is the account into which Mr Gupta alleges that, by reason of Mr Shah's alleged fraud, he paid US$10 million on or around 30 November 2020 and US$4 million on or around 2 December 2020. That account and those funds are the subject of

freezing orders granted by Snowden J on 28 May 2021 (as varied by subsequent orders). It is a reasonable inference that the US$10 million shown in the screenshot which Mr Shah emailed to Citibank on 14 December 2020 represented part of the US$14 million that the Gupta claimants claim to have paid into the account over the preceding two weeks. Indeed, Mr Shah's fifth witness statement in the Gupta proceedings, dated 20 July 2021, indicates that US$10 million received from the Gupta claimants remained in Mr Shah's dollar account at Barclays until 21 April 2021, when it was transferred to his HSBC accounts. Lex Foundation and Mr Shah admit the Gupta claimants' allegation that the second Gupta claimant transferred to money to the account in the belief and on the understanding (based on representations by Mr Shah) that it would be held in trust for the Gupta claimants, to be held as collateral/security for their participation in a financial programme. However, Lex Foundation and Mr Shah allege that the money was or included the proceeds of crime, and is therefore irrecoverable by the Gupta claimants. It is difficult to see how Mr Shah could properly rely on his possession of these funds – which according to the Gupta claimants belong to them and according to Mr Shah represent criminal proceeds – as demonstrating his own personal wealth. It is also difficult to see how the receipt of those funds supports the suggestion that Lex Foundation, Mr Shah or any of the companies associated with them is a credible source or conduit for a payment of €10 billion.

iii) The suggestion that Lex Foundation can rely on the €10 billion allegedly transferred to Citibank in order to help demonstrate that it was an entity of financial substance is wholly circular.

iv) Even if Regulus were a mere conduit for the funds, Lex Foundation could be expected to be able to produce evidence of its receipt and transmission of the money. Lex Foundation has made no attempt to do so.

v) The court is not required to take a claimant's statements in its particulars of claim at face value, even though supported by a statement of truth, if the evidence as a whole indicates that the claim has no realistic prospect of success.

vi) I do not agree that Citibank's attack on Lex Foundation's case (and the documents at the heart of that case) is superficial or insufficiently cogent to cross the high threshold required for summary judgment in a case where fraud/dishonesty is alleged. First, Citibank does not need to establish fraud or dishonesty in order to succeed in its application, but only that there is no realistic prospect of Lex Foundation showing that the €10 billion was paid to Citibank and that there is no other compelling reason for a trial. Secondly, and in any event, Citibank's evidence indicates that neither Lex Foundation, nor Intrepid or Regulus was a remotely plausible payer of any substantial amount of money, let alone such a vast sum. Further, as discussed in sections (2) and (3) below, the evidence indicates that none of those companies had an account at Deutsche Bank, that Deutsche Bank did not pay the money, and that Citibank did not receive it. If any part of Lex Foundation's version of events were true, it would be in a position, and could reasonably be expected, to adduce documentary or other evidence in support of it.

46. For these reasons, I consider the suggestion that Lex Foundation, Intrepid or Regulus were ever in a position to transfer €10 billion to Citibank to be entirely fanciful.

(2) Transmission by Deutsche Bank

47. The correspondence from Deutsche Bank referred to in § 30 above states in unequivocal terms that the alleged transfer did not occur, that it did not send the purported SWIFT messages, and that it has no banking relationship with Lex Foundation, Intrepid or Regulus.

48. Lex Foundation makes the following submissions:

i) Deutsche Bank's statements that the SWIFT messages are "*not authentic*" amounts to no more than bare assertion. There is no explanation from Deutsche Bank as to why they are considered not to be authentic and, as a result, the statements carry little or no weight.

ii) It is insufficient for Deutsche Bank to state that they have no record of a banking relationship, when the SWIFT messages refer to a sending account number.

iii) Resolving questions as to whether or not the SWIFT messages were sent via the SWIFT system, whether they were sent by Deutsche Bank or received by Citibank will require examination by expert evidence in due course.

iv) Deutsche Bank's email of 28 September 2021 raises significant but unanswered questions. It is suggested that the reference number on SWIFT-1 was linked to previous attempts to defraud individuals. However, for that allegation to be credible, there has to be some link with Lex Foundation. The chance that Lex Foundation (or Mr Shah) randomly matched a 22 digit reference that was connected with fraud is infinitesimally small – but there is absolutely no suggestion of any link between Lex Foundation and the alleged previous frauds.

49. As to those points:

i) Deutsche Bank's communications include the simple statements of fact that the purported SWIFT messages are not authentic communications emanating from Deutsche Bank. Those statements are perfectly clear, and are entirely unsurprising in circumstances where Deutsche Bank has also stated that none of Lex Foundation, Intrepid or Regulus held a bank account with it. It would have been very simple for Lex Foundation to demonstrate that one or more of the companies held accounts with Deutsche Bank, and indeed that one of the accounts contained at least €10 billion on 22 April 2021, but it has made no attempt to do so.

ii) The fact that the SWIFT messages state a purported Deutsche Bank account number makes no difference. Deutsche Bank has indicated in clear terms that none of the entities in question has an account with it.

iii) In circumstances where Lex Foundation cannot even show a prima facie case that it, Intrepid or Regulus had an account with Deutsche Bank and had €10 billion in that account available for transfer to Citibank, the case comes nowhere near requiring expert evidence.

iv) Deutsche Bank's statement that the reference number on SWIFT-1 was linked to previous attempts to defraud individuals does not, in order to be credible, require a link to be shown to Lex Foundation.

50. Accordingly, the information received from Deutsche Bank, even though in the form of correspondence rather than a witness statement or other formal evidence, but bearing in mind Lex Foundation's failure to provide any evidence to meet it, points compellingly against Lex Foundation's case.

(3) Receipt by Citibank

51. Mr Yates states in evidence that:

> "36.1 a sum of €10 billion was never transferred to or received by the Defendants on behalf of the Claimant;
>
> 36.1.1 Citi has conducted searches of Citi's Transaction Lifestyle Management ("TLM") system, a platform used for reconciliation of funds movement across clearing/correspondent banking accounts, for:
>
> (1) any transfers of EUR 10 billion received by Citi Private Bank's EUR nostro account from 20 April 2021 to 25 June 2021 – no results were found ...
>
> (2) any transfers of EUR 10 billion received by Citibank NA, London Branch's EUR nostro account held at Citi Dublin, which functions as its correspondent bank for Euro currency in Cash Management, from 20 April 2021 – 25 June 2021. [Footnote: Citi has informed us that a Nostro account in general is an account that a bank holds in a foreign currency with another bank]. A euro cash transfer made to a Citibank NA, London branch account would have been received by Citi Dublin and identified by this search – however, no results were found ...
>
> 36.2 the First, Second, Third and Fourth Purported SWIFT Messages (together, "the Purported SWIFT Messages") were never received by the Defendants;
>
> 36.2.1 Citi conducted searches for each of the Purported SWIFT Messages which showed that none of these messages were received by Citi via the SWIFT system; …
>
> 36.2.2 Citi has also conducted searches of its "STaRS" application, which is linked to the payment processor system

> which receives incoming SWIFT messages, for any payment instruction of EUR 10 billion from 20 April – 25 June 2021 – no results were found."

52. Lex Foundation objects that:

i) Citibank's search parameters and their sensitivity are obscure – it is not clear, for example, whether the search would have identified a sum of slightly less than €10 billion, if transaction fees had been deducted.

ii) The evidence as to the interaction or relevance of what appear to have been two nostro accounts is obscure. If any Euro transfer to Citibank NA (trading as Citi Private Bank) would have been received into the nostro account with Citi Dublin, the separate reference to "*Citi Private Bank's EUR nostro account*" is confusing. This emphasises the need for a proper investigation of all of the issues, which cannot be carried out in the context of this SJ application.

iii) Citibank's statement that it did not receive SWIFT-1, purportedly dated 7 April 2021, is based on an internal communication dated 8 April 2021 indicating that that message could not be found from a search covering the period from 1 April 2021 to date. However, Mr Shah told Citibank on 9 April 2021 that Swift had a backlog, so SWIFT-1 may have been missed from the search.

iv) Citibank's statement that it did not receive SWIFT-3 is based on a search for the relevant UETR (Unique End-to-end Transaction Reference) using the SWIFT GPI (Global Payments Innovation) tool. The UETR is automatically generated when a payment instruction is created, and retained for 124 days. However, Citibank's evidence does not state the date on which the search was carried out: if it was more than 124 days after 22 April 2021 then it will not have detected SWIFT-3.

v) Citibank and Deutsche Bank have not investigated the purported signature of the SWIFT messages by two officers of Deutsche Bank.

vi) They have also not investigated the "*wealth*" of other information set out in the SWIFT messages which could demonstrate that they were sent and received.

53. However:

i) Lex Foundation has put forward no evidence that any transaction fees would have been deducted, or the level of any such fees.

ii) Mr Yates' evidence states in terms that a Euro cash transfer made to a Citibank NA, London branch account would have been by Citi Dublin and identified by the search which Citibank carried out. No cogent reason has been put forward to doubt that evidence.

iii) Lex Foundation has provided no evidence of the SWIFT system having a backlog at the relevant time: it appears to have been no more than an assertion by Mr Shah.

iv) Counsel for Citibank told me, on instructions, that the GPI search for the UETR was done on 5 August 2021 i.e. 105 days after the alleged transfer. Citibank accepted that that fact was not in evidence. I note, however, that that date is entirely consistent with Citibank's letter to Lex Foundation's counsel the following day, quoted in § 26 above, stating among other things that the UETR number provided did not exist in the SWIFT GPI tracker tool.

Citibank added that, as Mr Yates' evidence indicated, Citibank also conducted searches of its "*STaRS*" application, which is linked to the payment processor system that receives incoming SWIFT messages, for any payment instruction of €10 billion from 20 April to 25 June 2021, and that no results were found. Since the SWIFT-3 stated the payment amount as €10 billion, one might reasonably expect it to have been detected by this search.

v) The purported signatories of SWIFT-1, SWIFT-3 and SWIFT-4 are Mr von Moltke, Citibank's Chief Financial Officer, and Mr Lewis, Citibank's Group Chief Risk Officer. It is inherently unlikely that officers at that level of seniority would personally have executed payment instructions or notifications.

vi) Lex Foundation does not explain which of the other data set out in the purported SWIFT messages could demonstrate their authenticity, or how.

54. There is accordingly no substance in any of Lex Foundation's objections on this issue.

55. Mr Yates also states that:

i) A search on the Bank for International Settlements ("***BIS***") website for Lex Foundation reveals no evidence of Lex Foundation having a mission statement registered with the BIS, as asserted in SWIFT-1; further, according to the BIS website (www.bis.org), BIS "*offers banking services only to central banks and international financial institutions*", and it does not accept deposits from, or provide financial services to, private individuals or corporate entities.

ii) SWIFT-1 includes language which Mr Yates has been informed by the Operations team for Citi Private Bank for commercial payments is indicative of a forgery, including confirmation that Deutsche Bank was "*ready, willing and able*" to transfer the funds, and that such funds were of "*non-criminal origin*". Similarly, SWIFT-3 included a statement that "*This irrevocable cash SWIFT GPI MT103 transfer can be relied upon for full cash*" and confirmation that the transfer is "*of good, clean, clear…funds of non-criminal origin*". SWIFT-4 included the statement *"We further confirm that these funds are clean, clear, free of any levy….and the transfer was fully compliant with the necessary permissions from monetary authorities"*. Mr Yates has been informed that MT199 messages do not usually include legal or banking language such as this.

iii) By reference to (1) the pro forma SWIFT MT103 message from the Knowledge Centre page of the SWIFT website (www.swift.com), which sets out the correct format for a message of this type, and (2) instructions he has received from the Operations team for Citi Private Bank for commercial payments, Mr Yates notes that:

a) the UETR should be included in field 121: there is no such field in SWIFT-3;

b) SWIFT-3 includes a F21 field: such a field does not exist in genuine MT103 messages;

c) SWIFT-3 should begin with the ordering bank and receiving bank Business Identifier Codes (BICs): these are missing from the header section of SWIFT-3;

d) field F32A should not include hyphens;

e) field F59A should not include spaces in the reference number;

f) asterisks do not exist in genuine SWIFT messages;

g) fields F77B and F79F do not exist in genuine SWIFT MT103 messages; and

h) MT103 SWIFT messages usually end with F71 or F72.

iv) the remitting bank account, remitting bank account details and SWIFT code in SWIFT-3 were different to those given in SWIFT-1; and

v) SWIFT-4 names Mr Sunil Garg as the responsible Bank Officer: Mr Yates has been informed that, as CEO of Citibank NA, Mr Sunil Garg is not involved in payment transfers or confirmations.

56. Lex Foundation responds that (a) it is clear that Citibank have made no enquiry of BIS, and taking information from the BIS website is a wholly superficial and unsatisfactory basis on which to allege falsity; (b) the allegation that the SWIFT messages (save for SWIFT-2) contained language "*indicative of forgery*" is mere assertion without explanation as why or how the language used indicates forgery; and (c) the critique of the contents and layout of SWIFT-3 is an impermissible attempt to deploy expert opinion evidence without permission for such expert evidence and is, in any event, lacking in reasoning. The point might also be made that Citibank's evidence about the difference in remitting bank details (§ 55.iv) above) perhaps does not add much to the basic point that the remitting entity is different as between SWIFT-1 and SWIFT-3.

57. I regard the further points made by Citibank, referred to in § 55 above, is essentially supplementary. Each of them is in my view cogent, and taken together with the other evidence before the court as discussed in §§ 41-54 above, they further undermine Lex Foundation's case.

(4) Overall assessment

58. There is no credible evidence that:

    i) any of Lex Foundation, Intrepid or Regulus was in a position to remit €10 billion to Citibank on 22 April 2021;

    ii) that any of them was a customer of Deutsche Bank;

    iii) that Deutsche Bank transferred €10 billion to Citibank on behalf of any of them; or

    iv) that Citibank ever received €10 billion from Deutsche Bank on behalf of any of them;

    nor of Lex Foundation being in a position to establish any of the above at trial.

59. There is no realistic prospect of Lex Foundation succeeding in its claim, and no other compelling reason for a trial.

(E) CONCLUSIONS

60. Citibank's application succeeds and it is entitled to summary judgment dismissing the whole claim.