



محكمة قطر الدولية
ومركز تسوية المنازعات
QATAR INTERNATIONAL COURT
AND DISPUTE RESOLUTION CENTRE

In the name of His Highness Sheikh Tamim bin Hamad Al Thani,
Emir of the State of Qatar

Neutral Citation: [2022] QIC (F) 20

IN THE QATAR INTERNATIONAL COURT
FIRST INSTANCE CIRCUIT

Date: 24 November 2022

CASE NO: CTFIC0015/2021

BANK AUDI LLC

Claimant

v

AL FARDAN INVESTMENT COMPANY LLC

First Defendant

ALI HUSSAIN IBRAHIM HASSAN AL FARDAN

Second Defendant

FAHAD HUSSAIN IBRAHIM AL FARDAN

Third Defendant

OMER HUSSAIN IBRAHIM HASSAN AL FARDAN

Fourth Defendant

AL FARDAN GROUP LLC

Fifth Defendant

JUDGMENT

Before:

Justice Frances Kirkham

Justice Arthur Hamilton

Justice Fritz Brand

ORDER

1. The Third Defendant's counterclaim fails.
2. The Third Defendant shall pay the Claimant's costs to be assessed by the Registrar if not agreed.

JUDGMENT

1. The Claimant, Bank Audi LLC (which we refer to as "**BAQ**") issued a claim in this Court against five Defendants. Mr Fahad Hussain Ibrahim Al Fardan (whom we refer to as "**Mr Al Fardan**") is the Third Defendant. He was there sued as a guarantor of a debt due by the First Defendant. By order dated 16 January 2022, we made an order for judgment in favour of BAQ in respect of its claims against all Defendants except Mr Al Fardan. We did not make an award of summary judgment against Mr Al Fardan because he had raised a defence and counterclaim by which, in broad terms, he sought to set the sum claimed by BAQ against a sum which he claims BAQ owes him. We concluded that the issues as between Mr Al Fardan and BAQ should be determined after hearing relevant evidence.
2. The sum awarded to BAQ pursuant to the order of 16 January 2022 has been paid. The only remaining issue therefore is Mr Al Fardan's counterclaim against BAQ for damages in relation to a USD 20 million investment which Mr Al Fardan made in a Lebanese bank in December 2016. This judgment concerns that counterclaim.
3. On 5 October 2022 Mr Al Fardan applied to the Court for an order requiring BAQ to provide specific disclosure of certain categories of documents and for an adjournment of the hearing. BAQ asked that we reject this application on the grounds (i) that the documents requested had either already been disclosed or were not in the possession of BAQ, and (ii) that the application had been brought late

(the hearing had been listed for 30 and 31 October 2022) and it would be unfair to BAQ to make the orders requested. We considered the applications on the basis of the parties' respective submissions and without a hearing. We rejected both applications because BAQ had submitted that it had disclosed the documents in its possession and that it had no other documents; there was nothing in Mr Al Fardan's submission to suggest otherwise; and because Mr Al Fardan had not demonstrated that the documents he was seeking would (if they existed) be relevant to the issues we would need to decide. It was therefore not necessary to consider whether it would have been necessary, or fair, to adjourn the hearing.

4. At the beginning of the two-day hearing, Mr Al Fardan applied for permission to amend his counterclaim and to introduce a second witness statement for Mr Khouri. Mr Al Fardan had given very little notice of these applications. BAQ opposed both applications, but did not suggest that it would suffer any prejudice if either was allowed. We concluded that it was right to permit introduction of that second statement so that Mr Khouri's evidence as to the existence of Mr Al Fardan's banking arrangements in Lebanon could be corrected before Mr Khouri began to give his evidence. The effect of the proposed amendment to the counterclaim was to clarify Mr Al Fardan's negligent misstatement claim. We concluded that the amendment was needed so that the scope of Mr Al Fardan's claim and the basis for it were clear. We granted both applications
5. Mr Al Fardan now claims either (i) that BAQ is in breach of contract by refusing to pay him in respect of that USD 20 million investment or, in the alternative, (ii) that BAQ is liable to him in damages by reason of negligent misstatement. He no longer proceeds with his claim for restitution pursuant to Article 42 of the QFC Contract Regulations.

Background

6. Mr Al Fardan is a wealthy businessman living in Qatar. Mr Khouri has worked for Mr Al Fardan and his companies since 2010 as a financial adviser. His role includes helping Mr Al Fardan with his personal investments.

7. BAQ is a private bank. It is one of a number of banks within the Bank Audi Group.
8. Audi Private Bank SAL (“**APB**”) and Bank Audi SAL (“**BAS**”) were, as at 2016, both based in Lebanon and within the Bank Audi Group, BAS being the parent company of the group. These banks subsequently merged (see paragraph 39, below).
9. Mr Zaouk has been BAQ’s General Manager in Doha since 2011. Mr Jaber worked for BAS in Lebanon between 2001 and 2007. He has been BAQ’s Business Director in Qatar since 2015.
10. Mr Hallit was the Private Banking Director for Banque Audi (Suisse) SA, another member of the Bank Audi Group. Mr Hallit had worked in Doha and had known Mr Al Fardan personally for a number of years.
11. Mr Al Fardan had been a high-worth VIP customer of BAQ’s private banking operation since 2008. Mr Al Fardan’s companies also maintained corporate accounts at BAQ. Mr Al Fardan described his close relationship with BAQ. Mr Zaouk and Mr Jaber both agreed that Mr Al Fardan was a valued client of BAQ. Mr Al Fardan and Mr Zaouk had a friendly relationship, occasionally meeting on social occasions. Mr Al Fardan also had a close relationship with the top management of the Bank Audi Group in Lebanon. The Al Fardan family had held a number of business and investment accounts with the Bank Audi Group for some years.
12. Mr Hallit had a long relationship with Mr Al Fardan, which began in about 2007 when Mr Hallit began his career with BAQ.
13. In November 2016 Mr Zaouk was told that Mr Hallit would be visiting Qatar in December 2016 to visit some of their clients. He asked that a meeting be arranged with Mr Al Fardan.
14. It is common ground that a meeting was held at BAQ’s offices in Doha on 7 December 2016 attended by Mr Hallit, Mr Zaouk and one other person. The meeting

lasted about 25 minutes. There was social discourse. There was also discussion about an investment opportunity which Banque du Liban (“BDL”) was offering to banks. Mr Zaouk said that it was Mr Al Fardan who introduced the BDL proposal; Mr Al Fardan said that it was raised by Mr Zaouk. Either way, the proposal was discussed briefly. BDL’s proposed arrangement was that BDL would discount Treasury Bills and/or Certificates of Deposit held by them at a price which would generate revenues for banks. The discount mechanism was contingent upon the banks placing with BDL an amount in USD equal to the nominal amount of discounted securities. It was a requirement that funds would be transferred in foreign currency from outside Lebanon and from outside a Lebanese Bank foreign affiliate. It appears that BDL had disseminated this proposal fairly widely. Bank Audi Group was prepared to share this opportunity with valued clients who were able and willing to invest the minimum required funds.

15. Mr Al Fardan expressed an interest. Immediately after the meeting, Mr Zaouk sent Mr Al Fardan by email information about the BDL proposal. In his email Mr Zaouk wrote:

Following our meeting today kindly find below the draft terms for the new Special Deposit:

1 3-year deposit at Bank Audi

2 Interest on USD is 5% p.a. paid quarterly

3 Upfront fee in LBP is 25%

a. 12.50% paid and released on the spot (can be converted into USD at the client request)

b. 6.25% placed in 1-year deposit paying 6% p.a.

c. 6.25% placed in 2-year deposit paying 6% p.a

4 Minimum ticket size is 20 million/max 50 million

5 Net New Money from outside the Lebanese banking sector and Lebanese banks

6 Fiduciary and placement fee of 0.50% p.a.

7 Money should be in account by December 12th.

Please let me know if you need any more info.

As implicit under element 6, the terms involved the investment being made through a fiduciary.

16. Attached to that email was a document setting out more detailed information. The two-page document was on notepaper headed “Bank Audi” and dated November 2016. The content was described as “Special Transaction >Description.” It set out the background to the BDL proposal. In section B the document summarised the investment, including:

- a. funds had to be transferred in foreign currency from outside Lebanon and from outside a Lebanese Bank foreign affiliate*
- b. the currency was to be USD*
- c. maturity was 3 years*
- d. interest was payable at 5%, every 3 months.*

There would be an “Upfront Return” of 25% “to be paid in their LBP [Lebanese pounds] account”:

---Half freely available (ie 12.50%)

---One quarter will be blocked for 1 year at 6.00%, payable quarterly (ie 6.25%)

---One quarter will be blocked for 2 years at 6.00%, payable quarterly (ie 6.25%)

The document stated that funds had to be transferred in foreign currency from outside Lebanon; they should not be transferred from a Lebanese Bank foreign affiliate. The minimum ticket size was USD 20 million.

The document included in Section E an Investor Acknowledgement by which the Investor was to acknowledge and confirm (i) that he had received all necessary information related to this special transaction, was aware of all the risks arising therefrom and related thereto, and had made an informed decision in entering into the transaction, and (ii) that “*the source of the funds was from outside Lebanon and from outside a Lebanese Bank affiliate. Bank Audi SAL will have the discretion to cancel at any time ...*”

The document concluded in Section F by stating: “*Subject to the terms and conditions set forth herein, the Investor hereby confirms the transfer and the deposit of amount of \$ _____ in his Account at Bank Audi ID _____*”. There was then a place for the Investor’s signature.

17. On 8 December 2016 a number of email messages were exchanged.

18. Mr Khouri reviewed the documents and sent them to Mr Al Fardan’s home for him to sign.

19. Mr Jaber sent Mr Khouri the “*account details of Mr Fahad [i.e. Mr Al Fardan] account at Audi Private Bank*” including the IBAN number (with the prefix LB for Lebanon) and the account number 21499. The bank at which the account was held was named as Audi Private Bank.

20. Mr Khouri sent Mr Jaber a copy of the Special Transaction document which Mr Al Fardan had signed and stated that the original was being delivered to BAQ’s offices.

21. Mr Hallit then emailed Mr Khouri and Mr Jaber to say that the Swift copy was needed.

22. Mr Jaber emailed Mr Khouri to acknowledge the email attaching the signed Special Transaction document and the original of this. He asked, “*please send me a swift copy once transfer is done*”.

23. Mr Hallit wrote to Mr Khouri asking for Mr Al Fardan’s signature on a further document, namely, an acknowledgement letter. Mr Khouri replied to say, “*we will review and discuss on Sunday*” (i.e. 11 December 2016). Mr Hallit replied giving his mobile telephone number.

24. Mr Al Fardan signed the Special Transaction document on 8 December 2016. Section F of the signed document had been completed in manuscript to show that

the deposit amount was USD 20 million and the ID of Mr Al Fardan's account at Bank Audi was 21499.

25. On 11 December 2016 Mr Armouti on behalf of Mr Al Fardan asked Mr Jaber for information about the name of the account to be used and for the account number.
26. Later that morning Mr Khouri emailed Mr Hallit asking him to “*elaborate*” on the fiduciary and placement fee of 0.50%: this was mentioned in Mr Zaouk's email of 7 December 2016 but not in the Special Transaction document. He said “*placement fees should be one time accordingly can we segregate from Fiduciary fees. Finally can we reduce fiduciary fees.*” Mr Hallit replied to say, “*This is one fee named placement and fiduciary fees. It is perceived per annum. It is within the terms of the transaction and cannot be waived or modified, it is part of the entire structuring*”. Mr Khouri acknowledged Mr Hallit's email.
27. Mr Khouri then emailed Mr Hallit, copied to Mr Jaber, “*the amended version of the acknowledgement letter*”. That document, dated 11 December 2016, was on paper headed “Bank Audi, Private Bank, Audi Private Bank sal”. It was signed by Mr Al Fardan. It stated:

With reference to the Special Transaction contemplated by Bank Audi Sal as per the terms and conditions detailed in the attached Special Transaction/Description dated November 8th 2016 prepared by Bank Audi SAL and signed by me.

1 I hereby represent and warrant that I have carefully reviewed and fully understand the contents of the attached Special Transaction / Description dated November 8th 2016 and (ii) have received all necessary information related to this contemplated special transaction, and (iii) am aware of all the risks arising therefrom and related thereto, and have made an informed decision in entering into the said transaction.

2 I confirm that all representations, warranties and acknowledgments made by me in the attached Special Transaction/Description are also considered to be made to and for the benefit of Audi Private Bank SAL

3 I hereby irrevocably instruct you to debit my/our account mentioned below held with you for the amount of 20,000,000 USD and place it as a fiduciary deposit with Bank Audi SAL. To this effect it is understood that ultimately the fiduciary deposit is in my favor for my account with your account number 021499.

4

5 By giving the present instructions I hereby lift the Lebanese banking secrecy to the extent needed for the accomplishment of their tasks in favor of any third party providing services in connection with my/our present investment notably in favor of Bank Audi SAL

The document is signed by Mr Al Fardan above the words “*account number 021499*”.

28. On 12 December 2016 the sum of USD 20 million was transferred from an account held by Mr Al Fardan with a branch of JP Morgan Chase Bank (apparently in France) to his account 021499 in Lebanon. Mr Hallit emailed Mr Khouri later that day to confirm that that sum had been received.
29. By email of 12 December 2016 to Mr Hallit, copied to Mr Jaber, Mr Khouri sent details of the Swift transaction.
30. On 22 December 2016 Mr Al Fardan signed a document addressed to APB (a revised version of the acknowledgement letter dated 11 December 2016) including the following:
 - a. One half of the Up-Front Return was to be deposited in his account at APB and was to be available as from 22 December 2016.
 - b. One quarter of the Up-Front Return was to be deposited in his account at APB, 21499, held by APB and blocked for one year until 3 January 2018.
 - c. One quarter of the Up-Front Return was to be deposited in his account at APB, 21499, held by APB and blocked for two years until 3 January 2019.

Certain of the terms of this document replicate, in substance, the terms of the letter of 11 December 2016, but with some changes.

31. On that date Mr Al Fardan also signed a Contract of Fiduciary Management (“COFM”) between himself and APB. This confirmed APB would act as fiduciary. The COFM set out the terms on which APB would act as fiduciary for the Lebanese transaction. It included at Article 3 a provision that Mr Al Fardan was solely responsible for risks and losses that might result from the investment. Article 6 provided that APB was to make restitution to Mr Al Fardan on expiry or termination of the COFM of “*the Fiduciary Assets in their state on such date*”.
32. Mr Al Fardan received, on 22 and 23 December 2016, confirmation that funds had left the fiduciary account and entered the investment account.
33. On 28 December 2016 APB credited Mr Al Fardan’s account 21499 with the USD 2.5 million Up-Front payment. Mr Al Fardan chose to reinvest that sum in Lebanon, rather than in Qatar or Switzerland.
34. In January 2017 Mr Khouri and Mr Hallit corresponded concerning a number of amendments to the COFM, including as to commission. Mr Hallit replied in detail to Mr Khouri’s queries. This included a statement by Mr Hallit that on maturity funds would be credited to Mr Al Fardan’s “*existing account 21499 held with Audi Private Bank.*” Mr Hallit also said that this was “*a standard contract which caters for general situations.*”
35. On 31 January 2017 Mr Hallit and Mr Khouri corresponded concerning the letter of 22 December 2016 which Mr Al Fardan had signed. A fresh version was needed because of the need for the document to include a formal Lebanese stamp of LBP 5,000 which Mr Al Fardan had to sign. Mr Khouri was concerned that there should not be two documents in existence which might create confusion as to whether Mr Al Fardan had invested USD 20 million or twice that amount. Mrs Stephan Nayla of APB confirmed to Mr Khouri that “*the document signed in 2016 is null and void*”. Thus, the later document superseded and replaced the earlier contract between APB and Mr Al Fardan.

36. In its messages to Mr Al Fardan dated 26 and 27 December 2019, APB referred to the restrictive measures which BDL had by then introduced and asked for his instructions as regards the investment which would mature on 3 January 2020. Pending instructions, the funds would be held in Mr Al Fardan's account at APB. It would not be possible for funds to be transferred out of Lebanon.
37. On 23 December 2019 Mr Khouri sent APB instructions as to the transfer of funds upon the investment maturing. These requests were addressed to APB, not BAQ.
38. During January 2020 Mr Khouri explored the possibility of moving APB's fiduciary duties to "*Audi Privat Bank Doha [ie BAQ] or Swiss*". Mrs Stephan Nayla explained that that would not be possible.
39. APB and BAS later merged, the latter taking over the whole assets and liabilities of the former, as noted in the judgment of the Lebanese court referred to below (see paragraph 66, below).
40. On 4 May 2020 Mr Fadi Sabsabi, Chief Legal Officer within the Al Fardan Group, wrote to Mr Zaouk contending that the Lebanese investment had been conducted through BAQ. He said, "*as you have acted as one entity in conducting the deposit transaction, and you have concealed the walls and the corporate veils between entities and departments of BAQ and APB Lebanon, you shall now be liable for your conduct.*"
41. Mr Zaouk wrote to Mr Al Fardan on a number of occasions asking him not to copy Mr Zaouk into his correspondence with APB, pointing out that BAQ and APB are separate legal entities and that BAQ is not a branch of either of BAS or APB.

Contractual claim

42. It is common ground that Mr Zaouk's email of 7 December 2016 and attachment amount to an offer which Mr Al Fardan could have accepted. As that is the agreed position we deal with that case.

43. In her skeleton argument, Ms Eborall stated that a contract (on which Mr Al Fardan relies) had been created as “*the Offer Contract entered into on 8 December 2016 and effected by the transfer of funds on 12 December 2016*”. In closing Ms Eborall submitted that BAQ’s email of 7 December 2016 was BAQ’s offer to act as a fiduciary which was accepted when, on 8 December 2016, Mr Khouri provided Mr Al Fardan’s account number to BAQ. Then, because BAQ was unable to act as a fiduciary on this transaction, BAQ interposed APB as the fiduciary. There were then two fiduciaries, BAQ and APB. BAQ’s liability to Mr Al Fardan arises because BAQ nominated APB as the fiduciary for this transaction. As APB cannot or will not repay the funds, BAQ is liable to do so. Ms Eborall also submits that the BAQ contract on which Mr Al Fardan relies required BAQ to return his investment on maturity. This was consistent with Mr Al Fardan’s long relationship with BAQ.
44. BAQ’s evidence is that there was no reason why it should not have acted as fiduciary in this transaction. Mr Zaouk and Mr Jaber confirmed that there was no impediment to BAQ so acting. It is only Mr Khouri who asserts that BAQ could not have acted as the fiduciary. Mr Al Fardan has produced no evidence as to relevant banking law to support this submission. We have no hesitation in preferring the evidence of Mr Zaouk and Mr Jaber. We found them to be helpful and reliable witnesses. As bankers they understand the scope and limitations of the bank’s activities better than Mr Khouri.
45. It became apparent very shortly before the hearing that Mr Al Fardan had indeed held an account at APB in Lebanon for many years, namely account 21499, into which the funds were in fact deposited. That contradicted the assertion made in Mr Khouri’s first witness statement that he believed that Mr Al Fardan did not have any relationship or contacts with Bank Audi in Lebanon. BAQ found evidence of Mr Al Fardan’s banking arrangements in Lebanon. Mr Khouri provided a second witness statement to correct his first in this regard. It is surprising that Mr Al Fardan did not volunteer to this Court the existence of his banking arrangements in Lebanon. It cannot be said that Mr Al Fardan had to use BAQ because of a lack of a Lebanese account.

46. There is no express suggestion in the documents that BAQ agreed to be the fiduciary or that BAQ and Mr Al Fardan entered into an agreement in that regard. To the contrary, the documents all point very clearly to a contractual relationship between Mr Al Fardan and APB, and with APB alone.
47. Mr Zaouk said that, during the meeting on 7 December 2016, Mr Hallit did most of the talking. That was consistent with the fact that he and Mr Al Fardan had known each other for some years. Mr Zaouk said that there was no discussion as to which bank would act as fiduciary for the investment. Mr Al Fardan said that he was interested and asked that details of the BDL offer be sent to him. Mr Zaouk did so by his email shortly after the meeting.
48. Following Mr Zaouk's email of 7 December 2016, at Mr Khouri's request, Mr Jaber (through Mr Hallit) learned that Mr Al Fardan had an account with APB. Mr Jaber obtained the details of that APB account and passed them to Mr Khouri. Mr Khouri inserted the APB account number into the Special Transaction document which Mr Al Fardan signed.
49. The Special Transaction document referred to APB. On its face, therefore, that document indicated that a contractual relationship would be established with APB, not BAQ.
50. Between receiving Mr Zaouk's email and Mr Khouri sending the signed Special Transaction document, Mr Al Fardan must have decided to use APB and not BAQ as fiduciary. That is why Mr Khouri inserted the APB account number in the document which Mr Al Fardan signed. That conclusion is supported by the evidence of Mr Jaber, who said that, in a telephone call with Mr Khouri on 8 December 2016, Mr Al Fardan was asked to use BAQ as fiduciary, but Mr Khouri said that Mr Al Fardan had chosen to appoint APB.
51. We therefore cannot accept Mr Al Fardan's analysis – namely that provision of the bank account number amounted to Mr Al Fardan's acceptance of BAQ's offer to act as the fiduciary. Mr Al Fardan provided an account number at APB. That indicated that he had decided to use APB not BAQ as fiduciary. Thus, Mr Al Fardan

did not accept BAQ's offer to act as fiduciary, and no contract came into existence on 8 December 2016 between Mr Al Fardan and BAQ.

52. When Mr Al Fardan decided to go ahead with the investment, he could arrange this through either BAQ or APB as fiduciary. He chose to do so through APB. Once funds had been transferred from BAQ to APB, thereafter BAQ had no involvement of any sort with the project. BAQ did not receive any fiduciary or placement fee. The first that BAQ knew that Mr Al Fardan was holding BAQ liable was in May 2020 when Mr Fadi Sabsabi wrote asserting that BAQ was liable.
53. Mr Al Fardan suggests that BAQ assumed responsibility to act as guarantor or underwriter of the investment made through APB because BAQ had "*nominated APB*". That is fanciful: there is no oral evidence to that effect let alone any written evidence of the sort one would expect to see. We are not persuaded by Ms Eborall's submission that the urgency of the project (funds had to be deposited by 12 December 2016) or the relationship with BAQ on which Mr Al Fardan relies explain why BAQ would not have ensured that such an underwriting or guarantor role was evidenced in writing.
54. In any event, even if BAQ had agreed to be the fiduciary (which it did not), such arrangement would no doubt have been on terms similar to those which Mr Al Fardan agreed with APB through the COFM. That COFM makes clear that Mr Al Fardan owned the risk of the investment. The COFM contains no terms guaranteeing or warranting that the investment would be successful.
55. Mr Al Fardan's claim in contract fails.

Negligent misrepresentation claim

56. If we were to conclude that Mr Al Fardan's contractual claim fails, his alternative claim is for negligent misrepresentation. His claims are:
- a. that BAQ represented to him that he would be contracting with BAQ. He relies, by way of example, on BAQ conducting correspondence without identifying or distinguishing legal entities and producing the

offer without adequately distinguishing between “Bank Audi” entities. Mr Al Fardan therefore understood that the investment would be managed by BAQ. He would not have signed the offer contract and transferred the USD 20 million had it been made clear that he would not be dealing directly with an entity based in the QFC; and

- b. (by the amendment for which permission was given at the hearing) as a result of BAQ’s longstanding and trusted relationship with Mr Al Fardan, BAQ assumed responsibility and/or owed a duty of reasonable care to describe Bank Audi entities with whom Mr Al Fardan was dealing accurately and not to misstate the position such that Mr Al Fardan was led into believing that the investment would be managed by BAQ; and
- c. by reason of all those matters, Mr Al Fardan was induced into transferring the USD 20 million and he would not have done so had it been made clear that he would not be dealing directly with an entity based in the QFC.

57. In closing Ms Eborall submitted that Mr Zaouk and Mr Jaber had a duty to inform Mr Al Fardan that he was not contracting with BAQ.

58. As set out in greater detail above, the following are clear from the email exchanges and documents passing between various people at relevant times. BAQ was offering only to act as a fiduciary. Through Mr Khouri, Mr Al Fardan knew that APB could act as the fiduciary. Mr Al Fardan already had an account with APB. He chose to make his investment through APB as the fiduciary. There is nothing in the exchanges or documents which indicated that BAQ would retain any involvement. It was not for Mr Zaouk or Mr Jaber to point out to Mr Al Fardan that he was not dealing with BAQ but instead with APB. Mr Al Fardan knew, or through Mr Khouri should have known, that. It was obvious on all the documentation with which they were dealing. On the facts of this case, we are not persuaded that Mr Al Fardan needed to be told something which he must have known. We find no fault at all with Mr Zaouk or Mr Jaber.

59. Mr Al Fardan's evidence now that without ongoing BAQ involvement he would not have made the investment is not reflected in the documents or oral evidence. That is a statement of what Mr Al Fardan now wishes had been agreed.

60. We therefore conclude that Mr Al Fardan has not proved the factual basis for his claim or that he relied on any representation or absence of statement or misstatement. His claim under this head fails.

61. Mr Page submits that we should not entertain a claim for negligent misrepresentation in circumstances where Mr Al Fardan has provided no supporting expert evidence to support what is in effect a claim for professional negligence. He refers us to the judgment of Coulson J (as he then was) in *Pantelli Associates Ltd v Corporate City Developments Number Two Ltd* [2010] EWHC 3189 (TCC). In that case Coulson J said, in paragraph 17 of his judgment, that it was:

standard practice that where an allegation of professional negligence is to be pleaded, that allegation must be supported (in writing) by a relevant professional with the necessary expertise. That is a matter of common sense: how can it be asserted that act x was something that an ordinary professional would and should have done, if no professional in the same field had expressed such a view?

62. Mr Al Fardan has not adduced any expert evidence. Given our conclusion, on the facts, that this head of claim fails in any event, it is not necessary (in order to decide the issue) that we reach any conclusion as to whether in this Court it would normally be necessary for a claim for professional negligence to be supported, from the beginning, by expert evidence of the sort envisaged in *Pantelli*. But we observe that the test for a claim of professional negligence would normally be whether a relevant professional with the necessary expertise would not have acted in such a way. This Court would normally expect supporting expert evidence to be provided to support the claim when it is launched. It would normally be unfair on a professional person not to do so.

Other heads of claim

63. Mr Al Fardan pleaded a claim in agency. But as this was not referred to in Ms Eborall's skeleton or closing submissions, we proceed on the basis that these heads of claim are not pursued. In any event, Mr Al Fardan has not sought to explain how it is said that BAQ acted as APB's agent.
64. Mr Al Fardan also pleaded a claim in mistake. Again, this head of claim is not covered in Ms Eborall's skeleton or closing submissions. In any event, it is difficult to see how such a claim could be made out: as the contract was between Mr Al Fardan and APB, any claim for avoidance or restitution must lie not against BAQ but against APB.
65. Ms Eborall has expressly confirmed that Mr Al Fardan does not pursue his claim that BAQ were in breach of the QFC Company Regulations.

Double recovery

66. On 20 April 2022 Mr Al Fardan obtained a judgment in a court in Lebanon against BAS, as successor to APB; he had sought an order of specific performance that BAS comply with his request that it transfer, from his account 021499 to certain banks in Switzerland nominated by him, sums totalling USD 20 million. BAS had acknowledged its responsibility for these funds, which it had offered to pass to Mr Al Fardan in Lebanon (an offer which Mr Al Fardan had declined), but had refused on various grounds to comply with the request that it transfer them abroad. The court granted the order sought. It was said on behalf of BAQ that that judgment is the subject of an appeal, but we have no information to assist us. Mr Al Fardan has chosen not to provide information about this.
67. It appears that Mr Al Fardan has also begun proceedings in Paris in respect of the USD 20 million, though we have no information to help us understand the nature or status of that claim.
68. Even if we had concluded that Mr Al Fardan had a good claim against BAQ, we are unlikely to have concluded that it was liable, at least at this stage, in the sum of USD 20 million. That judgment, although it may be subject to appeal, has currently,

it may be presumed, a value. If this case was pressed to judgment, that value would require to be taken into account.

Quantum

69. Even if we had concluded that BAQ is liable to Mr Al Fardan, it would have been difficult to determine the loss he has suffered or the appropriate level of damages. Mr Al Fardan has not provided sufficient information as to the financial consequences to him of the inability or refusal of APB/BAS to pay him the money deposited in Lebanon. It appears that the capital investment of USD 20 million has remained in Lebanon and interest has continued to accrue on that fund. In his witness statement Mr Al Fardan said, “*I have received no interest on my investments with Bank Audi*”. However, it was accepted on his behalf during the hearing that he has received at least USD 8 million in interest from the investment. We do not, however, have evidence as to the financial benefits which Mr Al Fardan has actually received from the investment and thus as to what his loss might be.

Conclusion

70. Mr Al Fardan’s claims against BAQ fail. Mr Al Fardan is therefore liable to pay BAQ’s reasonable costs of and in connection with this Court case

By the Court,



[signed]

Justice Frances Kirkham

A signed copy of this Judgment has been filed with the Registry.

Representation:

The Claimant was represented by Dani Kabbani, Alexander Whyatt, and Omid Mousavi (Eversheds Sutherland, Doha).

The Third Defendant was represented by Charlotte Eborall (3 Verulam Buildings), and Jonathan Brooks (Al Tamimi and Company, Dubai).