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FRENCH REPUBLIC
ON BEHALF OF THE FRENCH PEOPLE

PARIS COURT OF APPEAL

**International Commercial Chamber
DIVISION 5 - CHAMBER 16**

JUDGEMENT DATED OCTOBER 18, 2022
(No. /2022 , 13 pages)

General Directory Entry Number : **RG no. 20/18229 - Portalis no. 35L7-V-B7E-CCZVN**

Decision referred to the Court: Judgement of November 16, 2020 -TJ excluding JAF, JEX, JLD, J.EXPRO,
JCP of Paris RG no. 17/13222

APPELLANT

Mr [R] [X]

Born on [Date of birth], in [city of birth]

Domiciled in: [address 1]

*Represented by Mr Laurent MORET of the SELARL LM AVOCATS, a candidate lawyer at the Bar Council of
CRÉTEIL, mark: PC 427*

*Assisted by Ms Anne BERNARD-DUSSAULX, litigator at the Bar Council of PARIS, internal mailing
box: C 806*

RESPONDENTS

WORLDPAY AP LTD

Company under English law

With its registered office at: [address 6]

Represented by its legal representatives,

*Represented by Me Matthieu BOCCON GIBOD of the SELARL LEXAVOUE PARIS-VERSAILLES, a lawyer
at the Bar Council of PARIS, mark: C2477*

*Assisted by Me Dan BENGUIGUI, of the firm ALLEN OVERY LLP, litigator at the Bar Council of PARIS,
mark: J022*

SEROPH HOLDING BV

company under Dutch law,

registered in the AMSTERDAM register of companies under number 33274342

With its registered office at: [address 4] (NETHERLANDS)

Defaulting

INTERVENING PARTY:

THE PUBLIC PROSECUTOR - FINANCIAL AND COMMERCIAL DEPARTMENT

COMPOSITION OF THE COURT:

The case was debated on June 20, 2022, in a public hearing, before the Court which was composed of:

Mr Marc BAILLY, President of the Chamber
Ms Fabienne SCHALLER, Judge
Ms Laure ALDEBERT, Judge

A report was presented at the hearing by Ms [T] [I] under the conditions provided for by Article 804 of the Code of Civil Procedure.

Court Clerk, at the hearing: Ms Najma EL FARISSI

JUDGMENT :

- by default
- By making the judgement available at the Court Clerk's office, the parties having been informed thereon beforehand under the terms and conditions in the second paragraph of Article 450 of the Code of Civil Procedure.
- signed by Marc BAILLY, President, and by Najma EL FARISSI, Court clerk, to whom the original of the decision was handed over by the signing judge.

I. FACTS AND PROCEEDINGS

1- Mr [R] [X], aged 72, is a retired French citizen. He was approached by the companies Finch Markets, Bank of Broker, 50 Option and Triompheoption in order to invest funds in their online trading platforms.

In the course of 2014, he invested the sum of EUR 80,500 in these platforms.

2- Worldpay AP Ltd (hereinafter "Worldpay") (formerly "Envoy") is a payment service provider under English law, and has been licensed by the Financial Conduct Authority (FCA) since 2009, which offers payment and receipt of funds services on an international scale through a network of 250 bank accounts held at various financial institutions, including [G]. Its clients include payment solution providers, which use its network and technology.

3- The company under Israeli law, Charge It Ltd, preceding the Dutch company Seroph Holding BV (hereinafter referred to as "Seroph" and formerly referred to as "[F]"), specialising in the provision of IT infrastructures dedicated to Internet payments, with which Worldpay entered into an agreement entitled

"Payment Processing Agreement" (translated by "contrat de traitement des paiements" or "contrat de services des paiements") on February 19, 2009, which was terminated on June 27, 2014.

4- Since Mr [X] was unable to recover the funds invested and his contacts had disappeared, he asked the companies [G] and Worldpay to reimburse his funds. Following their refusal and finding themselves in the same situation as 146 other individuals, such persons, through their counsel, sent a formal notice dated March 25, 2015 to Worldpay's counsel requesting the latter to pay the total sum of EUR 8,066,933.56 and USD 69,230.48 in addition to EUR 1,500 to each of them for the costs incurred in recovering their debt, which Worldpay refused to do, stating that it had no connection with the unregulated stockbrokers concerned, nor with the said individuals.

A second letter of demand was sent directly to Worldpay on April 11, 2016 and to Seroph on March 21, 2016 by registered letter on behalf of 53 individuals, including Mr [X].

5- By writ of summons dated September 21 and 22, 2017, Mr [R] [X] has summoned BNP PARIBAS, THE ROYAL BANK OF SCOTLAND PLC, WORLDPAY AP Ltd, and SEROPH HOLDING BV before the Paris Court of First Instance in order to obtain compensation for his damages due to the violation of their duty of care. He withdrew his claim against BNP PARIBAS.

6- The company Seroph was indicted on May 20, 2016, as part of a judicial investigation relating to the practices of trading platforms.

7- By judgement dated November 16, 2020, the Paris Judicial Court has:

- Dismissed Mr [R] [X] in regards to its actions against [G] Markets PLC (formerly known as The Royal Bank of Scotland PLC) and against Worldpay AP LTD;
- Ordered the company Seroph Holding BV to pay to Mr [R] [X] penalties of:
 - twenty thousand euros (€ 20,000) as compensation for financial loss,
 - one thousand five hundred euros (€ 1,500) as compensation for moral damage,
 - three thousand euros (€3,000) under Article 700 of the Code of Civil Procedure;
- Dismissed the rest of his claims for compensation;
- Ordered the company Seroph Holding BV to pay all the costs incurred by Mr [X], which were awarded to Ms Anne BERNARD-DUSSAULX, lawyer at the Paris Bar;
- Rejected the parties' further claims, particularly with regard to Article 700 of the Code of Civil Procedure and the costs;
- Ordered the provisional execution of the present decision.

8- On December 14, 2020, Mr [R] [X] filed an appeal against this judgement, limited to the company Worldpay and the company Seroph.

9- The company Seroph was not incorporated and was not represented.

10- The file was communicated to the Public Prosecutor on February 23, 2022, which issued its opinion on March 14, 2022.

11- The case was closed on June 14, 2022.

II/ THE CLAIMS OF THE PARTIES

12 - By submissions no. 3 communicated electronically on May 25, 2022, Mr [R] [X] requested the Court, on the basis of Articles 1382 of the Civil Code and L.521-1 et seq of the Monetary and Financial Code, to:

- OVERTURN the judgement on November 16, 2020 as the Judge:
 - DISMISSED Mr [R] [X] 's actions against [G] MARKETS PLC and WORLDPAY AP LTD;
 - ORDERED the company under Dutch law SEROPH HOLDING BV to pay to [R] [X]:
 - 20,000 euros in compensation for the financial damage,
 - 1,500 euros in compensation for the moral damage,
 - 3,000 euros on the basis of Article 700 of the Code of Civil Procedure

-DISMISSED the rest of his claims;

-ORDERED the company SEROPH HOLDING BV to pay all the costs incurred by Mr [R] [X]

-REJECTED the parties' further claims, particularly with regard to Article 700 of the Code of Civil Procedure and the costs,

-ORDERED the provisional execution of the present decision.

And, ruling again,

As a principal claim:

-ORDER the companies WORLDPAY AP Ltd and SEROPH HOLDING BV to jointly and severally pay Mr [R] [X] the amount of 73,734.71 Euros in compensation for financial damage;

In the alternative:

-ORDER the companies WORLDPAY AP Ltd and SEROPH HOLDING to jointly and severally pay Mr [R] [X] the amount of 58,987.77 Euros, in addition to legal interest from the date of the formal notices sent to the latter, as compensation for the damage caused by the loss of opportunity;

In any event:

-ORDER the companies WORLDPAY AP Ltd and SEROPH HOLDING BV to jointly and severally pay Mr [R] [X] the amount of 10,000 Euros as compensation for moral damage;

-ORDER all unsuccessful parties to pay Mr [R] [X] the amount of 7,000 Euros under Article 700 of the CPC;

-ORDER all unsuccessful parties to pay all the costs to Ms Anne BERNARD-DUSSAULX, lawyer at the Paris Bar.

13 - By summary submissions in response No. 3 communicated electronically on June 1st, 2022, WORLDPAY AP LTD requests the Court to:

AS A PRINCIPAL CLAIM,

-FIND AND HOLD that Worldpay AP Ltd. has not committed misconduct that could incur its liability.

-CONFIRM the judgement rendered by the Paris Judicial Court on November 16, 2020, but only insofar as it dismissed Mr [R] [X] and [G]'s actions, claims, and arguments against Worldpay AP Ltd.

-DISMISS all Mr [R] [X]'s actions, claims, and arguments against Worldpay AP Ltd.

IN THE ALTERNATIVE,

-FIND AND HOLD that Mr [R] [G] has not demonstrated any causal link between misconduct allegedly committed by Worldpay AP Ltd. and the loss, which he claims to have suffered.

Consequently,

-DISMISS all Mr [R] [X]'s claims and demands against Worldpay AP Ltd.

IN THE FURTHER ALTERNATIVE,

-ORDER AND JUDGE that Mr [R] [X] has not demonstrated the actual loss that he claims to have suffered and that he cannot claim compensation for a loss of opportunity.

Consequently,

-DISMISS all Mr [R] [X]'s claims and demands against Worldpay AP Ltd.

In any case,

-EXONERATE Worldpay AP Ltd. of the case.

-ORDER Mr [R] [X] to pay Worldpay AP Ltd. the sum of EUR 10,000 by virtue of the provisions of Article 700 of the French Code of Civil Procedure,

-ORDER Mr [R] [X] to pay all costs, with an award to Selarl Lexavoué Paris-Versailles by virtue of the provisions of Article 699 of the French Code of Civil Procedure.

14 – The company Seroph Holding BV did not appear and did not file a cross-appeal.

15 – In its determination of March 14, 2022, the Public Prosecutor calls upon the Court to overturn the judgement of the Paris Judicial Court from November 16, 2020, by ruling that Worldpay AP Ltd., Seroph Holding BV and the victim are liable for the damage caused to Mr [R] [X] in proportions which will be a matter for the Court to assess.

16 – It should be referred to the above-mentioned submissions for a reminder of all the pleas set out by the parties, pursuant to article of the French Code of Civil Procedure.

III/ GROUND OF THE RULING

1. On Applicable Law

17 – Mr [X] maintains that French law is applicable by virtue of EC Regulation No. 864/2007 from July 11, 2007, on the law applicable to non-contractual obligations ("Rome II"), with the basis of his action wrongly ruled.

18 – He indicates that Worldpay AP Ltd., a company under English law, holds a bank account in France, within the French branch of the Royal Bank of Scotland (now known as [G]).

19 – He maintains that the misconduct committed by the company Worldpay AP Ltd. and by the company Seroph Holding BV was made possible by the means of this bank account, opened in France, a means that allowed the funds to disappear and the fraud to occur, for which Mr [R] [X] claims to have been a victim. He specifies that in terms of financial loss, the harmful event occurred in relation to the bank account where the funds were lost or misappropriated, which, in this case, was the one held by the company Worldpay AP Ltd., in France.

20 – In response, Worldpay AP Ltd. states that it is an FCA-approved payment institution under English law and maintains that the French obligations arising from European anti-money laundering and anti-terrorist financing rules do not apply to Worldpay AP Ltd. Worldpay AP Ltd adds that it is not a credit institution, and that it has never been present in France, nor has it acted there in the official capacity of providing services. It also argues that Mr [R] [X] does not provide proof that the payment transactions at issue actually transferred through the Worldpay AP Ltd. bank account. It denies having ever made any transfer or funds to a brokerage site, nor having been in contact with any of these sites, and maintains that only English law is applicable to the matter since Worldpay AP Ltd.'s payment is made exclusively from the United-Kingdom, and the contract linking it to Seroph Holding BV includes a clause designating English law as the applicable law.

21 – Worldpay AP Ltd. adds that it was only subject to the anti-money laundering and anti-terrorist and anti-terrorist financing obligations in force in the United-Kingdom during the period in which the facts at issues arose. The fact that the company had a bank account opened in France, as well as in dozens of jurisdictions, does not, in its opinion, have any consequence on the applicable law for its obligations in terms of the policy on pursuing anti-money laundering and countering terrorist financing, which remains subject to English law. The company concludes that the alleged misconduct against them can only be assessed under English law.

Thereupon,

22 – By virtue of Article 12 of the French Code of Civil Procedure, the judge shall settle the dispute in accordance with the applicable rules of law.

23 – The dispute concerns a claim for compensation for damages related to the alleged misconduct of a payment service provider under English law and a Dutch payment service provider with respect to a French individual for the breach of the duty of care and the policy on pursuing anti-money laundering in the context of investment transactions on unregulated offshore accounts.

24 – Since the French Court is called on to advocate adjudicate on the dispute, it is appropriate, in order to determine the applicable law, to apply EC Regulation No. 864/2007 from July 11, 2007, on the law applicable to non-contractual obligations ("Rome II"), in view of the tort nature of the dispute, as soon as:

- The Court before which the dispute was brought is located in a Member State of the European Union,
- The situation involves an international issue of such a nature as to justify the application of a conflict of laws rule,
- in this case, there is a claim based on a tortious obligation, falling within the scope of civil and commercial matters.

By virtue of the Article 4.1 of the EU "Rome II" Regulation:

"Unless otherwise provided for in this Regulation, the law applicable to a non-contractual obligation arising out of a tort/delict shall be the law of the country in which the damage occurs irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occur. "

25 – In compliance with the interpretation provided in order to determine the competent jurisdiction in accordance with the precedent from recital No. 7 of the "Rome II" Regulation, it should be deemed that when the alleged damage consists of financial loss, the law of the country of the victim's domicile is applicable when the damage is caused directly in relation to a bank account which the victim opened with a bank established in the same country in which his domicile is located.

26 – In this case, contrary to what Worldpay AP Ltd. maintains, it is established by the documents submitted by the parties and, in particular, by the procedure for bank transfer provided by Mr [R] [X] from his BNP account and his bank account statements, that the funds were in fact transferred from his BNP account to a French account held by Worldpay AP Ltd., opened in the French office of the bank [G], which was made available to Seroph Holding BV, and that attempts to recover the funds from [G] and Worldpay AP Ltd. on the aforementioned account remained in vain.

27- The loss of the funds from this account is therefore "emerged" in France and constitutes the place of occurrence of the damage within the meaning of the Rome II Regulation, the place of delivery and the loss of the funds being indisputably located in France.

28- The decision on this matter must be confirmed.

2. On these grounds

29 - Mr [R] [X] maintains that WORLDPAY and SEROPH have failed to act in their capacity as payment service providers, and in addition to the failure to obtain the approval by Seroph, and the fact that Worldpay has not verified the approval of his co-contractor, they have breached a general duty of care based on former Article 1382 of the Civil Code. They have also breached a special duty of care under the anti-money laundering and anti-terrorism regulations resulting from Directive 2005/50/EC of October 26, 2005 and Articles L.561-5, L.561-6 and R.312-2, R.561-12 of the *Code monétaire et financier* (French Monetary and Financial Code) (hereinafter referred to as the "AML/CFT regulations" – the Anti-Money Laundering and Countering the Financing of Terrorism regulations), the breaches of which have caused damage to Mr Patrick CHASTENET DE GERY. In every instance, he maintains that Worldpay was subject to an equivalent duty of care under English law, under the Money Laundering Regulations 2007.

30 - He indicates that Seroph was conducting an activity as a payment service provider, offering its clients a service consisting of receiving on their behalf the funds paid by their own clients. These funds were transferred through the Worldpay bank account, contracting with fraudulent brokerage companies or unregulated companies, and that it had not provided evidence that it had obtained the necessary authorisation to operate in France.

31- He claims that WORLDPAY agreed to enter into an agreement with Seroph without ensuring that Seroph was licensed to operate as a payment service provider in Europe and in France, as required by Articles L.572-

5, L.521-1 and L.521-2 and L.314-1 of the *Code monétaire et financier* (French Monetary and Financial Code) in order to operate as a payment service provider.

32 - He adds that providing Seroph with the bank accounts that it held in the books of the beneficiary banks to which the transfers were made, involves Worldpay's negligent conduct and Worldpay did not carry out the required verification of the authorisation and fraudulent activities of its co-contractor, even though it knew the final recipients of the funds that were transferred to his account.

33- He maintains that the misconduct of Seroph and Worldpay contributed to the occurrence of the damage, allowing the loss of the funds invested on the false online trading platforms of the fraudulent brokerage companies. According to him, out of the 78 entities listed on the "Binary Option" blacklist published by the AMF (French Financial Markets Authority) on June 18, 2014, almost half of them used the WORLDPAY/ALGOCHARGE payment channel, and that the WORLDPAY/ALGOCHARGE set-up was systematically used by the fraudulent brokers to shield themselves from the investors. This enabled them to carry out their fraudulent activities in France, while reassuring their victims as to where the funds were going, since those persons thought they were making transfers to France, and that this goal would never have been achieved without the help of WORLDPAY. He added that the same finding can be made in relation to the "FOREX" blacklist published by the AMF.

34- Finally, he contests any negligence, for his part, stating that the trading site seemed to be a platform reflecting the stock market prices of a financial market, which any normally vigilant person could consider to be a site that complied with the regulations. He added that the documents provided in support of the transactions also objectively proved that the trading activity of Finch Markets, BanQ of Broker, 50 Option and Triompheoption was conducted reliably.

35- In response, WORLDPAY denies any involvement and any misconduct, for its part, in particular any obligation to verify Seroph's agreement, since at no time was there any question of Seroph Holding BV's providing regulated payment services, either in France to French consumers, or within the EU.

36- The company maintains that it has acted in conformity with its duty of care under English law, both at the beginning and during the business relationship with Seroph. It argues that it was bound by a duty of care only towards its own clients, such clients, including Seroph, being solely liable for carrying out their own due diligence and control procedures with regard to their own clients.

37- The company adds that it was not bound by the obligations resulting from the anti-money laundering provisions of Articles L. 561-5, L. 561-6 and L. 561-10-2 of the Monetary and Financial Code as Worldpay had neither a subsidiary nor a branch in France and did not use an agent or representative in France.

38- The company adds that the French AML/CFT rules are intended to protect the general interest and preserve the integrity of the banking and financial system, but they do not protect private interests. Therefore, they do not give rise to any right to compensation for individuals. It concludes that Mr [R] [X] does not provide evidence of a causal link between the damage he alleges and the regulatory breaches of which he accuses WORLDPAY.

39- Worldpay recalls that Mr [R] [X] was never in a business relationship, nor had any connection with Worldpay, and that he cannot therefore claim to be the victim of a fraud, or even a breach of trust, sanctioned by Articles 313-1 and 314-1 of the *code pénal* (the Criminal Code).

40- It adds that Mr [R] [X]'s negligence results from the harm caused by himself . He did not do adequate research to inquire into the reliability and reputation of Finch Markets, BanQ of Broker, 50 Option and Triompheoption or their alleged collaborators, to whom he was nevertheless willing to confide all, if not most of, his savings. Nor did he consult the AMF website to check whether Finch Markets, BanQ of Broker, 50 Option and Triompheoption had any licence or authorisation, or whether these service providers were a subject of negative comments from the regulator, or even notes of caution from authorities, although a simple Internet search prior to his first transfer would have allowed him to see the warnings provided by a large number of Internet users and to avoid the loss of his funds. The company contests any loss of opportunity, considering that there was no risk.

On these grounds,

- *On Seroph's lack of authorisation and the duty of care*

41- Based on Article 1382 of the Civil Code, now Article 1240, that "any act of a person which causes damage to another person obliges the person by the misconduct of whom it occurred to repair such damage", and on Article 1241 that "each person is liable for the damage they have caused not only by their own act, but also by their carelessness or negligence. "

42 – It is common ground that the victim of fraudulent conduct can't rely on the failure to comply with the duty of care and reporting obligation imposed on financial institutions, in order to claim damages from the financial institution, pursuant to Articles L.561-5 to L.561-22 of the French Monetary and Financial Code.

43 – Without having to refer to this specific duty of care, imposed under the AML/CFT regulations, which the first judges rightly set aside, it follows from the above-mentioned provisions of the French Civil Code that there is a general duty of care, for which the non-compliance that causes a damage to a third party obliges the person causing such damage to compensate for such damage, even in the absence of any contractual link.

44 – The general duty of care includes the compliance with legal and regulatory provisions, which apply to certain regulated professions or activities in the European Union, under the European Law and its transposition in the Member States.

45 – Therefore, payment service providers are required to be licensed under Article 10 of the EU Directive 2007/24/EC on payment services in the internal market, without this constituting a restriction on free provision of services within the EU. In addition to sanctions by the regulatory authorities and constituting misconduct, the lack of a license of a payment service provider may also result in a breach of the general duty of care for the co-contractors who would fail to ensure that such a license will be obtained.

46 – In this case, Worldpay does not argue on their status as a payment service provider and can prove that they had a license in the United Kingdom. Nevertheless, Worldpay argue that Seroph, a legal entity established under Dutch law that is specified as a "payment solutions provider" (see §8 of Worldpay's brief), with which

Worldpay had signed a payment services agreement (payment processing agreement), and which is not a party to the appeal, should have had a license.

47 – Nevertheless, it is clear from the exhibits submitted to the debates that:

The payment processing agreement signed between the parties, which specifies in appendix 1 the payment services provided, and the means made available to Seroph, can provoke a trace of ambiguity as to the way in which Seroph was going to make use of such means, since the provision of payment “solutions” does not make it possible to exclude the activity of payment services for the benefit of third parties. As a matter of fact, in its brief, Worldpay argues that *"in order to provide payment solutions to its customers, Seroph Holding BV had concluded an agreement with Worldpay according to which, among other things, Seroph Holding BV had access to Worldpay's bank account. Seroph Holding BV therefore communicated to Finch Markets, to BanQ of Broker, to 50 Option and to Triompheoption, the details of Worldpay's bank account, along with a reference – beginning with “AC” for “All Charge”, the trade name of Seroph Holding BV – to be mentioned in each of the litigious transfer order by the client of Finch Markets, BanQ of Broker, 50 Option and Triompheoption, in this case Mr [R] [X] (see §46 of Worldpay's brief)".*

48 – Seroph did not challenge their status as a payment solution provider. On the contrary, Seroph acknowledged that it had used Worldpay's network and technology to provide payment solutions to their customers. Thus, Seroph had, in the first instance, requested a stay of proceedings be obtained, pending the outcome of the current investigation related to the offences of which they were accused, in particular the offence of unlawful practice of payment service provider.

49 – Seroph presented themselves as a *"specialist in the provision of payment services, as part of an international group of companies operating on the Internet payment services market, conducting their business under the [F] name"* (according to Mr [R] [X], see document n°18 of Seroph's request for a stay of proceedings).

50 – Seroph further explained that *"money transmission is a simple payment service generally based on transfers made by someone to a payment service provider, which transmits the corresponding amount, for example through a communication network, to a payee or to another payment service provider action on behalf of the payee"*.

51 – It follows from all of the foregoing considerations that, at the very least, the ambiguity surrounding Seroph's status as a “payment solutions provider”, which was similar to the provision of payment services, should have been removed and that it was for Worldpay, which agreed to provide their services to Seroph, to remove the said ambiguity as part of its duty of care.

52 – The agreement signed in 2009 with Seroph was terminated by Worldpay only in 2014.

53 – Nevertheless, on May 6th, 2013, a post with the title “[F] launches the service “Advanced Kit Merchant Account for Offshore and Non-regulated Brokers” (translated into French as « [F] lance le service « Advanced Kit Merchant Account ») was published on the Internet. The reliability of such post was not challenged ([R] [X]'s Exhibit n°14), stated:

"Last month, Forex Magnates published an exclusive article on the difficulties encountered by some unregulated brokers in processing payments. Since the major commercial banks in the EU are unwilling to work directly with unregulated businesses. As a rule, such businesses used intermediaries to process their

online payments. This contrasts with regulated companies that have a direct commercial bank account. Concerning unregulated businesses, there was an increasing number of instances of third-party businesses blocking broker withdrawals while the necessary verification was made. In order to provide a solution, the payment provider [F], which offers its services to online businesses, including forex and binary options brokers, has announced the launch of [F] Advanced Kit Merchant Account. This product offers unregulated brokers and offshore entities the ability to receive a Direct Merchant ID (MID) for Visa and MasterCard payment processing; [F] explained to Forex Magnates that it can provide businesses with a direct link to commercial banks using their existing relationships with their banking partners".

54 – This post also provides the possibility to consider as proven the risk that Seroph engages themselves in a PSP activity that they tout and that Seroph uses the technology developed by Worldpay, from which it benefits through the agreement signed between the two parties.

55 – According to this agreement (see Appendix 1§3), *"The Merchant may use the Payment Service to collect and send Payments from/to its customers and suppliers. Prior to using the Payment Services, the Merchant shall provide Envoy with the documents specified in the "Merchant Application Form" to satisfy the "know your customer" due diligence information requirements".*

56 – However, neither Seroph nor Worldpay can justify, that at any time during the period of the execution of the said contract, they fulfilled these "Know Your Customer" obligations, all the more so as when questioned on this point, Worldpay invoked the banking secrecy, even though their liability was being sought.

57 – For all these grounds, as well as for the concurring grounds provided by the judges of first instance, it was appropriate for the judges' part to hold that Seroph pertained to the category of payment service providers that are subject to authorizations.

58- With regard to payment transactions conducted from French territory, it is established by the transfer orders made by Mr [R] [X] that the funds were transferred to France by an intermediary. In this case, it is Worldpay that held an account in France in the books of the bank [G] in [City 5]. This account was made available to Seroph for its payment services (Mr [R] [X]'s exhibit no.13), without having verified Seroph's authorisation, which, in any case, did not exist.

59- Therefore, Seroph's breach of its licensing obligation has been established.

60- It was for Worldpay, which opened an account in France, made available to Seroph, in order to ensure that Seroph fulfilled the obligations arising from the European regulations applicable to payment services in the internal market.

61. By failing to do so, Worldpay breached its general duty of care. It is therefore inoperative to argue, as Worldpay does, that it was for Mr [X] to prove that he was not exempt from the obligation to obtain authorisation.

62- The decision of the first judges should be confirmed on this point.

- *On the causal link*

63 - It is clear from the exhibits submitted to the Court that Seroph provided payment solutions to Finch Markets, BanQ of Broker, 50 option and Triompheoption, online trading platforms to which Mr [X] subscribed. Some of such platforms were already on the blacklist published by the AMF in 2014 and such platforms were the subject of numerous warnings on the Internet.

64 - With regard to Seroph, in addition to the grounds set out above as well as for the concurring grounds provided by the judges of first instance, which the Court adopts, it must be noted that Seroph was fully aware of the beneficiaries for whom its transactions were intended. It touted its activity on the unregulated market, showcasing the use of the banking services of approved payment service providers with which it had contracted in order to promote its services (cf. internet post; dated 6 May 2013 (Mr [R] [X]'s exhibit no. 14).

65 - Regarding Worldpay, which denies having been aware of Seroph's activity as a payment service provider, and which denies knowing the beneficiaries of the transactions, nor having any link with them, and which invokes its obligation of confidentiality in order to refuse to communicate, if necessary, the names of the beneficiaries. Seroph has, in a letter from its counsel in the first instance dated 5 August 2016, submitted to the debates (Mr [R] [X]'s exhibit no. 8), stated that "*as part of its contractual obligations towards Worldpay AP Ltd, Seroph Holding BV communicated to it the identity of the merchant sites for which it provided payment services. Thus, in July 2013, our client sent Mr [C] [U], risk manager of the Alternative Payments Department of Worldpay AP Ltd, the list of merchant sites whose transactions were then passing through the Worldpay AP Ltd register. Similarly, while Seroph Holding BV never had a direct financial relationship with the end-users of the Forex websites, this was not the case for Worldpay AP Ltd.*", which contradicts the position developed by Worldpay on appeal.

66 - Without it being necessary to refer to the reinforced duty of care resulting from the provisions of the French AML/CFT regulation wrongly invoked by Mr [X], the fact that two of the online investment companies chosen by Mr [X] (BanQ of Broker and 50 Option) had already been mentioned on the blacklist of high-risk investments or known frauds by the AMF in 2013, the fact that the transfer orders made show not only the name of the final beneficiary (50 Option) but also the reference corresponding to Seroph beginning with AC (meaning AllCharge which became Seroph) followed by the number corresponding to the final recipient (ACXXXX), is sufficient to establish that Mr [X] on the one hand, but also the companies Worldpay and Seroph, on the other hand, who are professionals, were at least alerted, if not perfectly informed, of the risks involved in making investments on this type of platform and were aware of the risks related to the use of their payment services to make the said investments. In addition, by contributing to these investments and/or by making their payment services available to make these investments, they failed to fulfil their general duty of care and incurred liability. The causal link was therefore established between the lack of duty of care, the lack of good professional practice in this type of sector and the damage, as the investments were made possible through the technology and the Worldpay account opened in France and made available to Seroph.

67 - Worldpay therefore vainly asserts the principle of non-interference and the absence of a contractual link with Mr [X] or with the final beneficiaries.

68 - The joint liability of Worldpay and Seroph will therefore be upheld, the causal link being sufficiently established between the failures of these companies and the loss of the funds, and the decision will be overturned on this point.

- *On compensation*

69 - According to the principle of equivalence, any fact, even a remote one, without which the damage would not have occurred, is deemed to be causal.

70 - As Worldpay rightly pointed out, it would have been sufficient for Mr [X] to carry out quite mere research on the internet before his first investment in February 2014 to be aware of the significant risks associated with the planned investments. Two of the online platforms chosen had already been blacklisted by the AMF, with the other two following close behind (Worldpay document "The AMF updates the list of unauthorised websites offering binary options trading" of 14 May 2014), with the issued warnings calling for the public to be extremely cautious about trading in Forex, and the messages from Internet users being particularly clear and alarming.

71 - By disregarding these warnings and nevertheless deciding to invest on these platforms, Mr [X] demonstrated negligence that contributed to the occurrence of his damage to the same extent as the misconduct of Seroph and Worldpay, which must therefore be held jointly and severally liable for their misconduct.

72- The decision of the first judges must therefore be overturned on this point and the liability of Worldpay and Seroph, on the one hand, and of Mr [R] [X], on the other hand, must be held to be equivalent.

73 - With regard to the amount of the compensatory damages, this must be evaluated in the total amount of the capital invested, the loss of which is not related to a hazard but to the misconduct. However, the loss of opportunity cannot be retained in the absence of a hazard. As a matter of fact, investing on notoriously fraudulent sites is devoid of any probability of gain and therefore of any hazard.

74 - The decision must therefore be overturned on this point and the financial loss suffered by Mr [R] [X] must be set at the sums invested on the platforms at issue via the Worldpay account, which have totally disappeared, without the possibility of adding interest on a loan, the link between which and the damage has not been proved. Mr [R] [X] having invested € 72,000 and having recovered nothing, his compensation must be fixed at half of this sum, his negligence having contributed half to his damage.

75 - The existence and evidence of moral prejudice have not been proved since Mr [R] [X] simply invokes a situation of stress following the fraud of which he was a victim and does not provide any evidence that would make it possible to evaluate the difficulties that he has experienced in his situation. In addition, his vulnerability is not defined. In this respect, Mr [R] [X] claims must be dismissed.

- *Costs and irreducible expenses*

76- Since Seroph and Worldpay have been partially unsuccessful, they must be ordered to pay the costs of the first instance and of the appeal at their own expense. Furthermore, they must be ordered jointly and severally to pay Mr [X] the sum of 5,000 euros under Article 700 of the Code of Civil Procedure.

ON THESE GROUNDS

1. Overturns the decision except insofar as it held SEROPH HOLDING liable,

Ruling again,

2. Holds that the dispute is subject to French law,
3. Holds that SEROPH and WORLDPAY have failed to comply with their duty of care,

4. Holds that Mr [R] [X] contributed to the occurrence of the damage to the extent of 50%,
5. Consequently, orders the companies SEROPH and WORLDPAY jointly and severally to pay Mr [R] [X] the sum of € 36,000, with interest at the legal rate from the date of delivery of the present decision,
6. Dismisses the rest Mr [R] [X]'s claims,
7. Orders them to jointly and severally pay Mr [R] [X] the sum of 5,000 euros under Article 700 of the Code of Civil Procedure,
8. Orders them to jointly and severally pay the costs of the proceedings, which are to be paid to Ms Anne BERNARD-DUSSAULX, lawyer at the Paris Bar.

The Court Clerk

The President