

FRENCH REPUBLIC  
IN THE NAME OF THE FRENCH PEOPLE

**LYON COURT OF APPEAL**

**3rd chamber A**

**JUDGEMENT OF 23 February 2017**

**Docket no: 15/07231**

**APPELLANT and RESPONDENT:**

Decision of the  
Commercial Court of  
LYON  
On the merits  
Of 7 September 2015

**LES DOCKS LYONNAIS**

Registered with the Paris trade and companies register under number  
955 502 133, represented by its legal managers with an address in this  
capacity at the registered office located at

Docket no:  
2013j00077 ch no

11-13 avenue de Friedland  
75008 PARIS

SAM - SHAFTESBURY  
ASSET MANAGEMENT  
FRANCE  
SOCIETE ANONYME DES  
DOCKS LYONNAIS

Represented by SCP BAUFUME ET SOURBE, attorney admitted to the  
LYON bar

Assisted by Mr Cédric MONTFORT of SELARL CAYSE - AVOCATS,  
admitted to the LYON bar

v

SAM - SHAFTESBURY  
ASSET MANAGEMENT  
FRANCE  
SOCIETE ANONYME DES  
DOCKS LYONNAIS  
S.A.R.L. BOCA  
S.A.R.L. SU EUROPEAN  
PROPERTIES  
UBS AG JERSEY UBS  
WEALTH MANAGEMENT Y  
FUND

Assisted by Mr Christian DARGHAM, attorney admitted to the PARIS  
bar

**RESPONDENT AND APPELLANT**

**SHAFTESBURY ASSET MANAGEMENT FRANCE** registered  
with the Paris trade and companies register under number 491  
207 353, represented by its managers with an address for service  
at said registered office

7 Rue Galilée  
75116 PARIS

Represented by SCP TUDELA ET ASSOCIES, attorney admitted to the  
LYON bar

Assisted by André SOULIER of SOULIER A.A.R.P.I., admitted to the  
LYON bar

Assisted by Mr Philippe DUBOIS of AARPI DE PARDIEU - BROCAS -  
MAFFEI, attorney admitted to the PARIS bar

**RESPONDENTS**

**S.A.R.L. BOCA, a foreign law company,**

Represented by its legal representative with an address for service in this  
capacity at the registered office located at

65 Bd Grande Duchesse Charlotte  
L1331 LUXEMBOURG



**S.A.R.L. SU EUROPEAN PROPERTIES**, a foreign law company,  
represented by its current legal managers with an address for service at  
said registered office  
22 rue Goethe  
L1637 LUXEMBOURG

**UBS AG JERSEY**, served through its legal representatives with an address  
for service in this capacity at the registered office located at  
24 Union Street,  
JE48 ST HELLIER JERSEY CHANNEL

**UBS WEALTH MANAGEMENT CONTINENTAL EUROPEAN  
PROPERTY FUND**, a foreign law company, served through its legal  
representatives with an address for service in this capacity at the  
registered office located at  
C/O UBS JERSEY,  
24 Union Street,  
JE48 ST HELLIER JERSEY CHANNEL

**All represented** by SCP BAUFUME ET SOURBE, attorney admitted to  
the LYON bar

**Assisted by** Mr Cédric MONTFORT of SELARL CAYSE - AVOCATS,  
attorney admitted to the LYON bar

**Assisted by** Mr Christian DARGHAM of NORTON ROSE FULBRIGHT  
LLP, attorney admitted to the PARIS bar

\* \* \* \* \*

Closing date of investigation: **22 November 2016**

Date of oral arguments held in **public hearing: 08 December 2016**

Provision date: **16 February 2017 then extended to 23 February 2017** of  
which the parties were notified

**Composition of the Court during the debate:**

- Christine DEVALETTE, Chief Judge
- Hélène HOMS, advisor
- Pierre BARDOUX, advisor

Assisted during the debates by Jocelyne PITIOT, Clerk of the Court,

in the presence, during the debates of Monique SOULET, judge at the  
Commercial Court of ROANNE,

in the hearing, **Helene HOMS**, drafted the report pursuant to article 785 of  
the Code of Civil Procedure.



**Composition of the Court during the deliberation:**

- Christine DEVALETTE, Chief Judge
- Hélène HOMS, adviser
- Pierre BARDOUX, adviser

Judgement **in the presence of both parties** issued **publicly** by provision to the registrar of the Court of appeal; the parties were advised thereof first under the conditions stated in article 450, paragraph 2, of the Code of Civil Procedure,

Signed by Christine DEVALETTE, chief judge and by Jocelyne PITIOT, Clerk of the Court, to whom the record was submitted by the signatory judge.

\* \* \* \* \*

**BACKGROUND OF DISPUTE**

On 18 October 2005, a framework agreement was signed between SHAFTESBURY and UBS/CEPF for the purpose of the investment of funds by UBS/CEPF in Germany and France through special purpose vehicles, whose assets would be managed by SHAFTESBURY companies.

On 11 September 2006, LES DOCKS LYONNAIS (hereinafter, DOCKS LYONNAIS), the majority of which is owned by BOCA, owned in turn by SHAFTESBURY and CEPF, concluded with SHAFTESBURY ASSET MANAGEMENT FRANCE (hereinafter, SAM) a management contract, known as the Asset Management Agreement (AMA), under which it entrusted the management of the immovable assets of DOCKS LYONNAIS to SAM.

By an amendment of 21 May 2010, the term of the contract was shortened from 15 years to 8 years and was to expire on 31 December 2013; the parties agreed that this agreement would supersede the previous one.

Subsequently, differences between the parties arose and in a letter of 31 October 2012, DOCKS LYONNAIS notified the immediate termination of the agreement to SAM.

Believing that the 2010 AMA should be cancelled for fraud or, that failing that, the termination of the AMA in October 2012 was wrongful, SAM, after having been authorised to summon them without delay, summoned the following companies before the Lyon Commercial Court on 23 January 2013: DOCKS LYONNAIS, BOCA, SU EUROPEAN PROPERTIES, UBS WEALTH MANAGEMENT CONTINENTAL EUROPEAN PROPERTY FUND and UBS AG JERSEY.

In a judgement of 07 September 2015, the Commercial Court:

- dismissed SAM's claims for fraud,
- dismissed the parties' claims for the annulation of the AMAs of 2006 and 2010,
- upheld the termination of the 2006 AMA,
- ordered DOCKS LYONNAIS to pay SAM the amount of €7,000,000 in damages.
- dismissed SAM's claim to be guaranteed by BOCA, SU EUROPEAN PROPERTIES, UBS WEALTH MANAGEMENT CEPF and UBS AG,
- ordered SAM to return the documents listed in the letter of 12 October 2012 within 30 days as from the serving of the judgement at the expiry of which a fine of €5,000 per day late would be assessed.
- ordered the provisional enforcement of the decision,
- dismissed the parties' claims under article 700 of the civil procedure code,
- ordered DOCKS LYONNAIS to pay all costs for the proceedings.



By a writ of 21 September 2015, DOCKS LYONNAIS appealed this decision, bringing the action against SAM only; the proceedings were registered under docket no RG 15/07231. By summons of 08 March 2016, the other parties, present in the lower Court, were joined to the action in an appeal lodged by SAM.

By a writ of 05 October 2015, SAM also appealed this decision; the proceedings were registered under docket no RG 15/07618.

By a judgement of 21 December 2015, the delegate of the First Chief Judge of said Court dismissed the claim to stay the provisional enforcement lodged by DOCKS LYONNAIS, but authorised it to place the amount of €7,000,000 in escrow.

By judgement of 04 October 2016, the Judge in completion of the pre-trial procedure:

- ordered the joinder of RG 15/7231 and 15/7618 under number RG 15/7231,
- dismissed the incident lodged by DOCKS LYONNAIS to strike out the main appeal and incident of SAM.

In their latest submissions filed 7 November 2016, **DOCKS LYONNAIS, BOCA, SU EUROPEAN PROPERTIES, UBS WEALTH MANAGEMENT CONTINENTAL EUROPEAN PROPERTY FUND and UBS AG JERSEY** applied to the Court to:

- hold that the appeal lodged DOCKS LYONNAIS was admissible and well-founded,
- dismiss, as inadmissible, or failing that, without basis, the appeals, claims, pleas and submissions of SAM against DOCKS LYONNAIS, BOCA, SU EUROPEAN PROPERTIES, UBS WEALTH MANAGEMENT CEPF, UBS AG JERSEY, UBS AG which is not a party to this case.

Consequently,

1. On SAM's claims, upholding the judgement,

- rule and hold that SAM does not demonstrate any fraud, misconduct, failing, or the slightest reparable damage attributable to DOCKS LYONNAIS,
- rule and hold that BOCA, SU EUROPEAN PROPERTIES, UBS WEALTH MANAGEMENT CEPF and UBS AG JERSEY have no obligation of guarantee towards SAM and that in any event they committed no tort vis-a-vis SAM,
- dismiss SAM's pleas, submissions and claims,

2. On the claims of DOCK LYONNAIS to quash the judgement, principally,

- rule and hold that the AMAs of 2006 and 2010 are void or, alternatively, must be cancelled for breach of article L. 225-53 of the commercial code, the Hoguet law of 2 January 1970 and the order of 19 September 1945,
- rule and hold that SAM did not have any chartered accountant qualification or the business licence required by the Hoguet law,
- rule and hold that the breaches of these rules give rise to the rescission *ab initio* of the AMAs of 2006 and 2010,
- order SAM to repay DOCKS LYONNAIS the amounts unduly received which may not be lower than €15,000,000,
- rule and hold that the various faults of SAM give rise to its tortious liability towards DOCKS LYONNAIS and order SAM to pay the €2,000,000 in damages,
- order SAM to pay DOCKS LYONNAIS total compensation that may not be lower than €17,000,000,

Alternatively, quash the judgement,

- rule and hold that the faults and breaches attributable to SAM were grounds for the 2010 AMA to be terminated immediately at the sole fault of SAM as from 1 November 2012,



- order SAM to pay DOCKS LYONNAIS compensation that may not be lower than €11,000,000 as part of its contractual liability,

In any event, in quashing the judgement,

- hold that the lost profit allegedly suffered by SAM as a result of the termination that occurred on 31 October 2012 (€1,700,000) are much lower than the compensable claims and repayments owed to DOCKS LYONNAIS (€11,000,000),
- order SAM to pay DOCKS LYONNAIS €9,300,000 after set-off,

On the documentation, partially upholding the judgement,

- order SAM and its *de facto* managers, Miles d'Arcy-Irvine and Philippe Camus, to return immediately to DOCKS LYONNAIS all the documents and registers,
- consequently, order SAM to return immediately all the documents and registers held in escrow by Mr Thomazon, which legally belong to DOCKS LYONNAIS and its subsidiaries and which are listed in the termination letter of 31 October 2012 under penalty of a €10,000 fine per day late and breach recorded,
- reserve the authority to pay said fine even provisionally,
- order SAM to pay all Court costs and to pay €250,000 to DOCKS LYONNAIS and €10,000 each to BOCA, SU EUROPEAN PROPERTIES, UBS WEALTH MANAGEMENT CEPF and UBS AG JERSEY, as unrecoverable costs.

In relation to the action in nullity for fraud of the 2010 AMA brought by SAM, the appellants claim:

- inadmissibility, as the action contradicts the claims and pleas that said company filed with other jurisdictions proving that it considered the 2010 as perfectly valid,
- impossibility of cancelling the agreement for fraud on the grounds that SAM is an informed and experienced contracting party, it has not any evidence of fraudulent behaviour and it was thoroughly aware of the events that led the parties to renegotiate the AMA, i.e., the global crisis of 2008 and changes in taxation.

To counter SAM's claims for the purpose of terminating the AMA, they claim that said company, if it were to claim a breach by DOCKS LYONNAIS, pursuant to the 2006 AMA, had to notify this to DOCKS LYONNAIS by registered letter that would then have a period of 28 days to remedy it.

Regarding SAM's claims for compensation, they claim that they are based on contradictory legal grounds of tortious and contractual liability and that damage claimed has not been proven.

Consequently, there is no reputational damage comparable to the one in the LVMH case which SAM takes as example; the shortening of the initial contractual term has already been compensated by the payment of compensation for business reduction costs provided for in the 2010 AMA and SAM was free, since May 2010, to restructure its business to provide services to other clients; compensation for breach of contract, which is attributable to SAM's behaviour is ruled out and it cannot be claimed that the relationship between the parties alleged lasted after the expiry of the agreement.

They contest the consultations conducted by the firm of Sorgerm on the consequences of the alleged fraud and the breach of the AMA produced by SAM since a certain number of methodological choices by said firm were neither justified or explained.

They claim that SAM's claims are inadmissible vis-a-vis UBS AG which is not a party to the proceedings, unlike UBS AG JERSEY, and vis-a-vis the other companies because SAM is relying on a version of the shareholders' agreement that was amended in 2010 and which was not signed by anyone; in any event, SAM is not a party to the shareholders' agreement on which it bases its claim and it fails to prove that the said shareholders' agreement contains, pursuant to Luxembourg law which governs it, the guarantee relied on, which is disproved by the legal opinion that they produced.





Regarding the claims against UBS AG JERSEY and BOCA for quasi-tortious liability, they claim that the claims filed against BOCA are new in the appeal and no other fault that is attributable to UBS AG JERSEY, which is not a bank, is proven.

Regarding the pleas for nullity of the AMA filed by DOCKS LYONNAIS, they contest their limitation on the grounds that it is only when this company had an independent management able to supervise the acts of its Asset Manager, i.e., in 2012, that it discovered that the latter did not have the necessary business license to perform said duties; that the nullities punishing the irregularities are absolute nullities and that consequently the thirty-year time bar as from the conclusion of the agreement applies. In addition, where they are invoked by exception, nullities are not time-barred.

Lastly, following the reform of the statutory limitations, the new five-year limitation began on 18 June 2008 and expired on 17 June 2013, date on which it had already filed submissions for nullity of the AMA before the Lyon Commercial Court.

On the merits, they claim the nullity of the agreements on the basis that:

- \* they lack substance, since they duplicate the duties to be performed by the managing director of DOCKS LYONNAIS for which the latter is remunerated and they breach article L. 225-53 of the Commercial Code which is a mandatory statutory provision,

- \* they breach the regulations on chartered accountants since SAM performed, without being authorised, numerous missions on the books of DOCKS LYONNAIS and performed missions on the books of the subsidiaries of the latter,

- \* they breach the mandatory statutory provisions of the Hoguet law since SAM performed missions in this context without having the estate agent business license required by this law.

Regarding the termination of the agreement, they claim that SAM FRANCE, wilfully harmed DOCKS LYONNAIS and committed faults of such seriousness that they led to the immediate termination of commercial relationship since SAM brought against DOCKS LYONNAIS a dozen or so legal proceedings and disparaged the latter publicly and in the media; consequently, SAM must compensate DOCKS LYONNAIS for its damage.

Regarding the return of the documents, they claim that SAM is obliged to return them since the termination of the agreement in November 2012 and that it refrains from satisfying said obligation under wacky grounds whereas the judgement of 7 September 2015, which is provisionally enforceable, requires it to do so and whereas the documents were listed precisely in the presence of both parties in April 2013 by Mr Thomazon who maintains them and that to date the documents have still not been returned.

In its latest submissions, filed on 26 October 2016, **SAM**, applied to the Court to:

- rule that the claims for nullity filed by DOCKS LYONNAIS are inadmissible because they are time-barred,

- dismiss the claims of DOCKS LYONNAIS, BOCA, SU EUROPEAN PROPERTIES, UBS WM CEPF and UBS AG JERSEY for:

- \* (i) The partial quashing of the judgement of 7 September 2015 for:

- o Dismissing its claim for nullity and its claims for compensation,
    - o Uphold the claims for nullity and the claims for compensation of DOCKS LYONNAIS,

- \* (ii) Uphold the judgement being appealed in that:

- o It orders SAM to return the labour, accounting and legal documents belonging to DOCKS LYONNAIS,
    - o - exonerate DOCKS LYONNAIS, BOCA, SU EUROPEAN PROPERTIES, UBS WM CEPF and UBS AG JERSEY,



- Uphold the judgement of 7 September 2015 in that:
  - It dismisses the claim for nullity of the AMA filed by DOCKS LYONNAIS on the basis of the Hoguet law of 2 January 1970 for breach of the regulations on chartered accountants for duplication,
  - It dismisses the claim for nullity for fraud of the amendment of 21 May 2010 filed by it,
  - It upheld that both parties were equally at fault for the termination of the AMA,
- Reverse the judgement of 7 September 2015 in that:
  - It ordered DOCKS LYONNAIS to pay only €7,000,000 in damages,
  - It dismissed its claim for guarantee against BOCA, SU PROPERTIES, UBS WM CEPF and UBS AG JERSEY,
  - It ordered it to return the documents listed in the letter of 12 October 2012 within 30 days,
  - It made its decision subject to a fine of €5,000 per day late and ruled that as a result it is not necessary to liquidate the fine by the enforcement judge with the Paris high Court.

And by ruling anew,

- Rule that DOCKS LYONNAIS is intentionally guilty of fraudulent behaviour with the aim of concluding the amendment of 21 May 2010
- rule that said fraudulent behaviour was the material reason for its consent to sign the amendment of 21 May 2010,
- Consequently,
- Dismiss all the pleas and claims of DOCKS LYONNAIS,
- Hold the amendment of 21 May 2010 void for fraud,
- Hold that the contract which was the law between the parties on 31 October 2012, on the date of termination by DOCKS LYONNAIS, was the version prior to the amendment of 21 May 2010,
- Hold that regardless of whether the amendment of 21 May 2010 is held void or not, DOCKS LYONNAIS does not provide proof of contractual breaches such as defined in Annex A of the AMA,
- Dismiss the claim of DOCKS LYONNAIS to have the Court rule the AMA termination at its sole fault,
- Hold that the nullity of the 2006 AMA such as amended by the amendment of 21 May 2010 has no retroactive effect and consequently, dismiss the claim of DOCK LYONNAIS to return any amount whatsoever,
- Dismiss the claims for damages of DOCK LYONNAIS for the alleged contractual breaches by it,
- Hold that DOCK LYONNAIS did not validly enforce the rescission clause contained in article 7.4.1. of the AMA,
- Hold that DOCK LYONNAIS is guilty of a wrongful termination of the AMA at its sole fault on 31 October 2012,
- Hold that DOCK LYONNAIS should have performed the AMA and satisfied its obligations under it until its expiry, i.e., 31 December 2020 if the amendment of 21 May 2010 is void for fraud (i) or until December 2013 if the contract which was the law between the parties is the AMA in its version of 21 May 2010 (ii)

Consequently,

(i) Hold that if the amendment of 21 May 2010 is void for fraud, and that failing to have performed the AMA until 31 December 2020, DOCK LYONNAIS must compensate it for its economic damage by paying damages of up to €22,100,000,

(ii) Hold that if the amendment of 21 May 2010 is valid and that failing to have performed the AMA until 31 December 2013, DOCK LYONNAIS must compensate it for its economic damage by paying damages of up to €23,700,000,

In any event,



- Order DOCKS LYONNAIS to pay the amount of €20,000,000 for the moral and reputational damage that it sustained,
- Hold that BOCA, SU PROPERTIES and UBS WM CEPF, guarantors of the inviolability and performance of the contracts concluded by DOCKS LYONNAIS with the SHAFTESBURY companies, specifically the contract of 21 September 2006, shall be obliged, pursuant to said agreement to release it and hold it harmless for the compensation to which DOCKS LYONNAIS is obliged,
- Order jointly and severally DOCKS LYONNAIS, BOCA, SU PROPERTIES and UBS WM CEPF to pay the amounts ordered by the Court to be paid by DOCKS LYONNAIS,
- Hold that the bank UBS AG JERSEY shall also be ordered jointly and severally with DOCKS LYONNAIS for tortious liability to pay the amounts ordered by the Court to be paid by the latter,
- Hold that BOCA shall also be ordered jointly and severally with DOCKS LYONNAIS for tortious liability to pay the amounts ordered by the Court to be paid by the latter,
- Give it acknowledgement that it declines to claim the ownership of the residual elements listed in the letter of 31 October 2012, currently held in escrow by Mr Thomazon in Paris,
- Order the release of the escrow by Mr Thomazon and return of all the documents held in escrow to DOCKS LYONNAIS after submission of a copy, the cost of which shall be borne by DOCKS LYONNAIS,
- Hold that it would be unfair to have it bear the unrecoverable costs and fees incurred in connection with the proceedings before the Lyon commercial Court and order DOCKS LYONNAIS, SU and UBS WM CEPF, its manager UBS AG JERSEY, to pay jointly and severally the amount of €300,000 pursuant to article 700 of the Code of Civil Procedure and all expenses of the lower Court and the Court of appeals; said expenses are to be paid to SCP Tudela & Associés based on its *de jure* affirmation.

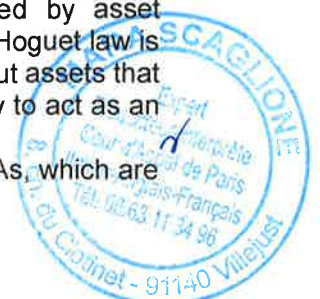
SAM maintains that the appellants' claims for nullity are time-barred on the grounds that the nullities invoked are not absolute nullities since they were invoked for the protection of private interests and the claims were not filed within the legal, five-year, limitation period set out in paragraph 1304 in its version prior to 1 October 2016.

On the merits, they contest the claim that the AMA duplicates the duties of the managing director in DOCKS LYONNAIS because UBS had real supervisory authority over the performance of the AMA through the investment committee and that it did not have the duties of managing director of DOCKS LYONNAIS since the services that it provided under the AMA were not the same as those provided by Miles d'Arcy-Irvine; what is more, no breach of article L. 225-53 of the commercial code has been proven since Miles d'Arcy-Irvine was never remunerated for his duties.

Regarding the alleged breach of the regulations on chartered accountants, it stresses that the chartered accountant association never brought any action against it; it maintains that the order that governs the profession of chartered accountant does not apply to the keeping, by a company's employed accountants, of the books of another company with the same controlling or joint controlling shareholder. In addition, if a breach is proven, it could not give rise to the nullity of the AMA pursuant to the severability clause that it contains pursuant to article 7.4.1. which requires a significant breach.

Regarding the alleged breach of the Hoguet law, it stresses that the appellants invoke it although the AMA had been performed for nearly 7 years and it maintains that its asset managers' duties do not in any way require it to have estate agent business licences since such duties deal only with advice on divestment, managing the sale process conferred on estate agents and supervision of the administration of assets provided by asset administrators who hold the necessary licence. It adds that in addition, the Hoguet law is not applicable because the transactions did not involve third-party assets, but assets that are part of joint venture and that its missions went beyond the mere agency to act as an intermediary.

Regarding the consequences of a nullity, it believes that a nullity of the AMAs, which are contracts for consecutive performance, may not be retroactive.





It maintains, regarding the alleged faults committed used as the basis to terminate the AMAs, that the statements made by its attorney in the Tribune de Lyon, and not by it, and the legal actions that it has filed have no impact on the reputation of DOCKS LYONNAIS and in the absence of a notice to comply, pursuant to article 7.4 of the AMA, it has not been able to remedy any negligence.

It adds that the appellants have not proven that there is a fraudulent fault or a serious fault within the meaning of Annex A of the AMA since the proof of the alleged accounting errors has not been provided and, in any event, has not caused any damage to DOCKS LYONNAIS such that there was no reason for the termination without notice of the AMA pursuant to article 7.4.

Regarding the claim for the return of the documents, it maintains that it cannot return documents that have already been returned long before the judgement of 7 September 2015 and that it is unable to return any other document listed in the termination letters since said documents are in escrow with Mr Thomazon in Paris and has never been provided with a list of them. It maintains that to put an end to the dispute, it waives its claims of ownership over the documents and registers listed in the termination letter and that it requests the Court to order the release of the escrow.

Regarding its action for nullity of the amendment of 21 May 2010, it maintains that DOCKS LYONNAIS and its representatives are guilty of fraudulent behaviour that tainted its consent at the time of signing of said amendment by promising to pay it the "disposal management" fees whereas they reserved the possibility to pay them since said manoeuvres were the material reason for its consent to shorten the term of the contract by more than half.

Regarding its claim for guarantee from BOCA, SU, UBS and WM CEPF, it invokes the shareholders' agreement of 25 August 2006 as amended on 20 May 2010 whose articles 17.1 to 17.3 contain an undertaking by the aforementioned companies to guarantee the inviolability and performance by DOCKS LYONNAIS of the AMA since said undertaking was made to it even though it was not party to the shareholder's agreement.

It believes that BOCA is also obliged jointly and severally with the other companies to compensate it for its damage because it gave rise to its quasi-tortious liability vis-a-vis it by instructing its representatives on the board of directors of DOCKS LYONNAIS to vote for the termination of the AMA.

Regarding UBS AG, it must be held liable for the breach of contract committed against it by DOCKS LYONNAIS.

Regarding the damage for which it is seeking compensation by making a distinction between the damage arising from annulment for fraud and the damage arising from the wrongful termination of the contract, it refers to the detailed valuations conducted by the firm of Sorgerm.

For a more in-depth explanation of the claims and pleas of the parties, the Court refers to the submissions filed by the parties referred to above pursuant to article 455 of the Code of Civil Procedure.

The closure of the proceedings was ordered on 22 November 2016.

## REASONS FOR THE DECISION

### Regarding the nullity of the amendment on 21 May 2010 for fraud:

Article 1116 of the civil code states: "Fraud is cause for nullity of an agreement if the manoeuvres of one of the parties are such that without such manoeuvres the party would not have entered into contract. It may not be presumed; it must be proven."

The appellants claim that the action is inadmissible on the grounds that SAM brought two proceedings to obtain performance of the amendment, which show that it believed it to be valid and prevents it from contradicting itself to its detriment.



The proceedings brought by SAM on 11 and 12 June 2012, cited by the appellants do not render inadmissible an action in nullity based on a fraud that SAM claims to have discovered later.

SAM maintains that it was misled by the negotiator of the 2010 AMA, Roddy Sloan, who patently concealed that the agreement would be terminated on grounds that existed since the very beginning and that he could identify during the negotiation once the amendments were signed and once the minimum waiting period necessary to allow him to become chairman of DOCKS LYONNAIS in the stead of Miles d'Arcy-Irvine.

The concealment of the intent that SAM attributes to its contracting party is based solely on an assertion whose truthfulness, according to it, is demonstrated by the events that occurred later, in particular, the removal from office of Miles d'Arcy-Irvine from his post of chairman and managing director on 9 December 2011, the appointment of Christophe Fournage and Eric Pinon as managing directors of DOCKS LYONNAIS, on 5 January and 6 February 2012, the removal of Miles d'Arcy-Irvine as director of DOCKS LYONNAIS, the termination of the agreement on 30 October 2012 and the sale of the assets of DOCKS LYONNAIS to Adia following the management of the same assets by Firce Capital created for this purpose by Christophe Fournage and Eric Pinon.

Said events, subsequent to the signing of the agreement, do not characterise manoeuvres intended to convince SAM to agree to the amendment whereas SAM itself explains in its summons that the negotiation lasted several months and became necessary in January 2010 owing to the crisis that started in the US and then spread to the rest of the world and a series of choices by certain managers of GPF in Asia and the United States that compelled UBS to rethink its strategy thoroughly to such an extent that it contemplated selling the control of the property companies that were its subsidiaries or causing the investment funds managed by it to do so.

SAM does not contest that it was able to determine whether the reasons for the renegotiation were relevant or not and whether it could agree to waive part of its rights which it claims were key. In addition, no proof of the reality of the intent of the other contracting party to terminate the amendment that it was negotiating has been provided.

Since SAM has not provided any proof of any fraud that tainted its consent, it is necessary to confirm the judgement of the lower Court that dismissed the action for nullity of the amendment.

On the nullity of the agreements signed on 11 September 2006 and 21 May 2010:

\* for lack of substance owing to a duplication of duties arising from a breach of article L. 225-53 of the commercial code

DOCKS LYONNAIS claims that pursuant to article L. 225-53 of the commercial code, the remuneration of the managing director or directors of a limited company can only be set by its Board of Directors. As result, it cannot be set by an agreement concluded with a third party for that purpose and such an agreement is void for lack of substance where it is written in such a way as to duplicate the duties of the managing director.

First, the parties object in the appeal on the limitation period.

Pursuant to article 1304 and 2224 of the civil code, the action for nullity based on the lack of substance of an agreement last for five years as from the day on which DOCKS LYONNAIS became aware or should have become aware of the events enabling it lodge the action for nullity, i.e., in this case as from the agreement.

Since lack of substance of the agreement, invoked as a plea for nullity, affects the initial agreement, the nullity of the amendment is only a consequence of the nullity of the initial agreement dated 11 September 2006; consequently, the limitation period for the action ended on 11 September 2011.



Although the exception of nullity may be raised after the expiry of the limitation period and specifically after the expiry of said limitation period, such an exception, which is a defence on the merits, can only be raised to prevent a claim for performance of a legal agreement that has not yet been performed.

In this case, SAM did not file an action for performance of the agreement, which had already been performed and terminated.

Consequently, the nullity invoked by DOCKS LYONNAIS, which is not a defence on the merits, but a counter-claim and which was filed after the expiry of the period for action, is time-barred.

\* for breach of the provisions governing the profession of chartered accountant

DOCKS LYONNAIS claims that article 20 of order no 45-2138 of 19 September 1945, which governs the profession of chartered accountant, punishes the illegal practise of the profession arising from the lack of registration with an association; that the breach of an ethics rule in connection with a contract gives rise automatically to its nullity; that in this case, SAM performed numerous works on the books of DOCKS LYONNAIS and its subsidiaries.

The parties disagree in the appeal on the limitation period owing to the nature of the nullity.

Pursuant to article 2224 of the civil code, the period for an action in nullity of an agreement is five years as from the date on which DOCKS LYONNAIS became aware or should have become aware of the events enabling it to file an action for nullity regardless of whether nullity is relative or absolute.

Article 26 of the law of 17 June 2008 that revised limitation periods in civil matters, provides that its provisions which reduce the duration of the time-bar, apply to limitation periods as from its entry into force without the total duration being able to exceed the period provided for in the previous law.

Pursuant to the above law, the limitation period for an action in nullity, which used to be 30 years for an absolute nullity was reduced to five years as from the entry into force of the law of 17 June 2008, i.e., as from 19 June 2008. The period from such an action therefore expired on 19 June 2013.

The parties agree to acknowledge that the claim for nullity was filed by DOCKS LYONNAIS by submissions filed with the Commercial Court on 5 April 2013.

It follows that, if the nullity invoked is an absolute nullity as maintained by DOCKS LYONNAIS, its period is not time-barred.

By contrast, if, as SAM maintains, the nullity invoked is relative, the counter-claim filed after 11 September 2011, the expiry date of the limitation period for the action, is inadmissible.

The nullity of a contract concluded by a person practising the profession of chartered accountant illegally is intended to protect the contracting party and is reserved for the latter; it is therefore a relative nullity; consequently, the action is time-barred.

\* for breach of the provisions governing the profession of estate agent

DOCKS LYONNAIS claims that the breach of the mandatory statutory provisions of law 70-9 of 2 January 1970 known as the Hoguet law and its enabling decree no 72-678 of 20 July 1972 governing the profession of estate agent is punishable by the absolute nullity of the agency agreement concluded in breach of said provisions.

The parties disagree in terms that are identical to those claimed for the previous nullity on the time-bar owing to the nature of the nullity.





The nullities that sanction agreements that breach the aforementioned law are absolute nullities that may be invoked by any party that has an interest in them; the action is therefore not time-barred.

The recitals of the asset management agreements signed between the parties state the Client (DOCKS LYONNAIS) wishes the Manager (SAM) to provide it with investment management advice and certain asset management services listed in annex B, subject to the stipulations of the contract and the Client's instructions, that it purchases, manages, finances and sells said investments conducted with the help of assets on behalf of the client in accordance with the investment directive such as set out in the contract.

The contract specifies that the Manager shall have the exclusive right to provide purchase services and management services subject to existing contracts concluded by the Client with Allti.

The investment advice services are listed in annex C which provides that the Manager must periodically propose asset investments that comply with the directives; if the Client is interested, it must draw up a preliminary memorandum and a study fee budget; if said documents are approved, it must appoint a technical consultant, a legal advisor and an expert to conduct the necessary studies on behalf of the Client, it must seek and recommend a loan, then draw up a final investment memorandum after the review of which the client, who has the discretionary authority to go ahead with or decline the investment, will take its decision.

This same annex provides that the Manager must draw up sale proposals or other sale of assets and that if the Client wishes to sell, it will give the Manager all the instructions to set up and manage the sale, including the appointment of estate agents, then obtain a valuation of the asset by an independent appraiser and strive to make the sale within the periods stated therein. This annex provides that if the Client notifies the Manager of its intent to sell, the latter must prepare all the necessary documents and look for potential buyers, analyse the bids, make the necessary recommendations to the Client to enable it to take a decisions; that after receipt of a decision to sell, it must negotiate a non-binding letter of intent with the potential buyers, negotiate the final legal documents and supervise the conclusion of the sale, advise the Client on the various aspects of the transaction, draw up any recommendation regarding any professional and/or consultant necessary for the needs of the sale and marketing process; the fees of the latter shall be borne by the Client; that as from approval by the Client, it must hire said professionals and an independent estate agent to facilitate or set up the sale in any other manner.

It follows from said provisions that the conduct of the missions of SAM did not require the possession of the "T" business licence that allows estate agents to conclude agency contracts for purchase or sale since its mission was not limited to performing such agency contracts for which the use of authorised professionals remunerated by DOCKS LYONNAIS was planned.

Moreover, DOCKS LYONNAIS does not contest that it paid fees to the estate agents Catelle et Bnppeim at the time of the sale of "Fontenay" property, cited by SAM.

Annex D on rental services, confers on the Manager a duty to supervise asset administrators, supervise the performance of their obligations such as the obligation of cashing the rents and in connection with the latter to ensure the proper use of the properties.

Annex D provides that the Manager must receive the requests of the managers for lessee requests to advise the client on how to proceed; it must obtain advice for the breaking of leases, the adjustment of rents, the conclusion of new leases or the renewal of existing leases and make comments on the advice obtained and conduct negotiations related to said matters after consulting the client and with the assistance of the relevant property manager; it must obtain advice from experts for installation, replacement, repair and maintenance of the facilities and mechanical and electrical equipment, draw up the specifications and necessary invitations to tender, negotiate maintenance contracts and ensure that this is done by the relevant property manager; it must provide continuous supervision of the maintenance contracts; it must ensure that the property managers have good relationships with the tenants; it must prepare and submit an annual business plan.





It follows from said provisions, that SAM acted as the supervisor of the administration of the assets provided by the asset managers.

DOCK LYONNAIS does not deny that the manager of the properties that it already owned in 2006 was Allti, whose contract is referred in the agreement, which is its subsidiary and holder of the "G" business licence authorising estate agents to administer properties; it does not deny either that the administrators of the properties acquired as from 2006 were those to whom the previous owners had conferred the agency contract.

Moreover, it does not demonstrate that SAM personally carried out duties of estate agents.

Consequently, the claim of DOCKS LYONNAIS for the nullity of the agreement for failure to comply with the law governing the profession of estate agent must be dismissed.

Regarding the termination of the agreement:

Article 7.4 (the uncontested translation of which is produced only by SAM) states that the Client may terminate the contract immediately for a Given Reason with immediate effect, provided that if, according to the (legitimate) opinion of the Manager, it is possible to remedy such a Given Reason, termination will only take place if such a reason is not remedied within the period stated in Annex A in the definition of the term "Given Reason".

Annex A defines Given Reason by listing; the paragraphs referred to in the termination letter are the following:

- c) the Manager is no longer authorised to perform the obligations and such a breach cannot be remedied within a period of 28 days as from the date on which the Manager is notified of the termination,

- d) In connection with the performance of its obligations, the manager is negligent, such a negligence had or will have a significant harmful impact on the net adjusted asset value and/or the client's reputation (and/or on any of its affiliates whatsoever) and such negligence is not remedied within 28 days as from the date on which the Manager receives notice of the termination,

- a) In connection with the performance of its obligations, the Manager is guilty of intentional non-compliance or fraud,

- b) The Manager acts in bad faith and its acts have a serious harmful impact on the net asset value or the value of any investment".

The reasons for termination set out in the letter of 31 October 2012 are as follows:

- irregularities tainting the validity of the agreement:

\* lack of an estate agent business licence required by the Hoguet law, making the AMA contrary to mandatory statutory,

\* SAM's persistence in wanting to continue to provide all the accounting services in breach of the monopoly enjoyed by chartered accountants, in spite of repeated requests to return its books without a fee reduction,

- serious and repeated faults:

\* lack of authorisations necessary because SAM did not have either the estate agent business licence or a chartered accountant licence (paragraph c),

\* serious damage to its reputation characterised by multiple legal proceedings through Miles d'Arcy-Irvine, and publicised in the media by his attorney, constituting acts of disparagement by the service provider which continues to receive all the remuneration (paragraph d),

- wilful non-performance (paragraph e):

\* repeated negligence in the management of matters and failure to follow instructions in accordance with the stipulations of the AMA,



- \* the delay and impediment of several matters, including the one related to the request of Cushman & Wakefield,
- \* serious errors related to the banking undertakings of DOCKS LYONNAIS related to a €257 million debt on the property located at 6/8 Haussmann,
- \* invoices proving that SAM caused DOCKS LYONNAIS and/or Allti to pay undue amounts,
- \* its refusal to return the books and the original documents belonging to it without a fee reduction in spite of numerous requests,
- \* the unauthorised use of Allti employees to provide the services that were to be provided by SAM employees,
- \* repeated attempts by SAM to build up an artificial file to attempt to obtain considerable amounts,

- damage to the value of investments characterised by the aforementioned behaviour contrary to the agreement's requirements (paragraph f).

It has already been held that the Hoguet law does not apply to lack of licences being contrary to mandatory statutory provisions. As to the persistence of SAM to want to continue to provide all the accounting services, it was legitimate because it was assigned this mission in the contract such that SAM's refusal, which considered the requirement of its contracting party as a breach of its obligations and whereas the dispute filed by DOCKS LYONNAIS on this matter had not been decided on, did not allow the latter to attribute a fault to SAM to terminate the contract.

The Given Reason stated in paragraph c) is therefore not met.

The legal actions brought by SAM and the criminal complaints filed by it do not constitute negligence within the meaning of paragraph d) above for this complaint in the letter since such actions are a right and they have not been held improper.

Regarding the publicity given to the claims on which the criminal complaints are based, the termination letter states: *"Said complaints were made publicly and in the media, SAM France, through its attorney, Mr Soulier went as far as asserting in the Tribune de Lyon of 28 June 2012, that our company and subsidiary 'had wanted to hack the books and know-how of SAM France, it's attempted theft.'*

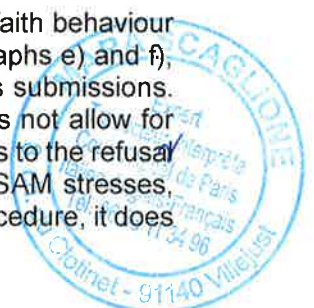
*In addition to fact that it is unacceptable for a service provider - which continues to receive all its fees - to disparage so violently and publicly its contracting party which it has turned into a real enemy, SAM's behaviour undeniably had - and continues to have - a 'material adverse effect' on the reputation of DOCKS LYONNAIS and its subsidiaries. Such disparagement constitutes an irreversible serious damage to reputation; it cannot be undone such that it constitutes an additional reason for the termination of the AMA".*

The reality of the facts is not in dispute and it has been proven. Nevertheless, as SAM asserts, the statements made by its attorney, assuming that they can give rise to the liability of its client vis-a-vis its contracting party go back to 28 June 2012 and they have not given rise to any reaction from DOCKS LYONNAIS before considering four months later, that they were grounds for the unilateral and immediate termination of the agreement.

In addition, DOCKS LYONNAIS fails to produce any exhibit to attempt to prove that such a disparagement, serious as it may be, has had an effect on its reputation.

Therefore, such events do not constitute a reason for the unilateral and immediate termination of the agreement.

For the other events of non-compliance (wilful non-performance and bad-faith behaviour harming the value of the investments) of which SAM is accused in paragraphs e) and f), DOCKS LYONNAIS states that said faults are broadly characterised in its submissions. Nonetheless, it does not elaborate on the complaints invoked, which does not allow for any reconciliation with the part or parts of said complaints (except as relates to the refusal to return the books, invoked elsewhere and already discussed) and, as SAM stresses, and in breach of the obligation set out in article 954 of the Code of Civil Procedure, it does not produce any exhibit in support of said complaints.



Lastly, although it disputes the exhibits produced by SAM to demonstrate that its behaviour was beyond reproach in the processing of the rental offering of the tenant Thomson Reuters, the fact remains that although it bears the burden of proof, it has not produced any exhibit to demonstrate the reality of the non-compliance that it adduces as a reason for termination.

Consequently, since there were no grounds for the reasons for termination adduced by DOCKS LYONNAIS, the unilateral, early and immediate termination by it is not well-founded, which makes it unlawful and precludes it from claiming compensation for the damage arising therefrom, but obliges it to compensate any damage suffered by SAM.

Regarding compensation of SAM's damage arising from termination of the agreement:

SAM requests the Court to award the amount of €11,700,000 as compensation for the economic damage arising from the termination.

In support of this claim, it produces a report drawn up by the firm Sorgerm which finds that there was damage arising from the loss of fees until the expiry of the contract on 31 December 2013 minus the expenses that it would have incurred over the same period.

The criticism of DOCKS LYONNAIS based on the contradictions between this report and another report from the same firm are irrelevant since the other report valued the damage in the event the Court allowed the main claim of the nullity of the AMA signed in 2010 for fraud and therefore based on the provisions on the term of the 2006 agreement and to the fees provided therein.

Consequently, the damage, which is well-founded in principle since the agreement had a definite term and that it was terminated wrongly before its expiry is also well-founded in its amount in the light of the aforementioned report.

SAM also requests the award of an amount of €12,000,000 to compensate it for the loss of the opportunity to continue, after the expiry of the AMA, a normal asset management activity because it was unable to position itself to continue to manage the assets which were sold to Adia.

A loss of opportunity can only be compensated if it is certain; however, in this case, given the deteriorated and conflictual situation between the parties, the wrongful termination of the agreement did not give rise to a certain loss of opportunity for SAM to manage the assets sold and the other assets that it could have obtained.

This claim must be dismissed.

Lastly, SAM requests the Court to order the payment of €20,000,000 in damages to compensate it for its moral damage that it describes as a reputational damage.

In support of this claim, after reiterating that legal entities may claim compensation for their moral damage defined as damage that does not affect their assets, but arising from damage to their reputation, SAM asserts that DOCK LYONNAIS informed numerous tenants and hundreds of suppliers and other third parties of the termination before it received notice of it on 2 November 2012.

It produces a single letter dated 31 October 2012 sent by DOCKS LYONNAIS to the attorney of its subsidiary, SCI Commerces Groupama et Carnot. First, by letter of 7 November 2012, the recipient has stated that it received the letter on 5 November 2012, i.e., after receipt by SAM of the termination letter. Secondly, it follows from this reply, that the notice was necessary because the submissions for the hearing of 19 November 2012 were being drafted.



Lastly the notice provided to the counsel of a subsidiary of the termination of the agreement "owing to a dispute" with SAM is not likely to damage the reputation of the latter since the notice did not contain any additional information and the existence of a dispute between the parties had been disclosed to the media by SAM itself.

SAM's claim must be dismissed since it fails to prove the reality of the damage it alleges.

Finally, it is necessary, by reversing the decision appealed, to order DOCK LYONNAIS to pay SAM the amount of €11,700,000.

On the guarantees of BOCA, SU EUROPEAN PROPERTIES, UBS WM CEPF:

The plea of inadmissibility of the claim against UBS AG filed by the appellants has no foundation, since no claim against this company is contained in the operative part of SAM's submissions and this company is not a party in these proceedings.

The guarantee is claimed on the basis of a shareholders' agreement signed on 25 August 2006 in its version amended on 20 May 2010 which contains an undertaking by BOCA, SU EUROPEAN PROPERTIES and UBS WM CEPF, as joint and several guarantors, to guarantee the proper and full performance of the obligations of the "joint companies" including DOCK LYONNAIS arising from any of the "joint venture agreements" of which the AMA and speedy payment when due of all amounts owed by it thereunder.

As the appellants assert, the version of the shareholders' agreement dated 25 August 2006 that refers to numerous amendments of which the last dated 20 May 2010, was not signed by any of the parties.

Consequently, as the appellants maintain, only the initial version dated 11 August 2006, to which SU EUROPEAN PROPERTIES is not a party, can be taken into account; this agreement contains a guarantee undertaking by CEPF for the proper and full performance of the obligations of Superopco referred to in the Agreement and the speedy payment, when due, of all the amounts owed by Superopco to any Joint Company, SIH (SA Shaftesbury International Holdings) or Shaftesbury (Kopetino Holdings Limited) under the Agreement; it contains an identical undertaking from Shaftesbury and SIH in favour of any Joint Company and Superopco,

According to the Agreement, the joint companies are BOCA, its subsidiaries and the companies that own the assets.

Consequently, SAM does not prove the guarantee of BOCA, SU EUROPEAN PROPERTIES and UBS WM CEPF that it claims.

Regarding the tortious liability of UBS AG JERSEY:

SAM maintains that, on a tortious basis, UBS AG JERSEY must be held accountable for the breach of contract by DOCKS LYONNAIS committed in May 2010 by Roddy Sloan manager at UBS AG JERSEY of the management of the GPF and CEPF funds, final shareholders of DOCKS LYONNAIS and who did not have any other authority to negotiate the 2010 amendment on behalf of DOCK LYONNAIS because at the time he was neither its chairman nor managing director nor agent.

The events invoked to characterise the breach giving rise to the liability of UBS AG JERSEY are those invoked in support of the allegation of fraud that SAM claims to have suffered at the time of the conclusion of the amendment of 21 May 2010 and which the Court has held have not been proven.

Consequently, SAM's claims against UBS AG JERSEY must be dismissed.





Regarding the quasi-tortious liability of BOCA:

In support of this liability, SAM maintains that as the parent company of DOCKS LYONNAIS, BOCA is at the root of the early termination of the agreement. Thus, during a meeting of the management board of 20 July 2012, the class A managers put to a vote and adopted a resolution under which *"the management board requests its representatives on the board of directors of DOCKS LYONNAIS to vote for the termination of the contract concluded with SAM France"*; the resolution adopted adds that: *"If and only if this termination is part of the contractual framework set up for this purpose by article 7.4.1 of AMA."*

The exercise of a company's voting right does not constitute a quasi-tortious breach and the damage suffered by SAM as a result of the termination only gives rise to liability of the terminating entity.

Regarding the tortious liability of SAM:

DOCKS LYONNAIS requests, on the above basis, the Court to order SAM to pay it the amount of €2,000,000 in damages to compensate it for the damage arising from the non-compliance that gave rise to the termination of the agreement and discovered subsequently.

It maintains that since it resumed the management of its operations, it has not stopped discovering more faults, non-compliance, negligence and flagrant errors attributable to SAM and that this is the case with some accounting entries.

The non-compliances of SAM adduced to terminate the agreement as well as any errors committed in maintaining the books with which SAM was entrusted under the agreement can only give rise to contractual liability which excludes tortious liability.

As to the smear campaign and the destabilisation of the company of which it claims to be a victim, although this might constitute a tortious fault, it cannot arise from the legal actions that have not been held to be improper or from the criminal complaints which received as a response a complaint for false accusation which was dismissed without further action nor from the statements made to the media by SAM's attorney and not by the latter.

In addition, DOCKS LYONNAIS does not detail the damage for which it claims compensation or the basis of valuation of the damages claimed.

Consequently, this claim must be dismissed.

Regarding the claim for the return of the documents and registers:

Since the agreement has been terminated, SAM must return to DOCKS LYONNAIS all the documents and registers in its possession, which it does not contest.

First, it must be acknowledged that SAM waives ownership of the documents and registers listed in the termination letter of 31 October 2012. Second, both parties state that the documents found in the Lyon offices of SAM and that had been put in escrow, on 18 April 2013, by Mr Fradin, bailiff, upon Court authorisation, were returned to DOCK LYONNAIS as accepted by SAM before the judge hearing applications for provisional relief at the Commercial Court of Lyon confirmed in a judgement of 12 June 2013. Lastly, DOCKS LYONNAIS claims that the documents that remain to be returned are those in SAM's Paris offices and which were put in escrow by Mr Thomazon, bailiff, on 18 and 19 April 2013 under a Court authorisation; SAM requests the Court to release the documents in escrow by Mr Thomazon and the return of all the documents after submission of copies, the cost of which shall be borne by DOCKS LYONNAIS.



Given such positions, the claim for return is no longer in dispute before the Court. In respect of the claim for submission of copies, to which DOCKS LYONNAIS objects, this is not justified by SAM and the claim must therefore be dismissed;

The application of a fine is not necessary where the documents must be returned by a bailiff.

Regarding the non-recoverable Court costs and fees:

Pursuant to article 696 of the Code of Civil Procedure, DOCKS LYONNAIS must bear all the Court costs that it has incurred except for the Court costs arising from the claims by SAM of BOCA, SU EUROPEAN PROPERTIES, UBS WEALTH MANAGEMENT CEPF and UBS AG JERSEY.

Out of consideration of fairness, all the claims of the parties for compensation on the basis of article 700 of the Code of Civil Procedure must be dismissed.

**ON THESE GROUNDS**

The Court,

Ruling publicly by judgement in the presence of both parties,

Upholds the judgement [of the lower Court] that dismissed the action for nullity filed by SAM of the amendment signed on 21 May 2010,

Reverses the other claims and ruling anew,

Holds inadmissible the claims for nullity of the agreements for lack of substance and for breach of the law governing the profession of chartered accountant,

Holds admissible the claim for nullity of the agreements for breach of the law governing the profession of estate agent filed by LES DOCKS LYONNAIS, but dismisses it;

Holds that the early and immediate termination of the agreement terminated by the letter of 31 October by LES DOCKS LYONNAIS is wrongful,

Consequently, it

Dismisses the claim of LES DOCKS LYONNAIS for compensation of the damage arising from the termination,

Orders LES DOCKS LYONNAIS to pay SHAFTESBURY ASSET MANAGEMENT FRANCE the amount of €11,700,000 in damages to compensate the damage caused by the wrongful termination of the agreement,

Dismisses all the other claims of SHAFTESBURY ASSET MANAGEMENT FRANCE for compensation,

Dismisses the claims of SHAFTESBURY ASSET MANAGEMENT FRANCE against the foreign law companies BOCA, SU EUROPEAN PROPERTIES, UBS WEALTH MANAGEMENT CONTINENTAL EUROPEAN PROPERTY FUND and UBS AG JERSEY,

Dismisses the action of LES DOCKS LYONNAIS for tortious liability against SHAFTESBURY ASSET MANAGEMENT FRANCE,

Orders the release of the escrow of Mr Thomazon, bailiff, with the Paris high Court and the return by it all the documents that it contains to LES DOCKS LYONNAIS,



Dismisses the claim of SHAFTESBURY ASSET MANAGEMENT FRANCE for the submission of copies of the documents to be returned,

Dismisses the parties' claims for payment of compensation based on article 700 of the Code of Civil Procedure.

Orders SHAFTESBURY ASSET MANAGEMENT FRANCE to pay for the courts costs of the lower Court and appellate proceedings arising from the claims of the foreign companies BOCA, SU EUROPEAN PROPERTIES, UBS WEALTH MANAGEMENT CONTINENTAL EUROPEAN PROPERTY FUND and UBS AG JERSEY since said costs may be recovered pursuant to the provisions of article 699 of the Code of Civil Procedure,

Orders LES DOCKS LYONNAIS in addition to pay the costs of the lower Court and appellate proceedings since said costs may be recovered pursuant to the provisions of article 699 of the Code of Civil Procedure.

## THE CLERK

## THE PRESIDENT

Traduction en langue ..... certifiée conforme à  
l'original / la copie rédigé (e) en langue .....  
visée Ne Varietur sous le N° 17/2195  
Fait à Paris, le 28/03/2017  
Signature 