



**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION**

**CAUSE NO. FSD 36 OF 2022 (RPJ)**

**THE FAMILY (GLOBAL GODFATHERS) SPC**

**(on its own behalf and on behalf of THE FAMILY (FREYA) SP,**

**THE FAMILY (ODIN) SP, THE FAMILY (HNOSS) SP and THE FAMILY (VIDHAR) SP)**

**Plaintiff**

**-and-**

**1. OUSSAMA AMMAR**

**2. FABULEO LIMITED**

**3. ALETHEIS, THE FIRST LIMITED**

**Defendants**

**Before:** The Hon. Raj Parker

**Appearances:** Mr Michael Wingrave and Mr Jack Stringer of Dentons on behalf of the Plaintiff

The Defendants did not appear

**Heard:** 6 & 7 November 2023

**Draft Judgment circulated:** 28 November 2023

**Judgment delivered:** 4 December 2023

**HEADNOTE**

*Judgment in default-assessment of damages-non appearance by defendants-quantum.*

**JUDGMENT****Introduction**

1. This is the Judgment following the hearing of these proceedings on 6 November 2023 against Mr Ammar('OA'), Fabuleo Ltd ('Fabuleo') and Aletheis, the First Ltd ('Aletheis') (each a 'D Co' and together the 'D Cos').
2. The Plaintiff (P), a Cayman company, obtained Judgment in default against each of the defendants and the hearing concerned only quantum.
3. The Court is satisfied that OA and the D Cos were aware of the trial date for the quantum hearing. They were notified by e mail on 21 August 2023. The materials upon which P relies were sent to the defendants on 30th October 2023 and OA's English solicitor was also copied on the communications.
4. As outlined in Colin 3, OA mentioned in a recent interview that he was conscious of an upcoming court hearing in the Cayman Islands litigation but has no intention of appearing it, and was disparaging about the Cayman Courts <sup>1</sup>. Indeed, although OA has sought to engage with litigation in France and England, his position on the Cayman Islands litigation has simply been to disregard the judicial system of this jurisdiction.
5. Indeed, none of the defendants have engaged in this litigation in this jurisdiction which was commenced by P in February 2022. A freezing order was granted in March 2022 and breached.
6. Each of the defendants continues to be the subject of a finding of contempt of Court made on 14 July 2022 and accompanying fine in the total amount of C\$ 150,000. None of the defendants have sought to purge their contempt or satisfied their financial penalty. OA is, in his personal capacity and his capacity as director of the D Cos, liable to imprisonment under the terms of the Order of 14 July 2022.

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<sup>1</sup> NC-3 pp 696-699

7. The findings in this judgement are based on the evidence and submissions put forward by P, as the defendants have not participated in any way.
8. There are related proceedings in England where there is to be a trial in November next year. There are also proceedings in France. OA is actively defending those proceedings.

### **Evidence considered at the hearing**

9. The court heard oral evidence by video link from Mr Colin. Obviously, he was not cross examined because no defendant appeared. He appeared to the court to be an honest and straightforward witness who answered all the questions put to him in chief by Mr Wingrave clearly, and also those of the court. The court also reviewed the affidavits of Mr Colin and Ms Zagury together with their exhibits.

### **Background**

10. OA was a director and management shareholder in P, a Cayman company. He was the founding partner of the Family group of companies which had been established in France in 2013 to take advantage of investment opportunities in the tech startup market. His co-founders were Nicolas Colin and Alice Zagury.
11. The D Co's are owned by OA and are incorporated in Hong Kong. He is the sole director of each of them.
12. P was incorporated in March 2019 and included a number of portfolios which were each dedicated to a particular investment opportunity. P would solicit investment funds from individuals familiar to the wider family group with each offering tailored to a particular investment opportunity.
13. OA was authorised to secure shares in target companies using funds provided to P for that purpose by investors. These target companies were pre -initial public offering (IPO) technology companies. The investment strategy was to secure shares in the target companies and hold them until after the company in question went through the IPO process. The business of securing shares took place on the secondary market because the target companies were in a pre IPO state and their stocks were not as a result traded on exchanges.

14. OA had a network of contacts in the tech start up secondary market and was able to assist the business by working with those contacts.
15. P claims in these proceedings, that notwithstanding the provision of funds by investors and others, OA either did not make the planned investments or, in one case, under invested in the planned investments and dishonestly diverted monies away from P to himself and the D Co's. P's case is that OA took funds from P in his capacity as a director and used his Hong Kong companies to receive the majority of the funds. P says that some additional funds were sent out to third parties, which were unauthorised, to cover expenses that were not properly those of P.
16. P's undefended case is that by one route or another, OA misappropriated € 3,420,969.75 belonging to P, of which €3,151,186 were funds contributed to P by investors. P seeks to recover those misappropriated funds from OA and / or from the D Cos. Furthermore, P seeks to recover profits lost by being deprived of the misappropriated funds and consequently being unable to invest those funds as originally planned.

### **Classification of Funds**

17. The Court is satisfied that the funds flowing out from P's accounts were the property of P. The Court is satisfied that no issue arises from the varying nature of funds P received, whether in the manner of investments for shares, investment other than in return for shares, or as loans.
18. Once P received the funds, it took both legal and beneficial title to them. There has been no suggestion in these proceedings that any party other than P is entitled to assert title over any of the relevant funds. Indeed, P's claims against OA and the defendants arise from payments out of bank accounts belonging to P itself.

### **Jurisdiction**

19. P obtained permission to serve the defendants outside the jurisdiction on 15 March 2022 and there has been no challenge to that permission.
20. The claims set out in the statement of claim<sup>2</sup> are put in various ways, but centre on the allegation that OA, as the directing mind and will of the defendant companies conspired to divert monies

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<sup>2</sup> See §43

improperly by way of an unlawful means conspiracy with the provision of dishonest assistance, so that the misappropriation of funds renders each defendant liable for their return. The claims against OA are brought in deceit, unlawful means conspiracy, breach of trust, breach of fiduciary duty, breach of directors duty and breach of contract. The claims against the D Cos are brought in unlawful means conspiracy, knowing receipt and dishonest assistance in breach of trust and breach of fiduciary duty. Particulars are given of each claim.

### **Heads of Loss and Quantification**

21. P's claim falls under two heads of loss:
  - a) Misappropriated funds; and
  - b) Loss of profit arising from deprivation of the misappropriated funds.
  
22. The Court is satisfied on the evidence that no investments, save one under-investment in Unison, were made. The Court accepts the following evidence from Mr Colin.
  
23. As set out in Colin 2, the investment projects were as follows:
  - a. Side Holding SAS ('Side');
  - b. Algolia, Inc ('Algolia');
  - c. Stripe, Inc ('Stripe');
  - d. Airbnb, Inc ('Airbnb');
  - e. The Space Exploration Technologies Corporation, Inc ('SpaceX'); and
  - f. Unison, Inc ('Unison'). Unison went through various name changes during the material period, from Chaosix to Unai to Unison.
  
24. P's bank accounts are set out in paragraph 37 of Colin 2. At the time of incorporation, OA was the only person with access to P's accounts. Mr Colin states, and the Court accepts that while various other people had bank access from July 2019 to June 2022, all material transactions were executed by OA or under his direct instructions.
  
25. The relevant payments were as follows as set out by Mr Colin:

Side

€ 73,500 was received from investors in connection with Side.

€ 503,000 was paid out of P's bank accounts to Fabuleo, purportedly in connection with the purchase of shares in Side.

No shares in Side were acquired for or on behalf of P.

#### Algolia

The position connected with Algolia is somewhat complex and set out between paragraphs 66 and 83 of Colin 2. In summary, the funds held by P in connection with Algolia were:

- a. Funds from investors: € 199,200;
- b. Balance of loans from SPV-III: € 175,500; and
- c. Balance of loans from SPV-III bis € 286,708

Total: € 661,408

There were no transactions purporting to support the flow of money out of P's accounts for the purposes of acquiring Algolia Shares. Nonetheless, various payments out of the Algolia segregated accounts took place and were unauthorised.

No shares in Algolia were acquired.

#### Stripe

€ 1,043,930 was received from investors in connection with Stripe.

€ 481,826 was paid out of P's account to Fabuleo and Aletheis purportedly to purchase shares in Stripe.

No shares in Stripe were purchased.

#### Airbnb

€ 881,967 was received from investors in connection with Airbnb.

€ 733,756 was paid to Aletheis in connection with the purchase of Airbnb shares. € 210,00 was paid to Aletheis for the purchase of Airbnb or SpaceX shares or for a combination of two purposes. The total paid out was € 943,756.

No shares in Airbnb were purchased.

### SpaceX

€ 804,100 was received from investors in connection with SpaceX.<sup>29</sup>  
€ 321,245 were paid to Aletheis for the purposes of purchasing SpaceX shares. € 210,000 was paid to Aletheis for the purpose of purchasing SpaceX or Airbnb shares or a combination of the two. The total paid out was € 531,245.

No shares in SpaceX were purchased.

### Unison

€ 966,725 was received from investors in connection with Unison.  
€ 818,236 was paid out in various ways in connection with the purchase of Unison shares. 948,956 shares were purchased. € 148,514 was not deployed into Unison as it should have been.

### *Total Investor Funds*

26. Adding together the projects, investors and loans, P received a total of € 3,969,422 for the purposes of investment (leaving aside the SPV loans). Of that total sum, only € 818,236 was properly deployed into Unison. No other proper purchases were made on P's behalf. The remaining € 3,151,186 was not deployed as it ought to have been.
27. Further sums were received into P from other companies within the Family group in tranches of €600,000 and GBP 50,000 from The Family For Momentum Machine SAS ('TFMM') and € 54,000 from The Family (Consigliere) Ltd for € 54,000. Each payment was ordered by OA using the accounts of the entity in question.

### *Unauthorised Payments*

28. Various forms of unauthorised payment, not dealt with above, made by OA using P's accounts are set out in Colin 2, commencing at paragraph 194 and ending at paragraph 282.32
29. It is also set out in appendices 1 - 10 to P's Amended Statement of Claim. The appendices track the various payments from P's accounts that were unauthorised. In total, those transactions amount to € 3,420,969.75.

*Total Misappropriation*

30. The Court finds that the total sum of € 3,420,969.75 was misappropriated from P's accounts by OA with the assistance or knowledge of the D Cos.
31. The evidence of Mr Colin makes clear that P was set up to make investments and only for that purpose. It was not created to allow OA to pay his bills, make loans, or pursue any commercial purpose other than the investments identified and marketed to investors. Accordingly, any payments out of P's accounts not directly linked to purchases associated with a marketed investment opportunity were not made and could not be understood to have been made for a proper purpose. The transactions relied upon by P as misappropriations each benefited OA, one of the D Cos or someone associated with OA, whether in satisfaction of purported invoices or otherwise. This demonstrates that OA was using the funds in question for his purposes and not in the interests of P.
32. In addition, many of the labels attached to transfers were false. Many transfers were labelled as being made to facilitate purchases of shares that were not purchased.
33. The transactions were premised on false bases or were for obviously unauthorised purposes, and OA must have known that on each occasion. The transactions demonstrate OA exercising control over the funds as if they were his property in a manner that was calculated to cause loss to P. There is no evidence that he intended to return any of the funds in the future.

*Loss of profit*

34. The Court is satisfied on the evidence<sup>3</sup> and the relevant authorities to which the Court was referred by Mr Wingrave, that in connection with each tranche of funds received by P for application to a particular project, the connected investment would have been made but for OA's fraud. In the case of Unison, had OA been acting properly, the full amount committed would have been invested, and under-deployment would not have taken place. The Court accepts Mr Colin's evidence as to the price that would have been paid by P for the various planned investments, the period over which those investments would likely have been held, and the value of those investments either at the likely date of sale or their present value.

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<sup>3</sup> Colin 2



35. The Court is satisfied that, but for OA's fraudulent conduct, P would have made the investments planned and marketed to investors in the manner set out in Mr Colin's evidence.
36. The following matters are put forward by P and follow on as a consequence:

#### Side

P makes no claim to loss of profit on Side. On the evidence, the investment would have been sold for the same price at which it should have been purchased.

#### Algolia

As set out in paragraphs 296, 297 and 338 of Colin 2, P should have acquired 26,996 shares in Algolia in March 2020 (at US\$ 8.7833 per share). In August 2022, Permira offered shareholders of Algolia US\$ 37.80 per share. Mr Colin indicates that P would likely have sold the shares at that price. Profit on the share sale at that price would have amounted to US\$ 783,326.23 or € 774,474.64 at the exchange rate then prevailing.

P claims a loss of € 774,474.64 on Algolia in consequence.

Mr Colin confirmed these prices in his oral evidence explaining that he was aware of the prices as other 'The Family' entities had purchased and sold Algolia shares at these times.

#### Stripe

Stripe remains privately held. Whether or not loss has been suffered in connection with Stripe turns on when and at what price the shares would likely have been purchased and the source from which the purchase would have been made. The possibilities are:

- a. US\$ 25 per share in August 2020, Setter Capital;
- b. US\$ 15.05, 28 June 2020, Shareworks;
- c. US\$ 15.69, 29 September 2020, Shareworks; and
- d. US\$ 69.70, October 2021, Unicorns Exchange

Fundraising for Stripe was completed by 3 August 2020. It is known that OA was in contact with Setter Capital, but also that OA had contacts with sources inside Stripe to purchase shares. If a purchase price above US\$ 20.13 would have occurred, P would suffer no loss, as US\$ 20.13 is the most recent valuation of Stripe shares.

P says that opportunities existed to purchase shares at US\$ 15.59 in September 2020, and had he been acting properly, OA would likely have taken that opportunity. OA's general announced strategy had been to make purchases from employees of companies where possible rather than proceeding through brokers. Therefore, he would likely have rejected the Setter Capital opportunity in August 2020 in favour of a more direct approach.

The Ps evidence is that at US\$15.59, P would have acquired 79,932 shares ((€ 1,043,932 x 1.1937) / 15.69). If so, those shares would be valued now at US\$ 1,609,031.16 (20.13 x 79,932), representing a profit of US\$ 362,889.53 or € 326,192.84.

#### SpaceX

Based on Mr Colin's evidence, P would likely have purchased SpaceX at US\$ 296.40 per share, for a maximum shareholding of 3,238 shares. P's shareholding would have multiplied by 10 in February 2022 due to SpaceX's 10 – 1 share split. Currently, SpaceX shares are valued at a mid-point of US\$ 75.40 per share. Based on the above, the loss of profit is calculated at € 1,331,701.05.

#### Airbnb

Airbnb is an investment falling into the first category. Mr Colin deals with the likely acquisition method at paragraphs 325 and 327 of Colin 2. 19,451 shares would have been acquired. Airbnb underwent IPO in December 2020, with lock-up expiring on 17 May 2021. The price per share on that day was US\$ 137.16. Assuming P's position was closed on that day, profit would have amounted to € 1,345,736.89. If there had been true tax problems and the position had been closed on 30 November 2021, profit would have been € 2,091,193.10. P has no evidence surrounding the genuineness of the tax issues identified by OA.

#### Unison

The loss here arises from under-deployment only. The under-deployment was € 148,514, amounting to 148,101 shares that would have been secured but for under-deployment. Had the above shares been purchased, the value of those same would have increased over time. On a present valuation, the shares P missed acquiring because of OA's actions would have realised a profit to P of € 168,712.50.

37. Following the hearing P provided the Court with a revised calculation which took account of Mr Colin's oral evidence. The Court accepts and adopts the total value given for the reasons explained by Mr Colin which amounts to € 3,946,818.22.
38. This is somewhat less than the amounts set out in P's written argument which put P's loss of profit on investment amounts to € 4,236,689.65 or € 4,692,274.13, depending upon the proper sale date for Airbnb.
39. The quantum which the Court finds as a result of the misappropriated funds and loss of profit is € 3,420,969.75 and € 3,946,818.22.



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**THE HON. MR. JUSTICE RAJ PARKER**  
**JUDGE OF THE GRAND COURT**