Neutral Citation Number: [2025] EWHC 2877 (Comm)

Case No: CL-2022-000367

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (KBD)

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

Date: 5 November 2025

Before :

MR JUSTICE BRIGHT

- -

Between :

Candy Ventures SARL

Claimant

- and -

(1) Aaqua BV
(2) Robert Bonnier

Defendants

- -
- -

Jonathan Nash KC and Ian McDonald (instructed by Grosvenor Law) for the Claimant (CVS)
The First Defendant (Aaqua) was not represented
The Second Defendant (Mr Bonnier) represented himself

Hearing dates: 7, 8, 9 October 2025

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JUDGMENT

Mr Justice Bright:

Introduction

1. This judgment follows the trial of the claim of the Claimant ("CVS") against the Defendants ("Aaqua" and "Mr Bonnier", respectively), seeking damages. The claim is framed in fraud, for which both Aaqua and Mr Bonnier are said to be jointly and severally liable.

2. CVS is an investment firm incorporated in Luxembourg. It is owned by Nicholas Candy (90 per cent) and Steven Smith (10 per cent).

3. Aaqua is a technology start-up company that was incorporated in the Netherlands in July 2020. Aaqua was established alongside subsidiaries ("the Aaqua Group"), including Aaqua Pte, a Singaporean entity. The Aaqua Group was set up to develop a new social media software application ("the Aaqua App").

4. Aaquaverse Pte Ltd ("Aaquaverse") is a holding company incorporated in Singapore. It acquired Aaqua and subsidiaries in a restructuring of the Aaqua Group in June 2022.

5. The Second Defendant, Mr Bonnier, is a businessman resident in the UAE. He is married to Ms Nashida Islam-Bonnier. At all material times, Mr Bonnier was the directing mind of Aaqua.

6. Audioboom Group PLC ("Audioboom") is a company incorporated in Jersey and listed on the Alternative Investment Market ("AIM") of the London Stock Exchange. Audioboom provides podcast marketing and analytics.

7. All Active Asset Capital ("AAA") is a technology investment firm which held various investments including shares in Audioboom and a minority stake in the application-based technology company, Sentiance NV. On 13 October 2021, AAA acquired a 32.5% shareholding in Aaquaverse through a share exchange transaction in which CVS exchanged its shares in Aaqua for shares in AAA. Both Mr Bonnier and Ms. Islam-Bonnier are minority shareholders in AAA.

8. On 15 February 2021, CVS and Aaqua entered into three agreements ("the Three Agreements"):

   (1) The "Aaqua Subscription Agreement", by which CVS subscribed for 15,000 shares in Aaqua for a total consideration of €7.5 million.

   (2) The "Purchase Agreement", by which Aaqua agreed to buy 1.5 million shares in Audioboom from CVS for a total consideration of £6.75 million.

   (3) The "Relationship Agreement", by which CVS and Aaqua agreed that the sum of €7.5 million owed by CVS to Aaqua and the sum of £6.75 million owed by Aaqua to CVS would be set off against each other, with no payments required by either except stamp duty and brokers' commissions.

9. CVS alleges that it was induced to enter into the Three Agreements by fraudulent misrepresentations made by Mr Bonnier on behalf of Aaqua, regarding Aaqua's current and future dealings with Apple and LVMH Moët Hennessy Louis Vuitton ("LVMH"). CVS relies on three alleged fraudulent misrepresentations:

    (1) That Mr Bonnier had had significant discussions with Apple and LVMH regarding proposed investments by those companies in Aaqua, and he honestly and reasonably believed that they would invest in Aaqua.

    (2) That there existed binding conditions precedent between Aaqua and Apple/LVMH which, once satisfied, would lead to those companies' obligations to invest in Aaqua becoming unconditional.

    (3) That negotiations with Apple and LVMH were at an advanced stage, and Apple and LVMH had commented on draft contractual documents during those negotiations.

10. The original claim in fraudulent misrepresentation by CVS against Aaqua and Mr Bonnier was joined with a Part 20 claim by Aaqua, Aaquaverse and Mr Bonnier against CVS and Mr Candy. Pursuant to an order dated 3 October 2025 by HHJ Pelling KC, the Part 20 claim was vacated for reasons set out in the context of the procedural history below.

11. The argument for CVS was presented to me by Mr Jonathan Nash KC for CVS, with assistance from his junior Mr Ian McDonald. Mr Bonnier represented himself. Aaqua was not represented.

CVS's witnesses

12. In light of the vacation of the Part 20 claim, CVS only called six of eleven of its factual witnesses to give oral evidence. The remaining five witnesses were not called, because much of their evidence related to the Part 20 claim, which is to be tried later. However, their statements were adduced as hearsay evidence.

Mr Smith

13. Mr Steven Smith is a chartered accountant and the sole executive director of CVS. Mr Smith is also a non-executive director of Audioboom. Prior to the events giving rise to these proceedings, CVS owned 3,697,602 shares in Audioboom (representing approximately 24 per cent of Audioboom's issued share capital).

Mr Candy

14. Mr Nicholas Candy is a British businessman, luxury property developer and the primary beneficial owner of CVS.

Mr McQuade

15. Mr Colin McQuade was a director of AAA from 8 November 2021 to 25 February 2022 before being reappointed as a director on 21 December 2022. He

became Aaqua's Chief Technology Officer in January 2022 before resigning on 22 February 2022.

Mr Sargent

16. Mr Rodger David Sargent is a chartered accountant. He was an executive director of AAA from 28 May 2020 before resigning as a director on 21 December 2022 and continuing to provide consultancy services to AAA.

Mr Foy

17. Mr Michael Foy joined Aaqua as Head of Finance and Aaquanomy on 2 January 2022 before resigning at the end of the February 2022. Prior to that he worked at Barclays Bank between 2013-2021, eventually as Head of CIB COO Finance.

Mr Hendren

18. Mr Philip Hendren is an experienced technology engineer and architect. He was introduced to Mr Bonnier by Mr McQuade whilst working at Barclays Bank in Canary Wharf in January 2021. He later left Barclays and joined Aaqua as Director of the Data Office in late May 2021 until 27 July 2022.

The facts

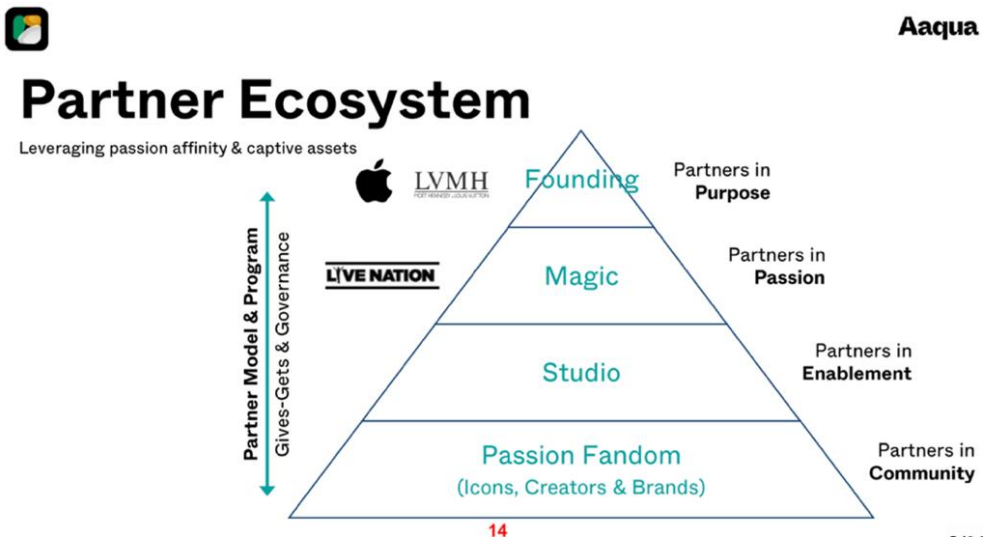
19. Mr Smith and Mr Bonnier were introduced by Mr Sargent in mid-2020. Mr Sargent – who Mr Smith has known for around 30 years – was, at that time, an executive director of AAA. He told Mr Smith that AAA was involved with Aaqua, a new company set up by Mr Bonnier, and that it was worth meeting Mr Bonnier given that he also had an interest in Audioboom, one of CVS's investments.

20. In September 2020, Mr Smith and Mr Bonnier met in France (the "September 2020 Meeting"). Mr Bonnier told Mr Smith that he thought that Audioboom, in which he knew CVS had a significant minority stake, was undervalued, and that he was looking to build his stake in the company.

21. Mr Smith and Mr Bonnier also discussed Mr Bonnier's vision for Aaqua. This was of interest to CVS.

22. On or around 14 October 2020, Mr Bonnier and Ms Islam-Bonnier – acting via their close associate and nominee, Peter Antonioni, the owner of 192 Pte Ltd ("192 Pte") (an investment vehicle based in Singapore), subscribed for £3.15 million of shares in Audioboom. Mr Smith describes this as boosting Mr Bonnier's credibility in his eyes, in addition to their introduction by a trusted mutual acquaintance.

23. On 1 November 2020 Mr Bonnier sent an email to Mr Smith, attaching a document titled "Aaqua Primer November 2020" (the "November 2020 Primer"). This included, on page 14, a table headed "Partner Ecosystem" and displayed as a pyramid – the top layer of which showed Apple and LVMH as "Founding" partners and described them as "Partners in Purpose". This is reproduced below.



24. On 31 December 2020 Mr Bonnier sent an email to Mr Smith, summarising the proposed capital structure of Aaqua and the proposed transaction between Aaqua and CVS (the "31 December 2020 Email").

25. At that stage, the proposed transaction was that CVS would sell 1.5 million of its shares in Audioboom to Aaqua for €5.5 million (the "Audioboom Shares"), and it would subscribe to acquire 15,000 Block shares in Aaqua, at a price of for €6 million. The €6 million subscription price was largely to be offset by the sale of the Audioboom Shares to Aaqua, with the balance of €500,000 to be paid in cash by CVS. Simultaneously, Aaqua would continue to pursue its "Dante plan", by which an entity referred to by the code name "Aristotle plc" would acquire 9.9 per cent of Aaqua, by a share exchange at a 1:7 ratio, in early January 2021, followed by a further 20 per cent in late January 2021.

26. Mr Bonnier further stated in the 31 December 2020 Email that:

> "There are various conditions precedent that were agreed between AAQUA and our tactical partners and we are on track to deliver / satisfy these in early Q2 '21. That would result in the tactical partners equity subscriptions to go unconditional and thus complete shortly afterwards. In total the amount to be raised in that tactical round is €960mn at PPS€1,920."

27. Mr Smith replied to the 31 December 2020 Email on 2 January 2021. He made various comments on the body of the 31 December 2020 Email and said that it would be necessary for Mr Candy and Mr Bonnier to have at least one face-to-face meeting to discuss the proposed transaction. He stated that Mr Candy's "key focus will be on the TP Round and what is the likelihood of it happening at the indicated valuation", because the tactical partner funding round "gives the trajectory external verification." Mr Smith noted that Mr Candy would not necessarily see a right or obligation to invest in a Series "C" round as a benefit, but this might be impacted by the "verification of the likelihood and valuation of the TP round".

28. Mr Bonnier replied to Mr Smith's email of 2 January 2021 on the same day (the "2 January 2021 Email") stating: "Not sure I get the point. Being granted a free Option where the Option holder has the right (not the obligation) to exercise for a 60 day period after the most valuable company in the world has just invested £500m+ at double the Option price point? If that ever in my life was offered to me, I would literally bite the persons' hand off". The parties agree that the reference to "the most valuable company in the world" meant Apple.

29. The 31 December 2020 Email had attached a document entitled "AAQUA High-level Cap Table Jan '21.xlsx" ("the January 2021 Capital Table"). The January 2021 Capital Table included an entry headed "Series B Round" which showed an investment from CVS and others, an entry headed "Series C Round" which showed a €200 million investment from as yet unidentified investors, followed by an entry headed "AAQUA Tactical Partner Round", which showed an investment with an "Issue Price" of €1,920 per share, with Apple acquiring 300,000 shares for a total consideration of €576,000,000 and LVMH acquiring 100,000 shares for a total consideration of €192,000,000.

30. On 8 February 2021, Mr Bonnier emailed Mr Smith, attaching a further capital table ("the February 2021 Capital Table") amongst other documents. The February 2021 Capital Table was in identical terms to the January 2021 Capital Table as regards the Series B, Series C and AAQUA Tactical Partner rounds. The email also attached a further Primer entitled "AAQUA Primer February 2021" (the "February 2021 Primer").

31. Mr Smith responded on the same day to say that:

> "The one thing we will want access to is the Aaqua "data room" (or equivalent); in particular the Apple and LVMH documentation."

32. On 9 February 2021 (the "9 February 2021 Email"), Mr Bonnier emailed Mr Smith to say that he was happy to share the individual draft tactical funding revenue contribution agreements with Apple and LVMH, that the individual tactical partner playbook programs were not yet ready and they expected these to be finalised in early April for Apple and early May for LVMH.

33. On 10 February 2021, Mr Smith confirmed to Mr Bonnier by email that CVS was ready to proceed with the transaction subject only to final due diligence. CVS asked, and Mr Bonnier agreed, to remove the €500,000 cash investment component of the proposed deal.

34. On 14 February 2021 (the "14 February 2021 Email"), Mr Bonnier emailed Mr Smith attaching a document entitled "Draft Tactical Partner Framework Agreement" ("the Draft Framework Agreement"), which was expressed as being an agreement between Aaqua and "Apple Inc". Mr Bonnier described the Draft Framework Agreement as follows:

> "includes the latest three way inputs and will continue to iterate over the next several weeks until we definitively conclude."

35. In the 14 February 2021 Email, Mr Bonnier offered for CVS to discuss the Conviction Passion Partnership Structure with Joel Hogarth of Eliot and Luther Advisry Ltd ("Eliot and Luther", the Aaqua Group's external general counsel). Mr Smith did not take up the offer.

36. The Draft Framework Agreement did not contain any definitive commitment by Apple to invest. No draft of any agreement with LVMH was provided at any time. The Draft Framework Agreement featured Aaqua and Apple's logos at the top of each page; was stated to be between Aaqua and "Apple Inc"; and set out, in Section C, the purported "Key Terms of the Tactical Partnership", including:

    (1) Provision for Aaqua and Apple to enter into 3 "Conviction Passion Partnerships" on the terms set out in Attachment B to the Draft Framework Agreement.

    (2) The right for Apple to subscribe for 300,000 shares in Aaqua, at a price of €1,920 per share, for €576 million.

    (3) The right for Apple to appoint a director to the Aaqua board, for so long as it held 10 per cent or more of the ordinary shares in Aaqua.

    (4) A requirement that the parties grant each other "most-favoured-nation" terms on any products and services provided to third parties.

37. On 14 February 2021, Mr Smith shared the Draft Framework Arrangement with an internal analyst (Mr William Benattar) and Mr Philip Lamb of BDB Pitmans, copying in Mr Candy amongst others. The email requested that Mr Lamb "please have a scan from a legal perspective and see if there are any red flags" and for Mr Benattar to "please review from a commercial perspective and summarise the key terms for Nick and me."

38. On 14 February 2021, Mr Benattar replied providing comments on the Draft Framework Agreement. Amongst his comments, Mr Benattar said:

> "this document is still a 'work in progress… in my view, the 'valuable' details are missing (e.g. collaboration framework, governance and the specifics of the content to produce). A lot, almost too much is still open for deliberation. Additional, my initial impression is that it feels 'light' for a contract with Apple, not sure whether Apple has any input in this, can we check?"

39. Mr Benattar also said:

> "Also worth noting that, at this stage, Apple's ability to invest in AAQUA is an option rather than something set in stone. Even if the 250m euro round equity round closes, we have little to no visibility as to how likely or interested they are to exercise it."

40. Mr Smith later replied on the 14 February 2021:

> "Any chance we could do a call at 08.00am tomorrow? I am back-to-back after that and I would really like the three of us to understand what this "contract" means."

41. On the 15 February 2021, CVS and Aaqua entered into the Three Agreements.

42. Following the execution of the Three Agreements, Mr Bonnier continued to tell both Mr Smith and Mr Candy that the Apple/LVMH investments in Aaqua were close to finalisation. On 16 February 2021, Mr Bonnier told Mr Candy that he would be meeting with Apple in San Francisco on 19 February 2021. When asked by Mr Candy how that meeting went, Mr Bonnier replied on 20 February 2021:

> "Hi Nick super well … Dealing with this now. Basically [Apple] want to accelerate first closing including 200k AAQUA shares at €1,920 and have the right to subscribe for a further 100k at 7,192 [sic] per AAQUA share which becomes a 30 day funding obligation if AAQUA raises a similar amount from a third party or AAQUA reaches for 30 days a total of 100m AAM and RAM (combined). It is the intention that we meet again for several days week commencing 8 March and there should be little reason why we can't close 10-14 days thereafter ie before end of March. We have our MVS scheduled for 23 March and would be great having the public announcement the following day. As a result I will probably stay Stateside until closing, unless I can get to Singapore late next week without quarantine. Speak soon!"

43. After another purported meeting with Apple on 5 March 2021, Mr Candy and Mr Bonnier exchanged the following messages by WhatsApp:

Mr Candy:	"How was the visit yesterday? All still on track? Any issues?
Mr Bonnier:	All super super good just execution.
Mr Candy:	Are Apple 100% committed?
Mr Bonnier:	I am really sorry Nick they are 192% committed for €1.1bn
Mr Bonnier:	So will focus purely on execution and for that my team and I need to just be dealing with that and 0 noise because the rest is now a foregone conclusion."

44. On 11 March 2021 Mr Bonnier sent Mr Candy an email, stating that Aaqua was:

> "head on dealing with the Apple transaction documentation such that it is in execution format for 2H week of 22 March".

45. On 19 March 2021, pursuant to the Three Agreements, CVS transferred 1.5 million shares in Audioboom to Aaqua and CVS acquired 15,000 shares in Aaqua. At the Closing Date of 12 March 2021 (as stipulated in the Relationship Agreement) the deemed value of the Audioboom Shares was £6,450,000.

46. Several months later, in or around October 2021, CVS agreed to exchange its shares in Aaqua for shares in AAA. By an agreement dated 13 October 2021, CVS subscribed for 56,250,000 shares in AAA (the "AAA Subscription Agreement") in return for CVS selling the 15,000 shares in Aaqua to AAA.

47. By summer 2022, CVS's patience had run out. When Mr Smith pressed Mr Bonnier in respect of the Apple/LVMH situation by email on 10 June 2022, Mr Bonnier replied on 14 June 2022 to say he was:

> "… simply no longer comfortable talking about founder partner relationships".

48. Around the same time, CVS learned of the restructuring of the Aaqua Group, pursuant to which Aaquaverse was incorporated in Singapore and Aaqua's business was transferred to it. Mr Candy identified this as the trigger for these proceedings.

49. On 20 June 2022, CVS' solicitors, Grosvenor Law Ltd, sent a letter before action to Aaqua and Mr Bonnier, alleging that CVS had been induced to invest in Aaqua on the basis of misrepresentations and contending that CVS was entitled to rescind the Three Agreements and to seek the return of the 1.5million shares in Audioboom that had been sold by CVS to Aaqua under the Purchase Agreement. They also notified Aaqua and Mr Bonnier that they would be seeking an interim injunction to restrain Aaqua from any disposition of the Audioboom Shares, pending the resolution of CVS's claim, and sought an undertaking that they would not dispose of the Audioboom Shares.

50. On 12 July 2022, Mr Hogarth of Eliot and Luther sent an email to Grosvenor Law (the "12 July 2022 Email"). The email stated that Aaqua would:

> "prefer to find a commercial solution to settle this matter without litigation".

51. Privilege over the without prejudice negotiations that followed was waived by the parties.

52. The 12 July 2022 Email also contained an offer to CVS pursuant to which Mirador Investments FZE, an investment company owned by Mr Diarmuid Clohessy, would purchase CVS's 106.25 million shares in AAA for a cash price of £13.5 million, with a proposed settlement date of 15 August 2022 (the "Mirador Offer").

53. On 12 July 2022, CVS made a counter-offer, stating that it would refrain from serving proceedings if, by 27 July 2022, Aaqua paid £15.9m in cash and transferred 500,000 shares in Audioboom to CVS, alongside paying CVS's reasonable legal costs.

Procedural history

54. CVS commenced proceedings on 13 July 2022. On 19 July 2022, Grosvenor Law sought confirmation again that Aaqua was willing to provide an undertaking not to dispose of the Audioboom Shares pending the resolution of CVS's claim.

55. No confirmation was forthcoming. On 21 July 2022 CVS issued an ex parte application for inter alia worldwide freezing orders against Aaqua, Aaquaverse and Mr Bonnier personally (the "WFOs Application").

56. Meanwhile, on 22 July 2022:

    (1) Aaquaverse and Jati Sejati Investments Ltd ("JSI"), an investment fund incorporated in Belize, signed a Facility Letter pursuant to which Aaquaverse was granted a 1-year distressed loan facility of approximately SG$69 million (around £41 million), of which approximately SG$29 million (around £17 million) was immediately available (the "JSI Facility Letter"). The JSI Facility Letter provided that further formal documentation would follow, including a facility agreement and an equitable mortgage of Aaquaverse's shares in Audioboom.

    (2) Aaquaverse and its subsidiaries entered into a Debenture Agreement with JSI (the "JSI Debenture"), under which Aaquaverse and its subsidiaries charged various property in favour of JSI, including all presently owned shares. The JSI Debenture stated that it was intended to cover Aaquaverse's shares in Audioboom until the equitable mortgage referred to in the JSI Facility Letter was in place.

57. The Defendants assert that around this time, Mr Clohessy also advised that, if the Mirador Offer was not accepted, Mirador would instead provide – via JSI, as part of a "*Repo facility*" – bridge financing to Aaqua of £6 million; and invest a sum similar to the amount of the Mirador Offer in AAA, to fund Aaqua.

58. On 25 July 2022 the WFO Application was heard by Butcher J, who granted worldwide freezing orders against Aaqua, Aaquaverse, and Mr Bonnier (the "WFOs").

59. The WFOs provided that they did not prohibit the Defendants from dealing with or disposing of their assets in the "ordinary and proper course of business", although the Defendants were required to notify Grosvenor Law in advance.

60. On 28 July 2022, the Defendants sought confirmation that they were permitted to sell shares in Audioboom to raise €3.2 million to pay employees and "critical" suppliers. That same day, Grosvenor Law highlighted the provision in the WFOs permitting the Defendants/Part 20 Claimants to deal with their assets in the "ordinary and proper course of business" and confirmed that CVS did not seek to prohibit them from doing so. Grosvenor Law reiterated the same to Mr Hogarth the following day. However, CVS also sought various confirmations, including as to whether there were any other assets that could be used and how the €3.2 million figure had been arrived at. That information was provided to Grosvenor Law on 30 July 2022, and the Defendants/Part 20 Claimants proceeded on the basis that their shares in Audioboom could be sold to pay salaries and suppliers.

61. On 9 August 2022, the Defendants/Part 20 Claimants applied to discharge or vary the WFOs. At a hearing on 12 August 2022, Butcher J found that CVS had not disclosed, at the hearing of the WFOs Application, that the assets that it

had represented as available to satisfy its cross-undertaking on damages were pledged to the Bank of Singapore.

62. Butcher J nevertheless decided to continue the WFOs on the basis of a personal undertaking by Mr Candy to guarantee CVS's cross-undertaking on damages (the "Personal Undertaking") and provide fortification of the same, via a £10 million bank guarantee, by 22 August 2022. The deadline for such fortification was subsequently extended, first to 26 August 2022 and then to 5 September 2022. At the time of the second extension, Mr Candy was also ordered to fortify his Personal Undertaking by paying £1.5 million into Grosvenor Law's client account by 31 August 2022.

63. The fortification of Mr Candy's Personal Undertaking was not provided by 31 August 2022, with the consequence that the WFOs were automatically discharged. On 7 September 2022, an inquiry as to the damages caused to Aaqua, Aaquaverse, and Mr Bonnier, as a result of the WFOs, was ordered. That inquiry forms the basis of the Part 20 claim.

64. Pursuant to the Order of Adrian Beltrami KC dated 7 September 2022, CVS filed and served Amended Particulars of Claim on 14 September 2022.

65. On 30 September 2022, Aaquaverse and its subsidiaries entered into a facility agreement with JSI, pursuant to which JSI made available to Aaquaverse a facility of SG$30 million (approximately £18 million) (of which around SG$4 million (approximately £2.4 million) had already been drawn down) (the "JSI Facility Agreement"). Under this agreement, the equitable mortgage referred to in the JSI Facility Letter and the JSI Debenture were replaced by an all-asset debenture over Aaquaverse's assets.

66. On 18 April 2023, following a number of extensions of time and a stay of proceedings, Mr Bonnier and Aaqua filed and served their Defence, pursuant to the Order of Calver J dated 27 March 2023.

67. On 26 May 2023, CVS filed and served its Reply to Defence, following an extension of time and pursuant to an Order of Henshaw J dated 16 June 2023.

68. A Costs and Case Management Conference took place on 24 January 2024.

69. Henshaw J made a Case Management Order dated 29 February 2024. Between then and 30 April 2025, a number of extensions of time were agreed resulting in the parties being due to provide disclosure and inspection of documents on 28 April 2025.

70. Aaqua is now insolvent. Its interest in the Part 20 proceedings was assigned to FL Hoes Ventures BV ("FL Hoes"), a Dutch company, by a deed of assignment dated 17 July 2025.

71. On 17 July 2025, the eve of the Pre-Trial Review, Aaquaverse and Mr Bonnier wrote to CVS to notify it that they had discovered approximately 23,000 documents which were responsive to the agreed search terms in these proceedings but had not been reviewed or disclosed (the "17-18 July Letters").

72. On 18 July 2025 at the Pre-Trial Review, HHJ Pelling KC ordered the outstanding disclosable documents to be provided no later than 29 August 2025 (the "PTR Order"). Aaqua and Mr Bonnier did not comply with the terms of the PTR Order.

73. On 12 August 2025, HHJ Pelling KC ordered that, unless the Defendants served a Notice of Change, including an address for service in England and Wales, by 22 August 2025, the Defendants would be debarred from defending CVS's claim and the Defendants' Part 20 claim would be struck out ("the Unless Order").

74. No Notice of Change was not served by the 22 August 2025 nor were the outstanding disclosable documents provided by 29 August 2025. On 1 October 2025, HHJ Pelling KC heard an application that the Defendants/Part 20 Claimants be debarred from defending CVS's claim and their Part 20 claim be struck out (the "Debarring Application") and a related, belated application by FL Hoes, Aaquaverse and Mr Bonnier for relief from sanctions (the "Relief Application"). The Debarring Application succeeded, in that the Defendants were debarred from defending CVS's claim (the "Debarring Order"). The Relief Application failed.

75. HHJ Pelling KC's order of 1 October 2025 also granted an application under CPR 19.2 to substitute FL Hoes for Aaqua as the First Part 20 Claimant for the purposes of the Part 20 claim. The Part 20 claim was vacated, subject to conditions set out in the 1 October Order.

76. It was in the light of this procedural history that I heard the trial of CVS's claim over 7-9 October 2025.

The Debarring Order

77. Pursuant to the Debarring Order:

    (1) Aaqua and Mr Bonnier were not permitted to advance any factual case in respect of the claim.

    (2) They were restricted to attending trial and making oral submissions exclusively by reference to the evidence adduced by CVS and/or of law.

78. In considering how the trial of CVS's claim should proceed, I was referred to two recent first instance decisions in which the effect of debarring orders on trial was considered: *Times Travel (UK) Ltd v. Pakistan International Airlines Corp* [2019] EWHC 3732 (Ch) and *Financial Conduct Authority v. London Property Investments & Ors* [2022] EWHC 1041 (Ch). Mr Edwin Johnson KC (Sitting as a Deputy Judge of the Chancery Division) in *Times Travel (UK) Limited, Nottingham Travel (UK) Limited v Pakistan International Airlines Corp* [55], helpfully distilled the preceding case law (at first instance) into six principles, which were cited with approval by the Court of Appeal in *Hirachand v Hirachand* [2021] EWCA Civ 1498 and are worth repeating:

"55. (1) If there is a debarring order in place, its effect depends in the first instance upon its terms. One must consider the terms of the debarring order in order to determine what it debars the relevant party from doing. And as I have already indicated there is no ambiguity in that respect in the present case. The December 2018 order, as accepted, debars the defendant from defending the account proceedings.

(2) Where an order debars a defendant from defending a particular proceedings, this should mean what it says: At the trial of the relevant proceedings the defendant should not be permitted to participate in the normal way. That is to say by doing such things as adducing evidence, cross-examining witnesses on the other side, or making submissions.

(3) The case law does appear to demonstrate the existence of a residual discretion or trial management power to permit a debarred defendant to take some part in the trial of the relevant proceedings. It seems to me that this discretion is a narrow one. In particular circumstances I can see that the exercise of this discretion might include the permitting of some limited submissions or the permitting of some cross-examination. More generally, it strikes me that a debarred defendant should normally be able to address the court on the form of order to be made after the substantive decision on the trial has been made, and in relation to the pointing out of any errors in the relevant judgment. It also strikes me, but I say this on a strictly provisional basis because it is not a matter I am deciding at this stage, that it does strike me that the debarred defendant ought to be able to address the court on the question of the costs of the relevant proceedings. But I repeat that that is not a question which I am deciding in this judgment.

(4) The overriding principle however is that debarring orders should mean what they say. The debarred defendant should not normally be permitted to participate in the relevant trial in a way which undermines the debarring order, and permits the defendant to escape the effect of the debarring order. A debarring order is an important sanction available to the court in the exercise of its case management powers, and an important method of ensuring that the court's case management orders are respected. As such, defendants should not normally be allowed to escape from the consequences of a debarring order when the trial of the relevant proceedings takes place.

(5) Where a debarring order does have the effect of preventing a defendant from participating in a trial, the position does not then go by default. At the trial the claimant must still demonstrate to the satisfaction of the court that the claimant is entitled to the relief sought in the relevant proceedings.

(6) The striking out of the defence does not mean that the court cannot have any regard to that defence. It can still be considered by the court for the purposes of understanding the statements of case in the relevant proceedings as a whole. To adopt the phrase adopted by Tomlinson LJ in the second decision of the Court of Appeal in Thevarajah , "The relevant defence may have left a lasting legacy on the statements of case as a whole". It also appears, by reference to what Sales J is recorded as saying in the

> second decision in Thevarajah , that looking at the defence for the purposes of understanding the claim can also, in an appropriate case, extend to hearing from counsel for the debarred defendant in order for counsel for the debarred defendant to provide assistance for the benefit of the court in understanding the nature and extent of the relevant claim."

79. To the extent that I quote Mr Bonnier's witness statements in this judgment as evidence, this is because CVS has sought to rely on or respond to his admissions.

80. In considering the implementation of the Debarring Order, I had to decide whether to allow Mr Bonnier to proceed with an application for security for costs. I allowed Mr Bonnier to make this application because I considered it outside the limits of "defending CVS's Claim", to which HHJ Pelling KC's Debarring Order specifically related. However, the application failed.

Mr Bonnier's Article 6 rights

81. In the course of Mr Bonnier's submissions on the law, he argued that the Debarring Order would breach his right to a fair trial under Article 6 of the European Convention on Human Rights, and took me to *JSC BTA Bank v Ablyazov* [2013] 1 WLR 1331 in support of this submission.

82. I am satisfied that the Debarring Order did not contravene Mr Bonnier's Article 6 rights, having in mind Arden LJ's analysis in *Stolzenberg v CIBC Mellon Trust Co Ltd* [2004] EWCA Civ 827, [161], which is quoted in *JSC BTA Bank v Ablyazov* [2013] 1 WLR 1331, [139], and reproduced below:

> "161. Article 6 of the Convention requires attention to be addressed to a matter which has always been implicit in cases of this kind, namely that the effect of the court's refusal to grant relief is that the losing party will be deprived of a trial of his defence on the merits. Clearly, as the judge recognized, that is an important factor. But three points must be borne in mind. First, it is open to a party to consent to judgment being given against him without a trial on the merits. In the absence of some special feature (not present here) there is no public policy consideration which forces an unwilling party to undergo a trial if he, being competent to do so, decides against this course. Second, this is not an appeal against the judgments entered against the appellants. The appellants cannot say that those orders were wrongly made. Third, the state can impose restrictions on the right of access to court provided that the restrictions serve a legitimate aim, are proportionate and do not destroy the very essence of the right. Here, the legitimate aim in imposing a sanction is to secure compliance with court orders, which in the instant case were made to ensure the effectiveness of freezing orders. The imposition of a sanction is proportionate if it is reasonably necessary for achieving that aim. The essence of the right of access to court is not destroyed because the litigant has the opportunity to seek relief against the sanctions. The refusal of that relief is Convention-compliant if the same tests are satisfied. The legitimate aim remains the same. Proportionality will be satisfied if the overriding objective is met. The essence of the right will not be destroyed even if refused, since the

> appellants always had the chance to comply with the court orders and to help progress the case to trial."

83. Mr Bonnier had the chance to comply with the court's orders and to help this matter progress to trial. It was his failure to comply with the terms of HHJ Pelling KC's 12 August 2025 Unless Order that led to the imposition of a proportionate sanction, at the hearing before HHJ Pelling KC on 1 October 2025. This does not breach Mr Bonnier's Convention rights.

84. Mr Bonnier asked me to make it clear in my judgment that the trial was a civil trial, in which the issues arising had to be proved to the civil standard, not to the standard that would apply in a criminal prosecution. I am happy to confirm this.

Mr Joel Hogarth

85. The Debarring Order had far-reaching effects on the evidence. As noted above, only 6 of the Claimant's witnesses were called, there was of course no cross-examination and only two were subjected to my questioning. Furthermore, none of the Defendants' witnesses were called to give evidence. I raise this because CVS's case included criticisms of Mr Joel Hogarth – Mr Bonnier's external legal counsel.

86. I am very mindful that Mr Hogarth was not and could not be called to give evidence. Given the serious nature of fraud proceedings, I make it clear that I do not make any findings in relation to Mr Hogarth.

Standard of Proof

87. The gravity of fraud allegations requires the evidence to be more convincing than for other less serious allegations. The principle is set out by Lord Nicholls in *Re H (Minors)* [1996] A.C. 563 [586–587]:

> 586. "When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence."

88. This principle was further set out in the context of allegations of fraudulent misrepresentation in *UK Insurance v Gentry* [2018] EWHC 37 (QB), per Teare J [19-21]:

> 21. "By contrast the present case is one where there is a dispute as to whether a fraudulent misrepresentation was made. It is therefore appropriate to bear in mind the improbability of a person acting fraudulently in the manner alleged of Mr Gentry. It follows that particularly cogent evidence is required in order to discharge the burden of proof. In short the nature of the allegation makes it appropriate to apply a standard not far short of the criminal standard."

89. In the course of making submissions on the law, Mr Bonnier helpfully took me to *The Ocean Frost* [1985] 1 Lloyd's Rep 1 [57] per Robert Goff LJ:

> 57. "I have found it essential in cases of fraud, when considering the credibility of witnesses, always to test their veracity by reference to the objective facts proved independently of their testimony, in particular by reference to the documents in the case, and also to pay particular regard to their motives and to the overall probabilities."

90. I have kept in mind the limitations on the evidence arising out of the Debarring Order and the consequent need to place greater weight on the documentary evidence, when considering whether CVS has discharged the burden of proof.

CVS's case

91. CVS's claim is in fraudulent misrepresentation and/or the tort of deceit. CVS's case is that, prior to the conclusion of the Three Agreements, Mr Bonnier (acting on behalf of Aaqua) made three representations to CVS (together, the "Representations"), each of which was false:

    (1) That Mr Bonnier was in the course of ongoing discussions with Apple and LVMH about their investing in Aaqua, and that he honestly and reasonably believed that those companies would invest in Aaqua (the "Honest Belief in Investment Representation").

    (2) That there existed binding conditions precedent between Aaqua and Apple/LVMH which, once satisfied, would lead to those companies becoming unconditionally obliged to invest in Aaqua (the "Conditions Precedent Representation").

    (3) That negotiations with Apple and LVMH were at an advanced stage, and Apple and LVMH had commented on draft contractual documents during those negotiations (the "Negotiations Representation").

92. It is CVS's case that the Defendants knew that the Representations were false, that the Defendants intended the Representations to induce CVS to enter the Three Agreements and that CVS did in fact rely on the Representations. Finally, CVS says say that this reliance caused loss resulting from the exchange of the valuable Audioboom Shares for what it describes in its pleadings as "worthless (or worth considerably less than the €7.5 million that they effectively cost CVS)" Aaqua shares.

93. CVS initially sought recission of the Three Agreements and damages in the alternative. I pressed CVS on the mechanics of recission. Mr Nash KC acknowledged that Aaqua had almost certainly sold at least some (if not all) of the Audioboom shares (indeed this was the basis of the claim for injunctive relief and the WFOs), which would be enough to prevent full restoration. I also expressed my concern that restitution could interfere with Aaqua's Dutch

bankruptcy proceedings. CVS subsequently abandoned the claim for recission during the trial. Thus, the only relief sought was ultimately damages.

The Honest Belief in Investment Representation

94. CVS said that the Honest Belief in Investment Representation was first made to Mr Smith at the September 2020 Meeting.

95. Mr Smith said that at the September 2020 Meeting:

> "Mr Bonnier also explained to me that Apple and either LVMH or its principal, Mr Bernard Arnault were intending to invest c.US$1 billion in Aaqua. He explained that he had a personal relationship with Tim Cook who had also committed to invest significant sums."

96. Mr Smith also said he recalled having a number of further conversations with Mr Bonnier around this time, during which Mr Bonnier expressed his "absolute confidence that Apple and LVMH had agreed to invest."

97. CVS says that the Honest Belief in Investment Representation was repeated in the November 2020 Primer, which showed Apple and LVMH as "Founding" partners.

98. Moreover, at a first meeting between Mr Candy and Mr Bonnier in early January 2021 at the Mandarin Oriental Hotel in Dubai, Mr Bonnier explained the Aaqua plan and how he had secured Apple and LVMH as investors. He said they would invest more than US $1bn and that this would be completed by the end of the first quarter of the year.

99. The Honest Belief in Investment Representation was made again in Mr Bonnier's 31 December 2020 Email and the January 2021 Capital Table attached:

    (1) In the 31 December 2020 Email, Mr Bonnier referred to the equity subscriptions of Aaqua's "tactical partners" going "unconditional" and completing in, or shortly after, the second quarter of 2021, thereby raising €960 million.

    (2) The January 2021 Capital Table showed Apple and LVMH acquiring 300,000 and 100,000 shares in Aaqua for approximately €576 million and €192 million respectively.

100. This representation was repeated in Mr Bonnier's 2 January 2021 Email to Mr Smith, in which he referred to Apple investing more than €500 million in Aaqua and to Aaqua being "about to complete" this funding.

101. CVS say that the Honest Belief in Investment Representation was made again in the February 2021 Capital Table, which was identical to the January 2021 Capital Table in relation to Apple/LVMH's involvement. When Mr Smith informed Mr Bonnier, in response to his 8 February 2021 Email, that CVS wanted access to the "Apple and LVMH documentation" in Aaqua's data room,

Mr Bonnier did not explain that Aaqua had not sought investment from Apple/LVMH yet.

102. Instead, the Honest Belief in Investment Representation was repeated by Mr Bonnier in his 9 February 2021 Email, when he offered to share the "individual draft tactical funding revenue contribution agreements", for both Apple and LVMH, with CVS.

103. CVS provided further witness evidence of Mr Bonnier's tendency to make representations and the extent of his alleged deception regarding the Apple and LVMH investments:

(1) Mr McQuade said that throughout 2020, Mr Bonnier told him that he had met with Mr Cook and Mr Maestri, and that Apple had decided to invest a "significant sum" in Aaqua; and that Mr Bonnier had held, and was holding, investment meetings with other companies, including LVMH.

(2) Similarly, Mr Sargent – who assisted Mr Bonnier with corporate finance and structuring deals relating to AAA and Aaqua – said that, during 2020 to 2022, Mr Bonnier informed him multiple times, both verbally and in writing, that he was holding ongoing negotiations with significant investors, including Apple and LVMH, regarding material investment into Aaqua and Aaquaverse.

(3) Mr Foy said that in a meeting in mid-October 2021, Mr Bonnier gave a presentation about Aaqua and its key investors to the executive management team and himself – who was invited as a guest – during which he said these would include Apple, LVMH, the Reuben brothers, Nick Candy and a private equity investor, Tiga Investments. He also said that during his meetings with Mr Bonnier during November and December 2021, Mr Bonnier told him that Apple had committed to the Aaqua business.

The Conditions Precedent Representation

104. CVS said that Mr Bonnier falsely represented that a binding conditions precedent between Aaqua and Apple/LVMH existed which, once satisfied, would lead to their obligation to invest in Aaqua becoming unconditional.

105. In an email to Mr Smith dated 31 December 2020, Mr Bonnier said:

> "There are various conditions precedent that were agreed between AAQUA and our tactical partners and we are on track to deliver/satisfy these early Q2 '21. That would result in the tactical partners equity subscriptions to go unconditional and thus complete shortly afterwards. In total the amount to be raised in that tactical round is 960mn euros at PPS €1,920."

106. The email attached the January Capital Table, which included an entry headed "AAQUA Tactical Partner Round". This showed an "Issue Price" of €1,920 per share, with Apple acquiring 300,000 shares for a total consideration of

€576,000,000, and LVMH acquiring 100,000 shares for a total consideration of €192,000,000.

107. Mr Smith said that he "understood the reference to "tactical partners" as being a reference to Apple and LVMH and the fact that these conditions precedent had been 'agreed' and that their equity subscriptions would go unconditional was consistent with what Mr Bonnier had previously told me, namely that Apple and LVMH had agreed to invest."

The Negotiations Representation

108. CVS said that the Defendants represented that negotiations with Apple and LVMH were at an advanced stage, and Apple and LVMH had commented on draft contractual documents during those negotiations.

109. CVS argued that the Negotiations Representation was made in the 9 February 2021 Email, by Mr Bonnier offering to provide Aaqua's "individual draft tactical funding revenue contribution agreements with Apple and LVMH" and indicating that draft Tactical Partner Playbooks with Apple/LVMH existed and were nearing finalisation.

110. CVS say that the representation was repeated in Mr Bonnier's 14 February 2021 Email, to which he attached the Draft Framework Agreement and in which he referred to the agreement as including the "latest three way inputs" and stated that it would:

> "continue to iterate over the next several weeks until we definitively conclude".

111. Mr Smith said that he understood from this that the Draft Framework Agreement was in advanced form and had been reviewed, and commented on, by Apple.

112. Mr Bonnier does not deny that what he refers to as the "Extra-Contractual Statements" in the emails were made.

Falsity

113. The Representations could only have been true if the Defendants, in particular Mr Bonnier, had been in significant discussions with Apple and LVMH – including meetings and advanced contractual negotiations. If this had been the case, it is inevitable that there would have been documents evidencing this. Such documents would have included both exchanges with Apple and LVMH, and internal exchanges within Aaqua concerning the discussions with Apple and LVMH. However, no such documents have been disclosed and Mr Bonner was unable to identify any such documents.

114. As regards the witness evidence:

(1) Mr McQuade said that he saw "no evidence" that Apple ever intended to invest in Aaqua;

(2) Mr Sargent confirmed that he saw no evidence that Mr Bonnier came close to securing investment from Apple/LVMH; or that any of the meetings and calls with them, to which Mr Bonnier referred, actually occurred;

(3) Mr Foy said that no meetings between Mr Bonnier and senior Apple/LVMH representatives, about investing in Aaqua, took place; and that Mr Bonnier's promises about Apple/LVMH investing were untrue; and,

(4) Mr Gordon-Pullar (who was a consultant legal advisor to Aaqua between August 2020 and November 2020) also said that Mr Bonnier's claims that Apple and LVMH had agreed to invest in Aaqua, and that he had met several Apple/LVMH executives in respect of the same, were "without basis".

115. Furthermore, CVS pointed to the Defendants' Response to a Request for Further Information, served on 8 February 2024, in which the only interactions with Apple were said to have been a conversation with Mr Tim Cook and Mr Steve Jobs in 1999 (i.e., some 20 years before Aaqua even existed); and the only interactions with LVMH were said to have been various discussions with Mr Nicolas Bazire, in particular an informal meeting in 2014 (i.e., some 6 years before Aaqua existed).

116. In the course of his oral submissions during the trial, Mr Bonnier confirmed that he had never discussed Aaqua with any representatives from Apple, apart from an off-the-record meeting with Mr Luca Maestri in Los Angeles on 7 August 2021, which he had overlooked at the time of preparing the Response to the Request for Further Information. He also accepted that Apple had had no hand at all in the drafting of the Draft Framework Agreement, and that Apple had not been involved in any negotiations in relation to it.

117. I accept CVS's case that these facts are inconsistent with the Representations. All three Representations were false.

Knowledge

118. CVS said that Mr Bonnier could not honestly have believed that the Representations were true and, in fact, knew them to be false.

119. As well as the matters set out under the previous heading, in relation to falsity, CVS relied on Mr Bonnier's admission in his witness statement that: "I accept that I went too far in some of my late December/early January emails and should have presented a clearer picture in February 2021."

120. Furthermore, CVS contends that Mr Bonnier cannot have reasonably believed that the Conditions Precedent Representation was true because he admitted in his witness statement that in relation to his 31 December 2020 Email:

> "no conditions precedent had been agreed or even discussed with those who we hoped would become tactical partners".

121. I am satisfied not only that the Representations were false, but also that Mr Bonnier knew them to be false. I reach this conclusion not least because of Mr Bonnier's admission, during the trial, that Apple had had no hand at all in the drafting of the Draft Framework Agreement, that Apple had not been involved in any negotiations in relation to it and that there would be no trace of a documentary record of any dealings with Apple even in the 6,000 unreviewed documents that Mr Bonnier says he disclosed to CVS on 29 August 2025, but which CVS says it has been unable to access.

Intention

122. In actions for fraudulent misrepresentation, where the fraudulent misrepresentation is found to have been made, it will give rise to a rebuttable presumption of fact that the representor intended the representee to act in reliance on it: *Rex Goose v Wilson Sandford & Co. (A Firm)* [2000] EWCA Civ 73.

123. CVS said there is no credible explanation for the Defendants having lied, to rebut the presumption of fact as to intention, other than because they intended to induce CVS to enter the Three Agreements.

124. CVS relied on additional evidence of the Defendants' alleged intention to induce it to enter into the Three Agreements:

(1) When making the Representations in February 2021, Mr Bonnier was privately warning his Aaqua team and Mr Hogarth to "keep a very tight lid on "additional dd and or information requests"" from CVS and to discuss them with him first, before sending anything.

(2) Following the execution of the Agreements, Mr Bonnier continued to tell Mr Smith and Mr Candy – well into 2022 – that the Apple and LVMH investments were close to finalisation, even though he knew that that was not the case.

125. I accept that the Defendants made the Representations, knowing them to be false, in order to induce CVS to enter into the Three Agreements.

Mr Bonnier's intention in light of Aaqua's financing

126. Furthermore, CVS presented evidence that Aaqua was essentially financed by the sale of Audioboom shares, with no other significant sources or revenue or income. CVS relied on Mr Bonnier's admission in his witness statement that:

> "with regard to Aaqua's liquid assets, the primary source of Aaqua's liquid assets were the shares it held in Audioboom which it had originally purchased on the open market and was then able to sell from time to time during the course of late 2021 and 2022 to meet operational needs."

127. Mr Foy gave evidence that he:

> "quickly came to learn that Aaqua was basically financed by the sale of the Audioboom shares. It had no other revenue or other form of income".

128. Mr Foy also said that:

> "Mr Bonnier and the Aaqua CFO Dennis Van Cotthem both told [him] that to fund the business it was necessary to sell Audioboom shares […] at least once a month."

129. In his expert report for CVS, Mr Jonathan Ellis said "I understand that Audioboom was the main source of liquidity for Aaqua", in addition to transactions with Mr and/or Mrs Bonnier, which were recorded as debt and a facility from JSI up to $30,000,000, of which Aaquaverse drew down at least $4,153,244 since July 2022.

130. CVS also presented evidence that Mr Bonnier was involved in spreading rumours about an Audioboom takeover, in order to push up the share price and thus maximise the income that Aaqua could make by selling shares:

(1) In October 2021, Mr Bonnier mentioned to Mr Smith that Spotify was interested in acquiring Audioboom and that he thought it would bid £19.20 per share – a significant premium compared to the market price – by the end of the month. Mr Bonnier told Mr Smith and Mr Candy that he was in advanced talks with Spotify in relation to the bid and in personal contact with Mr Daniel Ek (Spotify's Co-founder and Chief Executive Officer).

(2) Towards the end of 2021, news of Spotify's alleged interest in Audioboom became public and Audioboom's share price rose sharply. Mr Foy gave evidence that "This was a cause for celebration for the Bonniers. Mr and Mrs Bonnier treated the core team to an extravagant dinner at La Reserve in Paris." Also, that "All members of staff were asked to sign an agreement forbidding the dealing in certain shares without prior authorisation from the EMT. This included Audioboom."

(3) In or around February 2022, Mr Bonnier informed Mr Smith that Spotify's interest had cooled, but that he was now in talks with Vivendi (a French investment firm) about purchasing Audioboom at a significant premium.

(4) In early 2022, Vivendi's supposed interest in Audioboom became public, leading to another share price increase. Around the same time (February 2022), there were media reports that Amazon was also interested in acquiring Audioboom.

(5) No formal bid for Audioboom was ever made by any of the supposedly interested parties. Mr Smith gave evidence that in hindsight he believes they were "deliberate ruses" to distract CVS from the Apple/LVMH investment.

(6) Mr Candy said: "I heard in the first quarter of 2022, via [Mr Smith], that the Audioboom Board felt that the takeover rumours by Spotify and Vivendi had been started by Mr Bonnier himself, to pump the share price in Audioboom."

(7) Mr Foy also gave evidence that Mr Bonnier was "almost obsessive" about the Audioboom share price.

(8) CVS also provided evidence that there was significant trading activity between Aaqua and Ms Islam-Bonnier in shares in Audioboom, in which relevant TR-1 forms were not filed.

131. I find that Aaqua was effectively financed by the sale of Audioboom shares, and had no other source of income.

132. Where it is alleged that somebody has told deliberate lies, that case makes more sense if the motivation for lying can be explained.

133. In this case, Aaqua's lack of liquidity provides a cogent explanation for Mr Bonnier's lies. He had an urgent need for a source of income. He told his lies in order to induce CVS to invest in Aaqua, by providing Audioboom shares which could then be sold readily. He knew that the involvement of prestigious companies such as Apple and LVMH would add cachet and credibility to Aaqua. Furthermore, he relied on the supposedly advanced stage of the negotiations with Apple and LVMH to hustle CVS into acting swiftly, without proper due diligence.

The Aaqua App's lack of functionality

134. CVS argued that the Aaqua App never reached the proof-of-concept stage of development.

135. Mr Ellis said in his expert report that based on internal accounting management, it is clear that the Aaqua App had not transitioned from the "research" into the "development" stage, as the costs were not capitalised on the balance sheet as an asset (which a company can only do once a number of conditions are satisfied to demonstrate that it has entered the development phase).

136. The research stage is defined in Mr Ellis' report as when:

> "an entity cannot demonstrate that an intangible asset exists that will generate probable future economic benefits. Therefore, this expenditure is recognised as an expense when it is incurred."

137. Mr McQuade said that upon joining Aaqua in January 2022:

> "I found that the AAQUA app was still in a very basic state…The look and feel of AAQUA's app was obsolete. In my view, this was a direct result of lack of professional product and design input. Given the historic cash expenditure on product development, I found this astonishing. The app was low quality, did not scale and had very little functionality."

138. The Aaqua App's lack of functionality is relevant because it underlines the fact that the Defendants had no realistic way of attracting investment, or of generating income, except by misrepresenting the position to any potential investor. The underlying technological assets could not be monetised, and this was unlikely to change in the foreseeable future.

Reliance

139. CVS pointed to the following well-established principles:

(1) Where a false representation with intention to deceive is proven, there is a rebuttable presumption of reliance, which is "very difficult" to rebut: *Zurich Insurance Co plc v. Hayward* [2016] UKSC 48 [34-37].

(2) It is no barrier to a claim in fraud that the representee could have discovered the falsity of the representation by exercising reasonable care and skill: *Venezuela Central Ry v. Kisch* (1867) L.R. 2 H.L. 99, 120.

(3) Moreover, the false representation need not be the sole, or decisive, cause of CVS's actions; it need only play a *"real and substantial part"* in inducing it: *Dadourian Group International Inc. v. Simms* [2006] EWHC 2973 [99].

140. Mr Smith gave evidence that:

> "The involvement of Apple and LVMH as significant equity investors was completely fundamental to any decision by CVS to invest."

141. Mr Candy said that:

> "What was different about this particular investment opportunity was that we were not interested in the underlying technology assets of the Aaqua proposition: rather it was the opportunity to invest at earlier fundraising round, and at a discounted valuation prior to Apple and LVMH subscribing for shares. CVS' belief that Apple and LVMH were already committed to invest – which was based on a lie from Mr Bonnier – was utterly fundamental to its investment decision."

142. CVS said that its reliance is reflected in the communication between Mr Smith and Mr Bonnier prior to entering into the Three Agreements:

(1) On 2 January 2021, Mr Smith told Mr Bonnier by email that Mr Candy's "key focus" would be on the "Tactical Partner" funding round.

(2) In the same email exchange, in response to Mr Bonnier's mention of there being "various conditions precedent", Mr Smith said that CVS would "need to understand these and the legal enforceability of the TP round generally".

(3) In the same email exchange, in response to Mr Bonnier saying that the amount raised in the "tactical round" would be "€960mn", Mr Smith commented "Clearly, this is fundamental to everything and our verification of contracts etc will be a key part of our initial dd."

(4) Mr Smith replied to Mr Bonnier's 8 February 2021 Email saying "one thing we will want access to is the Aaqua "data room" (or equivalent)" and "in particular the Apple and LVMH documentation."

143. In the event, CVS was persuaded to invest without access to any "data room", but it was provided with the Draft Framework Agreement, which (reasonably) it understood to be an agreement that was the subject of ongoing negotiations with Apple. Mr Benattar expressed some scepticism about the degree of input from Apple, but I accept the evidence of Mr Smith and Mr Candy that they believed Mr Bonnier on this.

The Defendants' case

144. As set out above, the Debarring Order prevented the Defendants from advancing a factual case or evidence beyond making submissions on the law and/or the evidence adduced by CVS.

145. Mr Bonnier provided written opening submissions and closing submissions, which I read and considered. I summarise his main points on the law and in response to CVS's evidence below. It is worth noting that much of the contents of Mr Bonnier's written submissions, and much of what he said orally during the trial, was an attempt to give evidence, which I disregarded. This included comments as to the findings made in the course of previous litigation involving Mr Candy, which I did not find relevant to or useful in determining the issues before me.

The Defendants' submissions on Intention and the contractual provisions

146. Mr Bonnier relied on several contractual provisions to demonstrate that he did not intend for CVS to rely on what he called his "Extra-Contractual Statements" and to exclude liability.

147. In the Relationship Agreement, he relied on clause F.4:

> "4. Entire Agreement. This Agreement (together with its Annexes and agreements referred to therein) constitutes the entire Agreement between the Parties with respect to the subject matter of this Agreement and supersedes any prior discussions, agreements, representations or warranties."

148. In the Aaqua Subscription Agreement, he relied on various limbs of clause 6:

> "6. Common Understandings. Each of the parties understand and represent that:
>
> …
>
> (iv) AAQUA has limited operating history and that an investment in the AAQUA Subscription Shares involves material risks. Any financial projections that may have been provided are based upon assumptions of future operating results reasonably developed by AAQUA and are not binding. Any financial projections, therefore, merely represent an estimate by AAQUA of future results that it hopes can be achieved by AAQUA based upon reasonable assumptions as to certain events, many of which are beyond the AAQUA's control. No assurances or

representations can be given that the actual results of the operations will conform to the projected results for any or all of the indicated years.

(v) CV has carefully considered and has, to the extent it believes such discussion necessary, discussed with its professional legal, tax and financial advisors, the suitability of investing in the AAQUA Subscription Shares for its particular tax and financial situation, and CV has determined that the AAQUA Subscription Shares is a suitable investment for it. In making its investment decision, CV has relied solely on its own advisors, and not on the advice of AAQUA.

(vi): CV has relied on its own due diligence and investigations and has been afforded the opportunity to ask questions of and receive answers from duly authorized officers or other representatives of AAQUA concerning AAQUA's business, assets and financial position. CV acknowledges that AAQUA shall not be liable for any representations and warranties other than those appearing in this Agreement."

149. Mr Bonnier said that the provisions had the following legal effects:

(1) They made clear that CVS was responsible for conducting its own due diligence and should not rely on the Extra-Contractual Statements.

(2) They constituted a legal and binding representation and warranty by CVS that it would not rely on the Extra-Contractual Statements.

(3) They therefore created a reasonable expectation in his mind that, whatever the content of his informal "sales pitches", CVS would not rely on them.

(4) They estopped CVS from later relying on an Extra-Contractual Statement.

150. For the reasons set out in Lewison's 'The Interpretation of Contracts' (8th ed), §3.142-143 and §12.167-177, none of the provisions are effective to exclude liability for fraudulent misrepresentations.

151. As regards clause F.4 of the Relationship Agreement, Entire Agreement clauses can derogate from the contractual effect of a statement, but they do not affect the status of the statement as a misrepresentation without clear words to that effect: *AXA Sun Life Services v Campbell Martin* [2011] EWCA Civ 133, per Rix LJ at [94]:

> "…the exclusion of liability for misrepresentation has to be clearly stated. It can be done by clauses which state the parties' agreement that there have been no representations made; or that there has been no reliance on any representations; or by an express exclusion of liability for misrepresentation. However, save in such contexts, and particularly where the word "representations" takes its place alongside other words expressive of contractual obligation, talk of the parties' contract superseding such prior

> agreement will not by itself absolve a party of misrepresentation where its ingredients can be proved."

152. Next, in relation to the provisions under Clause 6 of the Aaqua Subscription Agreement, CVS relied on *HIH Casualty and General Insurance Ltd v Chase Manhattan Bank and others* [2003] UKHL 6, per Lord Bingham at [15]:

> "… fraud is a thing apart. This is not a mere slogan. It reflects an old legal rule that fraud unravels all: fraus omnia corrumpit. It also reflects the practical basis of commercial intercourse. Once fraud is proved, 'it vitiates judgments, contracts and all transactions whatsoever': *Lazarus Estates Ltd v Beasley* [1956] 1 QB 702 at 712 per Denning LJ. Parties entering into a commercial contract will no doubt recognise and accept the risk of errors and omissions in the preceding negotiations, even negligent errors and omissions. But each party will assume the honesty and good faith of the other; absent such an assumption they would not deal."

153. The only relevant provision that is worded widely enough to have any arguable effect on liability for pre-contractual misrepresentation is the final sentence of clause 6(vi). However, this does not exclude liability for fraud.

Estoppel

154. Mr Bonnier argued that CVS should be estopped from relying on the Representations and referred me to *Peekay Intermark Ltd v Australia & New Zealand Banking Group Ltd* [2006] EWCA Civ 386. I see no force in this.

155. The issue in *Peekay Intermark Ltd v Australia & New Zealand Banking Group Ltd* was whether the representee could claim that he relied on the representations where the terms of the contract itself, which he signed, clarified the true nature of the product, thereby correcting the original representation. It was not a fraud case. It is not material.

Intention

156. Mr Bonnier argued that the various provisions relied on by the Defendants showed that CVS did not rely on what he characterised as "informal sales pitches". CVS conducted its own analysis and drew its own conclusions.

157. However, there is no convincing explanation for Mr Bonnier's telling deliberate lies, as I have found he did, except to induce CVS to invest. Returning to *Rex Goose v Wilson Sandford & Co. (A Firm)* [2000] EWCA Civ 73, per Morritt LJ at [47]:

> "There is obvious sense in such a presumption for if the representor did not intend the representee to act on the faith of his statement why did he lie?"

158. The only explanation for Mr Bonnier lying so repeatedly and determinedly was in order to secure CVS's investment. None of the provisions relied on by the Defendants affects this simple reality. As I have already found, if Mr Bonnier had not made the Representations, CVS would not have invested.

Summary of findings on liability

159. It is clear from the documents, and was confirmed by the evidence of CVS's witnesses, that Mr Bonnier made the Representations prior to CVS entering into the Three Agreements.

160. During the trial, Mr Bonnier confirmed that he was not involved in active negotiations with either Apple or LVMH representatives concerning imminent investment in Aaqua. Thus, I am satisfied that the Representations were false, and he knew them to be false when he made them.

161. I am satisfied that Mr Bonnier intended CVS to rely on his representation for the reasons set out above.

162. I am also satisfied that the Representations in fact induced CVS to enter into the Three Agreements, and then to invest in Aaqua.

Quantum

163. Both parties provided expert reports: that of Mr Ellis for CVS and that of Mr Joel Franks for Aaqua and Mr Bonnier, along with a Joint Memorandum. Mr Franks notified the court on 18 September 2025 that he would not attend court due to the Defendants' non-payment of his fees. As events unfolded, following the Debarring Order, he could not have been called as a witness anyway. Whilst I read the Joint Memorandum, it follows that I had no regard to the views expressed by Mr Franks, save (i) that it assisted me to know where he agreed with Mr Ellis and (ii) that I was able to consider the reasons given by him where he disagreed with Mr Ellis, even though I gave no weight to Mr Franks' support for those reasons.

164. I was referred to McGregor on Damages (22nd ed), §50-001: the correct measure of damages in deceit is an award which puts the claimant into the position he would have been in if the representation had not been made. CVS argued that damages therefore should be assessed on the basis of the value of the Audioboom Shares on 15 February 2021, less the value of the AAA shares for which CVS exchanged its shares in Aaqua.

165. I accept that this is the correct basis on which to quantify CVS's damages. In particular, I accept that CVS entered into the AAA Subscription Agreement, by which it exchanged its shares in Aaqua for 56,250,000 shares in AAA, in direct consequence of its earlier investment in Aaqua, pursuant to the Three Agreements. It follows that the shares in AAA fall to be valued as at 13 October 2021, or very shortly thereafter.

166. Prior to the Debarring Order, the parties' experts agreed that the value of the Audioboom Shares, as of 15 February 2021, was £5,737,500.

167. The value of the AAA shares was disputed. Mr Ellis valued the AAA shares exchanged for the shares in Aaqua as of 4 November 2021 at €1,294,400, or £1,113,581.

168. The Defendants said that the correct valuation is of the 56,250,000 shares received in the share swap plus a further 50,000,000 shares that CVS received for no consideration, on the basis that this formed part of the same transaction. Their case was that the AAA Shares received by the Claimant were worth between £13,432,000 (applying the price allegedly offered by Mirador for those Shares) and £20,500,000 (applying the price of the counter-offer made by CVS on 12 July 2022).

169. While it seems that CVS received an additional 50,000,000 AAA shares in October 2021, it is not apparent that this occurred as part of the same transaction by which CVS gave up its shares in Aaqua. The AAA Subscription Agreement refers to only 56,250,000 shares in AAA.

170. Accordingly, I proceed on the basis that the relevant sum is that of the 56,250,000 AAA shares, as determined by Mr Ellis – i.e., £1,113.581.

171. The difference between this sum and the value of the Audioboom Shares on 15 February 2021 is £4,623,919.

Mitigation of loss

172. The essence of the law on mitigation is familiar from the summary formulated by Viscount Haldane LC in *British Westinghouse Co v Underground Ry* [1912] A.C. 673, 689:

> "The fundamental basis is thus compensation for pecuniary loss naturally flowing from the breach; but this first principle is qualified by a second, which imposes on a claimant the duty of taking all reasonable steps to mitigate the loss consequent on the breach, and debars him from claiming any part of the damage which is due to his neglect to take such steps."

173. This principle applies to damages claimed in deceit just as it does any other claim to damages: *Smith New Court Securities Ltd v Citibank NA* [1997] A.C. 254.

174. Mr Bonnier submitted that CVS failed to mitigate its loss by not accepting the Mirador Offer. The Claimants said that they acted reasonably in not acting on the alleged Mirador Offer, and disputed that the offer was genuine.

175. It is well-established that mitigation is a positive case that must be pleaded and proved by the Defendant: McGregor on Damages (22nd ed), §10-020. Here, the Defendants have adduced no evidence whatsoever to show that the offer was genuine. In particular, their disclosure contains no documentary evidence of exchanges or negotiations with Mirador or anyone acting on behalf of Mirador in relation to Mirador offer. It is inconceivable that there would have been no exchanges between the Defendant and Mirador, or internal exchanges referring to Mirador's interest, if the offer had been genuine.

176. Furthermore, CVS was entitled to be sceptical about bare, unsupported assertions from the Defendants to the effect that a wealthy third party wanted to invest in Aaqua or AAA, given Mr Bonnier's track history in this regard.

177. I therefore reject the Defendants' case that CVS failed to mitigate its losses.

Overall Conclusion

178. This claim succeeds.

179. CVS is entitled to damages in the sum of £4,623,919, plus interest.