[(1) Nest Investment Holding Lebanon S.A.L. (2) Jordanian Expatriates Investment Holding Company (3) Qatar General Insurance and Reinsurance Company P.J.S.C. (4) Ghazi Kamel Abdul Rahman Abu Nahl (5) Jamal Kamel Abdul Rahman Abu Nahl (6) Trust Compass Insurance S.A.L (7) International Insurance Company (Cyprus) Limited (8) His Excellency Sheikh Nasser Bin Ali Bin Saud Al Thani (9) Fadi Ghazi Abu Nahl (10) Hamad Ghazi Abu Nahl (11) Kamel Ghazi Abu Nahl vs Deloitte & Touche (M.E.) [2018] DIFC CA 011]

Claim No. CA-011-2018

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

In the name of His Highness Sheikh Mohammad Bin Rashid Al Maktoum, Ruler of Dubai

IN THE COURT OF APPEAL

BEFORE CHIEF JUSTICE ZAKI AZMI, JUSTICE SIR JEREMY COOKE AND H.E. JUSTICE SHAMLAN AL SAWALEHI

BETWEEN

(1) NEST INVESTMENTS HOLDING LEBANON S.A.L.

(2) JORDANIAN EXPATRIATES INVESTMENT HOLDING COMPANY

(3) QATAR GENERAL INSURANCE AND REINSURANCE COMPANY P.J.S.C.

(4) GHAZI KAMEL ABDUL RAHMAN ABU NAHL

(5) JAMAL KAMEL ABDUL RAHMAN ABU NAHL

(6) TRUST COMPASS INSURANCE S.A.L.

(7) TRUST INTERNATIONAL INSURANCE COMPANY (CYPRUS) LIMITED

(8) HIS EXCELLENCY SHEIKH NASSER BIN ALI BIN SAUD AL THANI

(9) FADI GHAZI ABU NAHL

(10) HAMAD GHAZI ABU NAHL

(11) KAMEL GHAZI ABU NAHL

Claimants/Appellants

and

DELOITTE & TOUCHE (M.E.)

Defendant/Respondent

Hearing:**19 February 2019**

Counsel: Mr Jonathan Fisher QC instructed by Onoma FZE assisted by Caley Wright for the Appellants

Ms Anneliese Day QC instructed by Clifford Chance assisted by James Abbott for the Respondents

Judgment:**13 March 2019**

JUDGMENT

ORDER

UPON reviewing the Appellant's application for permission to appeal dated 8 March 2018

AND UPON reviewing the Respondent's submissions to dismiss the appeal dated 25 September 2018

AND UPON hearing Counsel for the Appellant and Counsel for the Respondent on 19 February 2019

AND UPON reading the submissions and evidence filed and recorded on the Court file

IT IS HEREBY ORDERED THAT:

1.The Appellant's appeal is allowed.

2. Mr El Fadl is added as a Defendant under the provisions of RDC 20.7(2).

3. The parties shall try to agree on costs and on the directions, which follow from this judgment, including the time for service of amended particulars of claim and defence.

4. In the event that the parties cannot agree, they shall write to the Court within 21 days of the issue of this judgment to explain the position, or their respective positions and to seek directions, which can be given in writing, or if truly necessary at a further hearing.

Issued by:

Ayesha Bin Kalban

Assistant Registrar

Date of issue: 13 March 2019

Time: 11am

JUDGMENT

JUSTICE SIR JEREMY COOKE:

Introduction

1.This is an appeal from a decision of Justice Roger Giles dated 12 February 2018 in which he held that the Court had no jurisdiction under RDC 20.7 (2) to order the joinder of the Second Defendant ("Mr Al Fadl") by the Claimants, where the claim against that Defendant did not otherwise fall within the parameters of Article 5 (A)(1) (a)-(d) of the Judicial Authority Law (Law No 12 of 2004, as amended) ("the JAL") and that Article 5 (A)(1)(e) of that law was not brought into play by reason of the terms of that Rule of Court, whether or not it was to be seen as a "DIFC Regulation" for the purposes of that subsection of the Article.

2. There is no appeal from the Judge's earlier decision of 25 August 2017 in which he held that he had no jurisdiction to hear and determine the claim against Mr Al Fadl who had been included as Second Defendant on the original Claim Form because the claim against him did not fall within any of the "gateways" set out in Article 5 (A), including 5(A)(1)(e) where reliance was placed on the Law of Obligations and the Regulatory Law as founding jurisdiction. That decision was specifically made without prejudice to any application the Claimants might make pursuant to RDC 20.7 for an order that he be added as a party, where the terms of RDC 20.7 would fall to be considered (with the Rule itself relied on as a DIFC Regulation justifying jurisdiction. That Rule provides that the Court may order a person to be added as a new party "if there is an issue involving the new party and an existing party which is connected to the matters in dispute in the proceedings, and it is desirable to add the new party so that the court can resolve that issue".

3. There is equally no appeal from his decision on 12 February 2018 refusing the First Defendant (DTME)'s application for strikeout or immediate judgement on the claim against it. He thus decided that the Claimants had a good arguable case against DTME in respect of its alleged breaches of duty to the Claimants who were 24% minority shareholders in the Lebanese Canadian Bank SAL ("LCB") when it, or its agent Deloitte & Touche in Lebanon ("DTL"), carried out audits of that bank and its subsidiary LCB Investment (Holding) SAL ("LCBIH") in the years 2007-2010. LCB went into liquidation in 2011 with resultant extensive losses to the shareholders in respect of the value of the shareholdings and dividends which, it is alleged, would have been received had that not occurred. It is said that if the audits had been correctly carried out, then the minority shareholders could have taken steps to correct the management failures in running the business and the liquidation and ensuing sale of LCB's assets would not have occurred. The claim is for approximately USD 128 million.

The Claim

4. LCB is a company based in Beirut, formerly conducting a banking business. It is now in liquidation. The Claimants acquire their minority shareholdings shares in the years 2006 and 2007. The First Defendant, Deloitte & Touche (ME), ("DTME") is a general partnership registered in accordance with the laws of Cyprus. It is an accounting firm operating through branches in a number of countries in the Middle East including Dubai and it is a registered auditor in the DIFC, which is what gives rise to jurisdiction against it under Article 5(A)(1)(a) of the JAL. The putative Second Defendant, Mr El Fadl is a partner in DTME and is also the Managing Partner of Deloitte & Touche ("DTL") a civil company registered in Lebanon and carrying on an accounting business in that country.

5. The claims in the proceedings are for breaches of duties as auditor in relation to the audits of the financial statements of LCB for the financial years ending 31 December 2006, 2007, 2008 and 2009. The audits were performed by DTL under letters of engagement with LCB, for which it is alleged that DTME are responsible. Mr Fadl was the Managing Partner at DTL as well as a partner in DTME and was the senior individual responsible for the audit. There is also a claim in relation to the audits of what is said to be effectively a subsidiary of LCB, Tabadul Company for Shares and Bonds LLC ("Tabadul") which is pursued only against DTME, although its impact on the audits of LCB is reflected in the claims against Mr El Fadl also.

6. Although the audits were performed by DTL, the Claimants allege that DTL was in truth an extension of DTME, that they were both part of a single economic unit with DTL a branch of DTME, whereby DTME is liable for the acts and omissions of DTL and of Mr El Fadl as the responsible partner in DTME. He is said to be personally liable and DTME is liable for his acts and omissions, either vicariously or as his principal.

7. The causes of action are framed in the Particulars of Claim under the law of the DIFC in deceit, in negligence and under the Regulatory Law (DIFC Law No 1of 2004) or, alternatively, under the law of Lebanon.

8. As set out in the current Reamended Particulars of Claim, which have been reamended to exclude Mr El Fadl as a Defendant, following the decision at first instance, the allegations can be summarised thus:

8.1 Mr El Fadl is a registered general partner of DTME and a managing partner of DTL (paragraph 28).

8.2 DTME is liable as principal, or alternatively vicariously, for the acts or omissions and faults of its agent DTL and/or DTL is a "mandatory" of DTME under the law of Lebanon, which is equivalent to a principal/agent relationship under the Law of DIFC (paragraph 34)

8.3 Within his role at DTME, Mr El Fadl was responsible for the audits of LCB and its subsidiary LCBIH, which were conducted by DTME, through DTL. At all material times Mr El Fadl acted as the agent of DTME and the latter is vicariously liable for his acts and omissions and/or is liable by virtue of the principles of agency. He was the main auditor in personam of LCB and LCBIH, or alternatively had supervisory control of the audits conducted for those entities (paragraphs 36 and 42). He is referred to as the "partner in charge, Middle East" on the Deloitte & Touche global website which states that he "leads the Global financial services group of Deloitte in the Middle East" (paragraph 43). It is also the Claimants' case that Mr El Fadl was aware of all material auditing decisions relating to Tabadul, a licensed financial brokerage company trading in UAE securities and commodities and regulated by ESCA, which, unknown to the Claimants suspended Tabadul's activities from 1 December 2008 for regulatory breaches. Although nominally owned as to 49% by LCBIH and 51% by an individual, the Claimants' case is that Tabadul was, in fact, 100% controlled by LCB's management, which kept it in funds with huge loans which represented a substantial percentage of LCB's assets.

8.4 DTME/DTL, in breach of applicable corporate auditing standards was the sole auditor of LCB from 1995 to 2010 and Mr El Fadl was the audit partner responsible for all of that time. DTME, through him, was familiar not only with LCB's management with whom it met and communicated regularly, but also with LCB's business and with the anti-money laundering and counterterrorism financing risks ("the AML/CTF risks"), the constitution of LCB, its board and shareholders, the internal audit department, the

creation of the Internal Audit Committee at the instance of Claimant minority shareholders and the failure of the Board of Directors and management take any adequate steps to counter the AML/CTF risks or put in place proper controls.

9. The Claimants' case as set out in Re-amended Particulars of Claim, which runs to some 109 pages, is that the audit opinions given by DTME were dishonestly given for the years 2007 – 2010 with a view to supporting the Board of Directors, the majority shareholders and the Management of LCB when faced with the Claimant minority shareholders' demands for proper governance and controls to eliminate not just the AML/CTF risks but other dangers relating to unsecured loans to Tabadul and related party transactions. Properly undertaken audits would have revealed the mismanagement which took place in the relevant years but, instead, DTME gave "partisan audit opinions" which acquitted LCB's management of any wrongdoing. It is said that Mr El Fadl and DTME knew that LCB's management would rely on its audits to defeat the claimants' allegations of mismanagement and they wrongly verified LCB's AML/CTF compliance with Lebanese Law 318, failed to consolidate Tabadul's accounts (which DTME audited) with those of LCB and failed to identify Tabadul's unlawful trading and the true extent of its debt. (See paragraphs 101 – 301, where lengthy particulars are given).

10. LCB's Management controlled the Compliance Unit. The Internal Audit Department reports were ignored as were Internal Audit Committee requests to the Board and Management and recommendations from both were put aside with reliance upon the DTME Audits in the relevant years. No provision was made for a claim against LCB in New York in which allegations were made that the latter held bank accounts, intentionally or negligently, for entities which were an integral part of Hezbollah and constituted part of Hezbollah's financial arm. The claim alleged that LCB had enabled, facilitated and proximately caused wire transfers to be made into those accounts, allowing Hezbollah to plan, prepare for and carry out rocket attacks on Israel (paragraphs 120 – 125).

11. DTME failed to produce an AML/CTF report in 2008 in respect of 2007 but on 24 March 2009 and 21 April 2010 Mr El Fadl, on behalf of DTME, wrote to LCB's Board with DTME's opinion as to LCB's compliance with Lebanese AML/CTF regulations in accordance with International Auditing Standards. The audit opinions gave LCB a clean bill of health with only minor infractions noted, expressing no cause for regulatory intervention or meaningful external concern, despite DTME's knowledge or constructive knowledge that LCB was engaged in systemic international money laundering with consistently lax AML/CTF controls with cumulative breaches involving many millions of dollars (paragraph 117 – 152).

12. In a US Financial Crimes Enforcement Network Notice of 10 February 2011, as a result of an analysis of evidence obtained during an extensive criminal investigation, the conclusion was reached that LCB had been routinely used by drug traffickers and money launderers operating in various countries in Central and South America, Europe, Africa and the Middle East. One of those drug traffickers was a supporter of Hezbollah and another was a known individual who provided support to Hezbollah. Between January 2007 and early 2011, LCB and three other banks were involved in money laundering to the extent of USD 329 million and some USD 230 million had been transferred from accounts held at LBC after January 2008. The investigation found that the General Manager and his deputy and a number of managers of key branches had daily dealings with members of the drug trafficking and money laundering networks and personally processed transaction on their behalf. LCB had intentionally poor money laundering controls and it knowingly conducted business with Hezbollah-controlled entities and individuals linked to (inter-alia) African diamond smuggling, money laundering and drug trafficking.

13. The allegation is made that there was a money laundering scheme perpetrated by LCB under the control of its management, which led to LCB's collapse because the effect of these findings in the USA was to cause other banks to cease doing business with it. Proper auditing would have revealed this.

14. In Part 6 of the Re-amended Particulars of Claim, the breaches of duty on the part of DTME are set out for each of the 2006 – 2010 audits. At paragraph 251, in respect of 2008, repeated at paragraph 255 for 2009, it is alleged that DTME had no genuine belief in the truth of its audit opinions and deliberately sought to limit the scope of AML/CTF Audits to exclude any verification of the adequacy of LCB's money laundering controls in breach of its AML/CTF obligations in Lebanese law. The alternative case is put in negligence or "faute".
15. Justice Roger Giles in his first judgment of 25 August 2017, stated that there was no reason not to exercise jurisdiction if he had it, but concluded that the Court had no jurisdiction over Mr El Fadl, who was named as the Second Defendant in the proceedings, under any of the provisions of Article 5 (A)(1)(e) of the JAL.

The Judgments of Justice Roger Giles- The Judgment of 25 August 2017

16. In his first judgement of 25 August 2017 Justice Roger Giles considered the only extant contentions of the Claimants that jurisdiction existed against Mr El Fadl under Article 5 (A)(1)(e) of the JAL by reason of specific provisions in the Law of Obligations and the Regulatory Law. It will be recalled that the Article provides: –

> "(1) the Court of First Instance shall have exclusive jurisdiction to hear and determine:
> .....
> (e) Any claim or action over which the Courts have jurisdiction in accordance with DIFC Laws and DIFC regulations."

17. Additionally, as recorded by the Judge, the Claimants submitted that there was jurisdiction because Mr El Fadl was "a necessary and proper party" to the claim against DTME. That was put as a ground for present jurisdiction over a Defendant included in the original claim form but, as the judge remarked, when it was unpacked it was something different. The contention was that the Court could order under RDC 20.7 that Mr El Fadl be added as a new party in the circumstances there set out. That rule provides, under the heading "Addition and Substitution of Parties" (and not in terms of "necessary and proper party" or "necessary or proper party") that: –

> "20.7 the Court may order a person to be added as a new party if:
> (1) it is desirable to add a new party so that the court can resolve all the matters in dispute in the proceedings; or
> (2) there is an issue involving the new party and an existing party which is connected to the matters in dispute in the proceedings, and it is desirable to add the new party so that the court can resolve that issue".

18. The Judge held that reliance upon the Rule at that time was misplaced, as was ultimately accepted by the Claimants. The possibility of an order under the Rule did not mean that jurisdiction existed at the time, in circumstances where Mr El Fadl had already been named as an original party to the proceedings when issued, and served as such, followed by his challenge to the jurisdiction. On its own terms, the Rule is only applicable to the situation where a new party is to be added to the existing parties in existing proceedings and the relevant test set out in sub paragraph (1) or (2) is met, whereupon the Court is given a discretion whether or not to add the party in question.
19. Here, the relevant subparagraph is (2) and the criterion is whether or not there is an issue involving Mr El Fadl and the Claimant or DTME which is connected to the matters in dispute in the existing proceedings between the Claimant and DTME which makes it desirable for the new party be added so that the court can resolve the issue. The Judge was not prepared to consider the application of the Rule at that stage, not only because it was a hypothetical situation but more importantly because success in DTME's pending application to strike out the claim against it and/or for summary judgement would mean that there was no extant claim to which Mr El Fadl could be joined as an additional party. Consequently, he reached no decision upon the application of CPR 20.7 and referred at paragraph 19 to the possibility of a future application for an order thereunder, whilst the Order in paragraph 2 set aside the claims against Mr El Fadl without prejudice to any

application which the Claimants might thereafter make under the Rule for his future joinder as an additional party.

20. In such circumstances, it could not properly be argued on behalf of Mr El Fadl that the issue with which the Court is now concerned as to jurisdiction is res judicata by reason of the decision of the Judge of 24 August 2017. His decision stands for what he did decide, namely that there was no basis for jurisdiction over Mr El Fadl under Article 5(A)(1)(e) by reason of the statutes relied on in the context of the original claim as served on both him and DTME. He decided nothing as to jurisdiction under RDC 20.7 in the event of a later application to join Mr El Fadl to the proceedings against DTME.

21. The Judge went on to decide, in case he was wrong in his conclusions as to the lack of jurisdiction (a conclusion which was not the subject of appeal) whether the court should exercise jurisdiction, if it had it. He decided that he would have exercised any jurisdiction, if he thought he had it. He expressed his view on this because the matter had been fully argued before him, because he considered that it might be of assistance in the event of an appeal and because the question of an exclusive jurisdiction provision might arise if a future application was made under RDC 20.7.

22. He thus had in mind the very circumstances which would have faced him on the later application, had he decided there was jurisdiction, and which faces us if we so decide. The Judge decided that there was no exclusive jurisdiction agreement, whether under Article 87 of the Articles of LCB or the engagement letters signed by DTL and LCB. Neither bound DTME and the Claimants vis a vis each other. No other reason was put forward as to why the Court should not exercise jurisdiction if it had the power to do so. The Judge referred to "the economic and procedural consequences and risk of inconsistent finding if there were trials in two jurisdictions" which had persuaded the court in *Al Khorafi v Bank Sarasin- Alpen (ME) Ltd* that it should not stay proceedings to give effect to an exclusive jurisdiction clause relating to only one of two defendants. He referred also to the need for evaluation of the likelihood of unlikelihood of a fair trial in the Lebanese court as a potentially dominant factor, even if the exclusive jurisdiction had applied. In the absence of an effective jurisdiction clause which operated between the parties, he could see no reason not to exercise jurisdiction.

23. If that does not create any issue estoppel, which we consider it may well do, because the Judge specifically had CPR 20.7 in mind when he made the finding and did not change his mind on the point when considering the Rule in his later judgment, we are clear that it is most desirable to hear any claim against Mr El Fadl alongside the claim against DTME because many of the same issues arise in both claims and the terms of Rule 20.7 (2) are plainly satisfied.

24. If the Court has power and a discretion whether or not to order the joinder of Mr El Fadl in the proceedings against DTME, the Court has no hesitation in saying that such an order should be made, for the reasons given hereafter. Jurisdiction exists over DTME because it is a DIFC Establishment and a Licensed DIFC Establishment under the supervisory control of the DFSA, so that it falls within the provisions of Article 5 (A)(1)(a) of the Judicial Authority Law No 12 of 2004 as amended by Law No. 16 of 2011 ("The JAL").

25. It is clear that Mr El Fadl is the central character in the case made against DTME, not least because he wrote the letters of 24 March 2009 and 21 April 2010 giving the opinion that LCB was in compliance with Lebanese AML/CTF Regulations, when, on the Claimants' case, he knew that was not the case. He was the individual responsible for the audits as the relevant partner and it is his actions which are those for which DTME is said to be liable vicariously or as principal.

26. It is clearly desirable, if he is to be sued anywhere, for him to be sued at the same time and in the same jurisdiction as DTME. Whilst there is no necessity for him to be joined as there is room for DTME to be found liable without liability being established against Mr El Fadl personally, the crux of the Claimant's case is that, if he is found liable, DTME is, by reason of his relationship to it, liable also and, moreover, he is alleged to be the key figure who conspired with the management and majority Lebanese shareholders in LCB to make

statements in the form of opinions which were intended to avert suspicion of involvement of LCB in money laundering and terrorist financing.

The Judgments of Justice Roger Giles- The Judgment of 12 February 2018

27. The Judge described the Claimants' position thus: "the Claimant said that there was an issue involving the new party, Mr Fadl, which was connected to the matters in dispute in the proceedings, being the claims against DTME: and that the desirability lay in having all claims determined together, and in avoiding what they alleged were, for them, impediments to a just resolution in the Lebanese Courts". He described Mr El Fadl's position as saying that the requirements of the Rule were not satisfied but, regardless of that, "he could not be joined pursuant to the Rule when, as had been decided, the Court did not have jurisdiction to hear and determine the claim against him".

28. The Judge expressed his conclusions succinctly. He noted that RDC 20.7(2) reproduced the English rule CPR 19.2(2) but noted that in England there was no overriding jurisdictional fetter because jurisdiction over a party could be founded simply on service, whether within the physical jurisdiction or outside it with the permission of the court. He stated that, by contrast, the DIFC Court is a court of limited jurisdiction with that jurisdiction prescribed in Article 5(A)(1) of the JAL. He said that while the origin of the DIFC rule might lie in the English rule, its scope had to take account of the overriding jurisdictional prescription.

29. He went on, by reference to Article 5 (A)(1), to say that jurisdiction was prescribed in terms of claims and actions which had particular characteristics (and an equivalent in relation to appeals against decisions by DIFC Bodies). He stated that it was "jurisdiction by kinds of claims and actions, not by persons or territories". Having referred to the various sub-paragraphs of the Article as providing "gateways", the terminology commonly used in relation to these provisions with a claim or action of the requisite kind opening the gate, he asked how RDC 20.7(2) could avail the Claimants when seeking to add Mr El Fadl as a new party in circumstances where the claim against him could not constitute a claim falling within one of the gateways.

30. The Judge did not accept that the wording of RDC 20.7(2) could give rise to a freestanding "gateway of jurisdiction", because he regarded the Rules of Court as procedural only and as not providing for jurisdiction above and beyond the JAL. He referred to the definition in Article 2 of the JAL, which states that the Rules are "rules regulating litigation procedure before the Courts" and the provision in Article 4(II)(b) of the JAL that the Chief Justice has power to "approve and issue the Rules of Court and the DIFC Regulations falling within the Courts' jurisdiction". He thus concluded that the Rules operated within the jurisdictional limits in the JAL and that RDC 20.7(2) could not, of its own force, enlarge the court's jurisdiction beyond that set out in Article 5 (A)(1) of the statute.

31. He then went on to grapple with the question which appears to this Court to lie at the heart of the argument between the parties, despite the extensive submissions made in both parties' skeletons. Article 5(A)(1), by subparagraph (e) provides that the Court shall have exclusive jurisdiction to hear and determine "any claim or action over which the Courts have jurisdiction in accordance with DIFC Laws and DIFC Regulations". The simple issue is whether or not the Rules of Court constitute a DIFC Regulation and, if they do, whether the terms of RDC 20.7 are apt to confer jurisdiction or merely constitute a procedural provision which can only apply if jurisdictional issues are already satisfied in relation to the claim in question by reference to one of the gateways.

32. Whilst the Judge considered that the Rules of Court did not technically fall within the definition of DIFC Regulations, by reason of his conclusion that they were "issued" by the Chief Justice, as opposed to the President, although "made" by the latter, he recognised that this might be seen as an "over- fine" distinction. The real difficulty, as he saw it, was that when subparagraph (e) referred to jurisdiction "in accordance with DIFC Laws and DIFC Regulations" there had to be found a sufficiently clear conferral of jurisdiction by the relevant Law or Regulation and he did not see that RDC 20.7 could be seen as having that effect.

33. He said that Article 94 (2) of the Regulatory Law was an example of a DIFC Law which did have that effect, and that while the wording there did not expressly confer jurisdiction, it could be seen that this was the purpose. That, however, he considered was not the purpose of the Rules of Court because, in his view, they operated within the jurisdictional limits of the JAL.
34. The Judge did not consider that the Rule was framed in terms of conferral of jurisdiction as opposed to giving the Court a discretionary procedural power. He considered that RDC 20.7 did not purport to confer jurisdiction *over a claim or action embodying the issue involving the new party and an existing party* (emphasis added). What the Rules did was to give the power to add a new party but only within the Courts jurisdictional limits as set by the JAL. The words "in accordance with DIFC Laws and DIFC Regulations" in Article 5(A)(1)(e) required more than was to be found in RDC 20.7. He therefore concluded that the Rule did not enable the joinder of a new party where the issue involving that party and an existing party was a claim which the court did not, per se, have jurisdiction to hear and determine under one of the other gateways or under some other statutory or regulatory provision falling within subparagraph (e).
35. He noted that the same question could arise in relation to an additional claim against a person not already a party whom it was sought to join under RDC 21 That rule provides for the situation where a defendant wants to join a new party to a counterclaim that it wishes to bring, or as an additional party from whom it seeks contribution or indemnity in respect of the claim made against it. He saw the unsatisfactory nature of a result which made this impossible but considered that the jurisdictional prescription in the JAL could not be satisfied, under RDC 20.7 and that those who drafted the RDC, when adopting rules from the CPR, might not have sufficiently taken into account the jurisdictional limits which applied to the DIFC Courts and their terms.
36. The Judge referred to the absence of any decided authority of the DIFC Courts on the point and considered that reference to other jurisdictions with their different regimes could not assist.
37. He also referred to Mr El Fadl's contentions that RDC 20.7 was unavailable because the limitation period for any claim against him had expired; because there was no issue involving him and the Claimants connected to the matters in dispute in the proceedings; and because it was in any event not desirable that he be added so that the court could resolve an issue. There were apparently extensive submissions by both parties on desirability which he chose not deal with, despite having reached a conclusion in his previous judgement that there was no good reason for the court not to exercise any jurisdiction it had.

Discussion and Analysis

38. As stated above, the issue, it appears to this Court, is simply whether RDC 20.7 is a DIFC Regulation which confers jurisdiction for the purpose of JAL Article 5 (A)(1)(e). *En passant*, we note, however, that Article 5 (A)(1)(a) confers jurisdiction not just for a claim which has particular characteristics (civil and commercial claims and actions) but that a critical component is the identity of the party with a specific connection to the DIFC (see the reference in *Corinth Pipeworks Sa v Barclays Bank PLC* CA 002/2011 at paragraph 84). As long as one of the parties to the claim or action in question is the DIFC itself or any DIFC Body, DIFC Establishment or Licensed DIFC Establishment, jurisdiction exists if the claim is civil or commercial. It matters not whether the party is claimant, defendant or third party. Whilst subparagraph (d) stand somewhat on its own, whereas subparagraphs (b) and (c) refer to claims and actions which have other connections to the DIFC, subparagraph (a) looks also to the identity of the parties in question.
39. Subparagraph (e) is however, on its face, freestanding, inasmuch as it covers any claim or action where another DIFC Law or DIFC Regulation confers jurisdiction. The words "over which the Courts have jurisdiction in accordance with DIFC Laws and DIFC Regulations" require the relevant Law or Regulation to have the effect of creating jurisdiction, which must always be a question of construction in the light of the particular provision of the Law or Regulation in question, when seen in the context of the statute or regulation as a whole and the purpose which lies behind the provision and the statute.

40. The first question is whether or not the Rules of Court constitute a DIFC Regulation.

40.1 Article 2 of the JAL defines DIFC Regulations as “any rules, regulations, bylaws or orders relating to the DIFC issued by the President or by DIFC Bodies.”

40.2 Article 31 (1) of DIFC Court Law No 10 of 2004 provided that the Chief Justice should recommend Rules of Court for “enactment” by the President.

40.3 Article 31 (7) provided for the Registrar to publish the Rules of Court “made” by the President under this Article.

40.4 Schedule 2 of the same Law provided that the “Rules of Court are made by the President on the recommendation of the Chief Justice”.

40.5 The RDC themselves, at RDC 1.2, states that the Rules are “made by the President of the DIFC on the date specified in the Enactment Notice in respect of these Rules”, but that, after the enactment of Law No 7 of 2011, on 10 July 2011, by RDC 1.4, “any rule amendments are made by the Chief Justice of the DIFC Courts”.

40.6 Article 2 of the JAL defines “DIFC Bodies” as “bodies established pursuant to Article 3 of Law 9 of 2004, or any other body established pursuant to the DIFC Laws or pursuant to approval of the President.”,

40.7 The DIFC Courts are such a body, established pursuant to the JAL and DIFC Court Law No. 10 of 2004.

40.7.1 Under Article 3 (3) of the latter law, one of the bodies to be established in DIFC was the Dispute Resolution Authority and under Article 8.1 of the same Law, the Dispute Resolution Authority was to be comprised of “the Centre’s Courts” amongst other entities.

40.8 The Chief Justice is, by reason of Article 8 (5) of that same Law the Head of the Dispute Resolution Authority who is responsible for its administration with the powers given to him which were set out in that Article and reiterated in amended form in the JAL at Article 4.

40.9 Article 2 of the JAL defines Rules of Court as “rules regulating litigation procedure before the courts”.

40.10 Article(4)(2)(II)(b) of the JAL provides for the Chief Justice to “approve and issue” Rules of Court, “falling within the Courts’ jurisdiction”.

41. In all the circumstances, this Court considers that the DIFC Rules of Court do constitute DIFC Regulations. The question nonetheless arises as to whether they constitute DIFC Regulations for the purposes of and within the meaning of Article 5 (A)(1)(e) of the JAL. They are rules relating to the DIFC, but a question arises as to whether or not they are “issued” by the President or by a DIFC body, a matter which Justice Roger Giles decided against the Claimants, despite referring to a potentially “over-fine” distinction between the words “made” and “issued” as justifying this conclusion.

42. The original Rules were enacted by the President and were therefore both “issued” and “made” by him. We consider those words to be synonymous. This Court considers that the DIFC Courts constitute “a DIFC body” established pursuant to Article 3 of Law No. 9 of 2004 and a body established pursuant to the DIFC laws. It cannot be, and was not, contended otherwise. The Chief Justice is Head of the Dispute Resolution Authority and personified the Courts when carrying out his functions to recommend the original rules and to make any amendments to them. To the extent that amendments are “made” by the Chief Justice, or approved and issued by him, to the extent that he does not do so on behalf of the President, he does so on behalf of the Courts which themselves are a DIFC body, which he represents. The Rules are made under powers delegated to him. We consider that the distinction which the Judge sought to draw between the words “issue” and “make” is not only “over- fine” but unwarranted. Whether “made”, “approved” or “issued” by the President or Chief Justice, the Rules of Court have the force of DIFC Regulations and it could not be contended otherwise in any other context.

43. Ms Anneliese Day QC, for Mr El Fadl, relied on the distinct definitions drawn in Article 2 of the JAL for “DIFC

Regulations" on the one hand and "Rules of the Courts" on the other and submitted that when Article 5 A(1)(e) referred to " any claim over which the Courts have jurisdiction in accordance with DIFC Laws and DIFC Regulations", the reference could not include Rules of Court. Self-evidently, the JAL defines them individually, but the definition of " DIFC Regulations" in the JAL itself, is, as pointed out above, apt to include "Rule of the Courts" and there is no reason why, in the context of interpreting Article 5(A)(1)(e), the expression "DIFC Regulations " should not be given the defined meaning, and every reason why it should, with the inclusion within it of "Rules of the Court". The more limited definition of "Rules of the Courts" is needed because the Chief Justice has powers in relation to them, which he does not have in relation to the full body of other "DIFC Regulations".

44. The more substantial question is, however, as the Judge remarked, whether RDC 20.7 is apt, on its proper construction, in context, to confer jurisdiction upon the court. Do claims which are covered by RDC 20.7 constitute "claims over which the Courts have jurisdiction in accordance with a DIFC Regulation"? What is needed to establish that the Rule is intended to confer jurisdictional power as opposed to a limited procedural power? It is agreed that there need be no express conferral of jurisdiction by the use of that word, as it appears in Article 5 of the JAL.

45. Both the parties and the Judge accepted that Article 94(2) of the Regulatory Law is an example of a DIFC Law which does confer jurisdiction on the Court. That regulation states:

> "the Court may, on application of the DFSA, or of a person who has suffered loss or damage caused as a result of conduct described in Article 94 (1), make orders for the recovery of damages or for compensation or for the recovery of property or for any other order as the Court sees fit, except where such liability is excluded under the Law or Rules or other legislation administered by the DFSA".

46. Whilst that provision does not expressly state that it is conferring jurisdiction upon the Court, it cannot be read in any other way than giving the court a power to make orders relating to compensation or property in the circumstances there set out. It would not be possible to argue that the court had no such jurisdiction, where there is conduct which meets the terms of Article 94(1) and an application is made by a person who has suffered loss or damage, regardless of whether the claim for such compensation or recovery of property would otherwise fall within one of the gateways in Article 5 (A)(1) of the JAL. Nonetheless the Regulatory law has its own jurisdictional limits in Articles 3, 30, 41, 41A, 41B, 42(3),59,63 alongside Article 94 and the Court gains little assistance from this statute in examining the effect of the Rules of Court. The Rules must be interpreted on their own terms.

47. When RDC 20.7 provides that "the court may order a person to be added as a party" in the circumstances there set out, the question is whether that is properly read as giving the Court a power to assume jurisdiction over a party where the criteria of that Rule is met, regardless of the Article 5 (A)(1) (a)-(d) gateways. The Rule does not expressly confer jurisdiction, by using that term, but it clearly sets out a criterion for the joinder of a party, in the same way as RDC 21 does in respect of the joinder of additional parties to counterclaims or for the purposes of seeking indemnity or contribution. It is said that the Rules of Court regulate litigation procedure, as Article 2 of the JAL spells out, but this in itself does not mean that jurisdiction cannot thereby be created. Nor does Article 4 (2)(II)(b) of the JAL itself limit the ability of the Rules to confer jurisdiction, being aimed at the powers of the Chief Justice, in exactly the same way as Article (2) (II) (a) and (c), in the context of his role in the Dispute Resolution Authority and the Courts.

48. The critical point, in the judgment of this Court, in interpreting RDC 20.7, is that, if RDC 20 does not confer jurisdiction, their contribution to the administration of justice is very limited indeed, providing only that a claimant who had begun an action against one defendant alone could later apply to join in that action a person that he could, as of right, have included when issuing the claim form, had he thought of it; or, put another way, the Rule would enable him to apply to have two defendants in one action instead of having to

pursue them in separate actions, where there was a sufficiently common link between the two.

48.1 If a claim against an additional Defendant falls within one of the Article 5 (A)(1)(a) –(c) gateways, there is no need for RDC 20.7 at all. A party can proceed against both defendants at the outset on the basis of those gateways without reliance on the Rule. The Rule can only be effective in giving the Court any real power where those gateways do not apply.

48.2 To say that the Rule gives a procedural power to join two parties in the same action where there are other gateways which apply to each, gives the rule no real force at all. It adds nothing to the ability to join two defendants in the same action at the outset, as of right, whereas the whole purpose of the Rule is to give the Court a discretion to add a party where it is desirable to do so on the basis of the criteria set out there, without having to cross the same jurisdictional barriers for an ordinary claim.

48.3 The Court can weigh up issues of forum conveniens, and other matters which militate for or against joinder and make a decision which facilitates justice being done in the most appropriate manner where there are some common issues between the new party and one or more of the existing parties.

48.4 The Court also has the power to order that a person cease to be a party if it is not desirable for that person to be a party, so that it is open to the newraise objection and be heard on the discretionary exercise of the Court's power under RDC 20.8.

48.5 The effect of Mr El Fadl's interpretation is to emasculate the Rule of most of its force and, in the view of the Court, to ignore its obvious intention.

49. Of course, it might be that the drafting of the Law, Regulations and Rules were deficient in not providing for the intended effect, which Ms Day QC contended was the true position and that, in order to achieve the desired result, a new law or Regulation would have to be passed to do so. It was, she said, as the Judge had said, probably the result of the draftsmen of the Rule overlooking the statutory jurisdictional limits of the Court, when bringing in a provision of the English rules into a different jurisdiction. Whilst there is a difference between the CPR in the English system with its underlying common law jurisdiction founded essentially on service within the jurisdiction or service outside the jurisdiction with permission, on the one hand, and the RDC with a jurisdiction created by statute, on the other, the fact is that the CPR, which, like the RDC is procedural in nature, sets out the boundaries of jurisdiction and is effective by reason of enabling statutory instruments (secondary legislation) authorised by Statute. The Rules cannot add to the jurisdictional powers set out in Statute unless the Statute provides that they may do so, which this Court considers to be the position here.

50. Just as the CPR has the force of the statutory instrument which enlivens them and gives a discretion to the English court, which is thus enabled to make rulings in respect of entities under a form of "long arm" jurisdiction which might not always be recognised by foreign courts, as also Article 5(A)(1) (e), by reference to DIFC regulations, allows DIFC Regulations in the form of Rules of Court, to create a discretionary jurisdictional power in the shape of RDC 20.7.

51. There can be no reasoned objection to a jurisdiction which is created by Rules of Court which are authorised by statute to do so. Nor can there be any grounded objection by reason of the fact that such an assumed jurisdiction would not necessarily be recognised internationally. The ambit of the undisputed DIFC Courts' jurisdiction in this Court, created by statute, includes cases where the claimant is the party with the DIFC connection which is also not one which would always be recognised internationally.

52. The indisputable fact is that the wording of RDC 20.7 is wide enough to confer jurisdiction upon the court by giving it the power to make the order in question if the criteria are satisfied. The words give the Court the discretionary power to allow joinder in the circumstances outlined. Whilst not expressly conferring jurisdiction, by using that terminology, the Rule makes no reference to a requirement that any of the Article 5 (A) (I) (a)-(d) gateways should apply and for the reasons given above, were it not to confer such jurisdiction, the Rule would be robbed of most of its force.

53. In such circumstances, the question of policy and purpose in the Rule in question and the Rules as a whole, fall for consideration. There are overwhelming reasons for the Court to give the Rule a wide meaning. There is self-evidently merit in a court having something in the nature of a “necessary or proper party” rule so that matters in dispute can be decided between all the relevant parties, without the risk of inconsistent decisions by different courts at different times with all the inherent additional cost and inconvenience involved. As the Claimants point out, the effect of the refusal to make an order in a case such as the present is to render the DIFC Court effectively incapable of trying a claim with multiple defendants from different jurisdictions, where the gateways cannot be satisfied in respect of each.

54. Public policy weighs heavily in favour of the Court having such a power because it aids in the administration of justice. It is a power which is found in the rules of court in many jurisdictions, however differently it may be expressed. The object is to prevent unnecessary duplication of litigation in different jurisdictions and to facilitate the resolution of disputes consistently between multiple parties where common issues arise for determination. The overriding objective of the Rules, as expressed in RDC 1.6 is to enable the Court to deal with cases justly, which includes, as far as practicable, saving expense, dealing with cases proportionately, dealing with cases expeditiously and fairly. When interpreting the Rules, RDC 1.7 provides that the Court must seek to give effect to the overriding objective. In the view of this Court, the narrow approach for which Mr El Fadl contends would run counter to that objective.

55. Examples of the unsatisfactory results following from a narrow interpretation of the Rule which does not allow for this, can be multiplied.

55.1 In a fraud claim, where a fraud has been carried out overseas by a DIFC Establishment but where the proceeds are in the hands of a special purpose vehicle defendant in a tax haven where a gateway is inapplicable, that defendant could not be added to a claim against the DIFC establishment and separate proceedings would be required in the tax haven itself

55.2 if a claim is brought against a DIFC Establishment for vicariously liability where the employee in question is outside the DIFC and carried out the acts complained of outside the DIFC, that employee could not be joined as a party (as here).

55.3 In a claim against a DIFC Establishment partnership, any non-DIFC Establishment partners could not be added, although their liability would be commensurate with the partnership itself.

55.4 The same problem arises in relation to a defendant, properly sued within the DIFC, who would wish to counterclaim against an additional party outside the DIFC or to claim contribution or indemnity from an entity where the latter is outside the DIFC and none of the gateways in Article 5 are open to it.

56. These examples would appear to represent perverse outcomes in circumstances where, if the claimant had been within the jurisdiction, all the defendants domiciled or located elsewhere would fall within the jurisdiction of the Court. Whether or not a contrivance such as assigning a claim to a claimant specially created as a special purpose vehicle and as a DIFC Establishment, could create jurisdiction or whether it might be considered an abuse of process is beside the point. The unreasoned illogicality and anomalies which arise if a narrow interpretation is given to the Rule militate against such a construction. The effect of such a construction would be to curtail the utility of the DIFC Court as a forum for the determination of commercial disputes with an international dimension because of its inability to exercise jurisdiction over parties with a close connection to the dispute in question, in circumstances where it made obvious sense for one court to hear and determine the common and connected issues between all those involved.

57. The Judge, with all due respect to him, appears to have started from the position that because there was no original jurisdiction under Article 5(A)(1)(a)-(e) when the claim was commenced against Mr El Fadl, there could not be jurisdiction to join him on the basis of the Rule in RDC 20.7. The way in which the case progressed no doubt encouraged him in that view, with the misconceived reference to RDC 20.7 by the

Claimants in the first application which he had to determine, but his successive judgments betray that his thinking in the latter judgment was influenced by the decision in the former, whereas the issue had to be seen on its own terms, regardless of past history. When the Rule is viewed objectively in the light of its own wording, the purpose of the Rule, and the obvious public policy, we consider that it must lead to the Court having the ability to join a foreign defendant, as a matter of discretion, if the terms of RDC 20.7(2) are satisfied.

58. We gained no assistance from other authorities cited to us nor from Legal Articles shown to us, however eminent the authors, because none had the provisions of RDC 20.7 in mind when referring to the statutory nature of the Court's jurisdiction, which, ofr the reasons set out above, does not answer the question because of the reference in Article 5(A)(1)(e) to DIFC Regulations as giving rise to jurisdiction. In truth much of the argument on this point was circular, since the true issue turned on the two factors the Court has identified above, namely whether the RDC constitutes a DIFC Regulation and whether RDC 20.7 is apt, on its proper construction, to confer jurisdiction.

59. In all the circumstances and for the above reasons we consider that the Court does have jurisdiction because RDC 20.7 is a DIFC Regulation which confers jurisdiction upon the court which it can exercise as a matter of discretion, if the criteria set out in the Rule are met. Because the original claim has to fall within one of the gateways in Article 5(A)(1), there is no question of "opening the floodgates" generally. The Rule merely provides a logical extension to the provisions of the gateways in enabling the court to assume jurisdiction over parties who are intimately concerned and connected with the parties and disputes which fall within the jurisdictional requirements of Article 5(A)(1) of the JAL.

60. Whilst similar issues may arise under RDC 21, because the principles are apparently much the same, we note that the terms of that Rule are different and, in particular, RDC 21.3 provides that an additional claim within that Rule is to be treated as if it were a claim for the purposes of the Rules, save as provided in RDC 21. The question as to how this Rule operates, on its own terms, was not fully argued before us and we make no decision as to its jurisdictional ambit and interrelationship with Article 5(A)(1) of the JAL.

Desirability

61. As set out above, this Court is clear that it is desirable that Mr El Fadl be joined. The desirability is informed by the objective set out in the Rule itself, namely that the Court can resolve a common issue between the new party as well as the existing parties. That avoids inconsistency, additional costs and work involved in more than one set of proceedings.

62. It is not necessary to dwell on the factors put forward by Mr El Fadl for saying that it was not desirable to do so in the present circumstances. We were invited to consider paragraphs 55-72 of the Skeleton Argument served on his behalf and have done so. They do not assist him.

62.1 It is, as was accepted by the Claimants, not necessary for him to be joined, inasmuch as the claim can proceed against DTME without him being a party. The claim is that there is liability for his actions and that will either be made good or not, whether or not he is a party.

62.2 It is a matter for the Defendants whether he would be called as a witness, but his presence or absence in that capacity has no bearing on the issue of desirability.

62.3 The motivation for joining him is not of great relevance either, although we were told that the Claimant minority shareholders considered that, as the man responsible, he should be held to account personally as well as the auditing body. It is not sufficient to assert, as Mr El Fadl does, that this is a contrivance, in the absence of a gateway to pursue him as an original defendant.

62.4 The desirability of his being joined is simply that, if he is not so joined, and the Claimants want to pursue him, there will be proceedings elsewhere against him, (if it is possible to bring them in Lebanon or elsewhere) with all the duplication in work and costs that are entailed in deciding the common issue

which are central to the claims against him and DTME, with a risk of inconsistent judgments.

62.5 There can be no significant prejudice to him in having the matters heard in the same proceedings as the claim against DTME.

62.6 If proceedings cannot be brought against him in Lebanon as he suggests at paragraph 72 of his skeleton, that constituted an additional reason why it is desirable for him to be joined in DIFC in order to secure the ends of justice.

Conclusion

63. The appeal must be allowed, and Mr El Fadl added as a Defendant under the provisions of RDC 20.7(2). We would anticipate that costs should follow the event in the normal way but were told by Counsel, that in the event that we were in favour of the appeal it would be necessary for other consequential orders to be made, after the parties had addressed us further.

64. If the parties can agree on costs and on the directions which follow from our decision, including the time for service of amended particulars of claim and defence, so much the better. If not, the parties should write to the Court within 21 days of the issue of this judgment to explain the position, or their respective positions and to seek directions, which can be given in writing, or if truly necessary at a further hearing.

CHIEF JUSTICE TUN ZAKI AZMI

1.I have had the privilege of reading the draft of Justice Sir Jeremy Cooke's judgment and agree with his reasoning and conclusion but nevertheless would like to add in a few words.

2. Taking the issue in a very simplistic manner, the Claimant's case starts with The Judicial Authority Law (Law No. 12 of 2004 as amended by the Laws referred to in the preamble to that Law No. 12 of 2004) (hereinafter referred to as "The JAL 12/2004"), in particular Article 5 (A) (1) (e). This is the decree that sets up the Dubai International Financial Centre Courts (see Article 3 of The JAL 12/2004). The decree also confers upon the Court its jurisdiction.

3. The said Article 5 (A) (1) (e) reads:

"(1) The Court of First Instance shall have exclusive jurisdiction to determine:…

(e) Any claim or action over which the Courts have jurisdiction in accordance with the DIFC laws and DIFC Regulations." (emphasis added)

(Paragraphs (a) to (d) spell out the other jurisdiction of the court.)

4. The decree setting up the Courts and all its consequential amendments up to JAL 12/2004 did not contain paragraph (e). It stops at paragraph (b). Paragraph (d) then reads:

"(d) any application over which the DIFC Court has jurisdiction in accordance with the DIFC Laws and Regulations;"

5. It is to be noted that the difference between the old paragraph (d) and the current paragraph (e) are the words "application" in the old (d) and "claim or action". The words "DIFC Laws and DIFC Regulations" in the current JAL 12/2004 are also slightly different from the earlier paragraph (d) in that there they are expressed as "DIFC Laws and Regulations".

6. In my view, these differences in wordings are not intended to create any difference in the meaning and intention of the old (d) and the current (e).

7. There were some arguments as to whether the expressions "DIFC Laws and DIFC Regulations", or "DIFC Laws and Regulations" were meant to include Rules of the Dubai Court ("RDC") made by the Chief Justice pursuant to delegation by the Ruler under the respective provisions of the original JAL and that JAL 12/2004.

8. As I had understood from arguments by Counsel for Mr. Fadl (the Respondent), in order to succeed in their argument that this Court has jurisdiction over Mr Fadl, the Claimants must first prove that this Court has jurisdiction over Mr Fadl before he can be added as a third party under Rule 20.7 of the RDC. As can be seen from the facts elucidated in Justice Sir Jeremy Cooke's judgment, the Claimant brought in Mr Fadl as third

party by invoking Rule 20.7. Rule 20.7 reads:

> "20.7 The Court may order a person to be added as new party if:
>
> (1) it is desirable to add a new party so that the court can resolve all the matters in dispute in the proceedings; or
>
> (2) there is an issue involving the new party and an existing party which is connected to the matters in dispute in the proceedings, and it is desirable to add the new party so that the Court can resolve that issue."

9. There was some anxiety in my mind as to whether any person who wish to bring in, or seeks to be brought in as a third party must first show that this Court has jurisdiction over him instead of just allowing him to invoke Rule 20.7 as the route for him to come in. I must confess that I had read over the relevant parts of Justice Sir Jeremy Cooke's draft judgment a few times, before arriving at the conclusion that his decision is right, and I agree with him.

10. In particular, in my opinion there is no doubt that the words "the DIFC Laws and DIFC Regulations" are used by the legislators to cover all forms of written law, by whatever name it is called, whether such written law is referred to as decree, enactment, regulations, rules or order and irrespective of who enacts them for so long that he is a lawful delegate. Those different designations to any piece of legislation merely depend the level and the purpose for which that written law is made. Therefore, although the RDC is referred to as rules, it must fall with the term the DIFC Rules or DIFC Regulations. To interpret otherwise is to say that the whole of the RDC is totally unlawful. That cannot by any stretch of imagination be the case.

11. The more difficult question to my mind is whether it is proper for Claimant to seek to bring Mr Fadl under the jurisdiction of this Court merely by adding him as a party to the action. Should not anybody who is to be added as a party must first fall within the jurisdiction of the DIFC Court before he can be made a party to the action? At first sight, I placed the third party in the similar position as the Claimant or Defendant, in that he must first fall within the jurisdiction of DIFC before he can be added as a party. It is clear that a Claimant or Defendant must show he can be made a party by going through one of the "getaways" as provided for in paragraph (a) to (d) of Article 5 (A)(1). Alternatively, the parties can opt in at any time before filing the action. But, can a claimant or a defendant or a third party file a claim or defence, or an action or seek to be made a third party and by the act of such filing thereby say he is within the court's jurisdiction?

12. On further perusal of Rule 20.7 of the RDC, I am satisfied that Rule 20.7 cannot be invoked as of right. The claimant, defendant or for that matter anybody seeking to be joined as a party can only do so with the order of the court, which order the judge can only make if the judge considers it desirable to do so. Looking at the facts of this case, there are sufficient circumstances to make it desirable for an order under Rule 20.7 to be made. They include the obvious reason of having to file a duplicate claim, when this one claim maybe able to resolve the issues between the parties of this case.

13. The other reason that strongly influence me to agree with Justice Sir Jeremy Cooke's judgment appear in paragraphs 53 to 56 of his judgment. Justice Sir Jeremy Cooke had given much weight to public policy. As many would agree, the common law courts have been since immemorial been very protective and jealous of their jurisdiction. The courts are not ready to give up their jurisdiction unless they are really legally obligated to do so. In the case of the DIFC Courts, if one goes back into recent history and background as to why the DIFC was in the first place set up by His Highness the Ruler, it was to attract business and to improve the economy of Dubai by introducing English common law into DIFC. The DIFC Courts must be ready to support this policy.

14. I therefore agree to the Orders made by Justice Sir Jeremy Cooke in his grounds mentioned in his concluding paragraphs 62 and 63.

H.E. JUSTICE SHAMLAN AL SAWALEHI

1. I agree with the above mentioned judgment and have nothing further to add.

Issued by:
Ayesha Bin Kalban
Assistant Registrar
Date of issue: 13 March 2019
Time: 11am