

<p><i>In the Name of Allah, Most Gracious, Most Merciful</i></p> <p><u>In Name of His Highness Sheikh Mohammed bin Rashid Al Maktoum, Ruler of Dubai</u></p> <p>In the session held in Dubai Courts building, Chief Justices Meeting room, on Wednesday 11th July 2018.</p> <p>Presided by Dr. Ali Ibrahim Al Imam, Chief Justice of the Cassation Court, and Chairman of the Judicial Tribunal for Dubai Courts and Dubai International Financial Center Courts;</p> <p>and membered by Mr. Michael Hwang, Chief Justice of Dubai International Financial Center Courts;</p> <p>Mr. Khalifa Rashid bin Dimas, The Secretary-general of the Judicial Council;</p> <p>Mr. Essa Mohammad Sharif, Chief Justice, of the Appeal Court;</p>	<p>بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ</p> <p>باسم صاحب السمو الشيخ محمد بن راشد آل مكتوم حاكم دبي</p> <p>باجلسة العلنية المنعقدة يوم الأربعاء 11-7-2018 بمقر محاكم دبي - قاعة رؤساء المحاكم الابتدائية.</p> <p>برئاسة السيد الدكتور/ علي إبراهيم الإمام - رئيس محكمة التمييز ورئيس الهيئة القضائية لمحاكم دبي ومحاكم مركز دبي المالي العالمي،</p> <p>وعضوية السيد / مايكل هوانج - رئيس محاكم مركز دبي المالي العالمي،</p> <p>وعضوية المستشار / خليفة راشد بن ديماس - أمين عام المجلس القضائي،</p> <p>وعضوية السيد / عيسى محمد شريف - رئيس محكمة الاستئناف،</p>
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Mr. Omar Juma Al Muhairi, Appeal Court Judge at DIFC;	وعضوية السيد / عمر جمعة المهيري - قاضي محكمة الاستئناف بمركز دبي المالي العالمي،
Mr. Jasim Mohammad Baqer, Chief Justice of the First Instance Court,	وعضوية المستشار / جاسم محمد باقر - رئيس المحكمة الابتدائية - عضو الهيئة،
Sir David Steel, Judge of the First Instance Court, DIFC;	وعضوية السيد / سيرديفيد استيل - قاضي المحكمة الابتدائية بمركز دبي المالي العالمي،
And in the presence of Mr. Abdul Rahim Mubarak Al Bolooshi, Registrar of the JT.	ويحضور السيد / عبدالرحيم مبارك البلوشي - مسجل الهيئة
<u>Cassation No. 1/2018 (JT)</u>	<u>الطعن رقم 1 لسنة 2018 (هيئة قضائية)</u>
Appellant: Sinbad Marine In. LLC	الطاعن: سندباد مارين ش. ذ. م. م.
Respondents: Essam Abdulameer Hamadi Alfadli Al Tamimi	المطعون ضده: عصام عبد الأمير الحمادي الفضلي التميمي
<u>Judgement</u>	<u>الحكم</u>
Having perused the file and documents and after deliberation.	بعد الاطلاع على الأوراق والمداولات.
The cassation had satisfied the necessary requisites of form; hence it is accepted in form.	حيث أن الطعن استوفي مقوماته الشكلية فهو مقبول شكلاً.

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The relevant facts of this cassation as they appear from the cassation file are briefly as follows:- The appellant filed this application to challenge the jurisdiction of the DIFC Courts with regard to entertaining the award in the arbitration case No. (D-L- 16064) issued by the Dubai International Financial Arbitration Center and the London Court of International Arbitration (DIFC LCIA). It argues that Mr. Essam Al Tamimi – a prominent Emerati Lawyer - was the claimant before the arbitration panel in the DIFC LCIA. The seat of arbitration was Dubai Emirate, and the proceedings were governed by the UAE laws.

As a result of the arbitration proceedings, the award was delivered in favour of the claimant. The appellant filed the case No. 42/2018 before Dubai Court to annul this award.

Essam Al-Tamimi lodged the case No. (ARB-007-2017) before DIFC court seeking the recognition and enforcement of the arbitration award. The appellant contends that this gives rise to a conflict between the two courts i.e. Dubai Court

وحيث أن الوقائع تتحصل - بإيجاز - فيما يلي،- أقامت الطاعنة هذا الطلب للطعن به في سلطة محاكم مركز دبي المالي العالمي فيما يختص بنظر حكم التحكيم الصادر عن مركز تحكيم دبي المالي العالمي ومحكمة لندن للتحكيم الدولي رقم (دبي- ال 16064) وتقول الطاعنة إن السيد عصام التميمي - محامي بارز - هو المدعي في الدعوى التحكيمية أمام مركز تحكيم دبي المالي العالمي ومحكمة لندن للتحكيم الدولي. وإن مكان التحكيم في إمارة دبي وتطبق في الإجراءات قوانين دولة الإمارات العربية المتحدة .

ونتيجة لإجراءات التحكيم فقد صدر حكم التحكيم لمصلحة المدعي . وأقامت الطاعنة القضية رقم 2018/42 أمام محكمة دبي لإبطال حكم التحكيم.

وأقام عصام التميمي القضية رقم (ARB-007-2017) أمام مركز دبي المالي العالمي طالباً التصديق على حكم التحكيم وتنفيذه. وتقول الطاعنة إن هذا يؤدي إلى

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and the DIFC Court. As the DIFC LCIA arbitration center and the DIFC courts are separate entities, the DIFC Courts would not automatically have jurisdiction to recognize and enforce an award from the DIFC LCIA Arbitration Center unless the seat of arbitration was the DIFC. In addition the claimant in the arbitration case is an Emirati Citizen and the defendant is a company that has been based in Dubai Emirate for over 35 years with no branches or assets elsewhere.

For the reasons set out above, the appellant requests from the JT to accept its challenge to the jurisdiction of DIFC courts and to decide that the competent court to determine the case is Dubai court. The respondent lodged a memorandum of defense requesting the JT to dismiss the cassation because the DIFC court proceedings were over and the order issued by that court had become final and executory .

The background of the arbitration case between the two parties is as follows: The claimant, lawyer, Essam Al-Tamimi, purchased a Yacht from the defendant (Appellant) in March 2014. The yacht was built in Sharjah in 1989. The agreement between the parties provided that the yacht should be renovated by the

تنازع في الاختصاص بين المحكمتين ، أي محكمة دبي ومحكمة مركز دبي المالي العالمي. وبما أن مركز التحكيم المالي العالمي ومركز دبي المالي العالمي هما كيانان منفصلان لا تكون محاكم مركز دبي المالي العالمي بصورة تلقائية صاحبة الاختصاص في التصديق وتنفيذ حكم التحكيم الصادر من مركز تحكيم مركز دبي المالي العالمي ومحكمة لندن للتحكيم الدولي.

أودع المطعون ضده مذكرة بدفاعه التمس فيها رفض الطعن تأسيساً على أن الاجراءات قد انتهت وانقضت واصبح الحكم الصادر من محكمة مركز دبي المالي العالمي نهائياً وتنفيذياً.

إن خلفية الدعوى التحكيمية بين الطرفين تتحصل في أن المدعي المحامي عصام التميمي اشترى يخت من المدعي عليها (الطاعنة) في مارس 2014. وكان اليخت قد بني في الشارقة في 1989، ونصت الاتفاقية المبرمة بين الطرفين على تجديد اليخت بواسطة المدعي عليها الطاعنة. وقد نشأ

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<p>appellant. A dispute arose between the parties regarding the progress and quality of the works. Consequently the respondent filed the case No. (D-L-1664) before the DIFC-LCIA Arbitration Center.</p> <p>Article 14 (4) of the agreement for the renovation of the Yacht provided that if the parties have been unable to resolve any dispute between them, then the dispute must be referred to and finally resolved by arbitration administered by the DIFC LCIA Arbitration Center in accordance with its rules.</p> <p>Despite the fact that the DIFC and the DIFC –LCIA (the Arbitration Center) are separate entities, yet the DIFC –LCIA Arbitration Center had been established in the DIFC. Accordingly, the supervising court of the arbitration should be the DIFC court and not Dubai Court.</p> <p>Therefore the cassation should be dismissed .</p>	<p>نزاع فيما بين الطرفين حول تقدم سير العمل وجودته . ونتيجة لذلك اقام المطعون ضده الدعوى التحكيمية رقم (D-L-1664) امام مركز تحكيم مركز دبي المالي العالمي ولندن للتحكيم الدولي.</p> <p>ينص البند 14 (4) من اتفاقية تجديد اليخت على أنه في حالة عدم قدرة الطرفين على حل أي نزاع ينشأ بينهما على إحالة النزاع لحله نهائياً عن طريق التحكيم بواسطة مركز تحكيم مركز دبي المالي العالمي ولندن للتحكيم الدولي وفقاً لقواعده.</p> <p>هذا وبالرغم من أن مركز دبي المالي العالمي ومركز تحكيم مركز دبي المالي العالمي ولندن للتحكيم الدولي كيانان منفصلان إلا أن مركز تحكيم مركز دبي المالي العالمي منشأة في مركز دبي المالي العالمي، ولهذا تكون محكمة مركز دبي المالي العالمي هي المناط بها مراقبة حكم التحكيم المشار إليه وليست محكمة دبي.</p> <p>لهذا يجب رفض الطعن.</p>
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<p><u>For the foregoing reasons, the Judicial Tribunal decides:-</u></p> <p>(1) The cassation is dismissed. (2) The DIFC Court is the competent court to entertain the case. (3) The appellant must pay the fees and AED 2000 as an advocates costs, and the deposit is forfeited.</p> <p>Justices Michael Hwang, Omar Al Muhairi and Sir David Steel agree with the first and third decisions of the majority, i.e.:</p> <p>(1) The cassation is dismissed; and (3) The appellant must pay the fees and 2000 dirhams as advocates costs, and the deposit is forfeited.</p> <p>However, they do not agree with the second decision of the majority, (i.e. The DIFC Court is the competent court to entertain the case), for the enclosed reasons.</p>	<p><u>للأسباب السالفة الذكر تحكم الهيئة القضائية:-</u></p> <p>(1) رفض الطعن (2) محكمة مركز دبي المالي العالمي هي المختصة بنظر الدعوى. (3) تلزم الطاعنة بالمصروفات ومبلغ ألفي درهم مقابل اتعاب المحاماة مع مصادرة التأمين.</p> <p>المستشارين مايكل هوانج وعمر المهيري وسيرديفيد استيل يتفقون مع القرارين الأول والثالث الصادرين عن الأغلبية، أي:</p> <p>(1) رفض الطعن و (3) إلزام الطاعنة بالمصروفات ومبلغ ألفي درهم مقابل اتعاب المحاماة مع مصادرة التأمين.</p> <p>إلا أنهم لا يتفقون مع الأغلبية على القرار الثاني (محكمة مركز دبي المالي العالمي هي المختصة بنظر الدعوى)، وذلك للأسباب المرفقة.</p>
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CASSATION NO 1 OF 2018
SINDBAD MARINE INC. LLC V ESSAM AL TAMIMI

DECISION OF MINORITY

We agree with the first and third decisions of the majority, i.e.:

- a) The cassation is dismissed; and
- b) The appellant must pay the fees and 2000 dirhams as advocates costs, and the deposit is forfeited.

However, we do not agree with the second decision of the majority, i.e. the DIFC Court is the competent court to entertain the case.

We set out below our reasons.

- 1.1 The application which was filed in the DIFC Courts was for the DIFC Courts to recognize and enforce the Arbitration Award. Because DIFC is a separate arbitral jurisdiction from onshore Dubai, it has independent jurisdiction to recognize and enforce Arbitration Awards from other seats or arbitration jurisdictions. That jurisdiction is a separate jurisdiction from the jurisdiction of Dubai Courts, which are the sole Court with jurisdiction to hear and decide an application for setting aside as the Court of the seat.
- 1.2 The position in law therefore is that our two Courts have concurrent jurisdiction. Each Court is competent to decide the matters concerning the case happening within its jurisdiction according to its own arbitration laws. In the case of the DIFC Courts, the relevant law is Article 42(1) of DIFC Arbitration Law No 1 of 2008, which is in the following terms:-

“An arbitral award, irrespective of the State or jurisdiction in which it was made, shall be recognised as binding within the DIFC and, upon application in writing to the DIFC Court, shall be enforced subject to the provisions of this Article and of Articles 43 and 44. For the avoidance of doubt, where the UAE has entered into an applicable treaty for the mutual enforcement of judgments, orders or awards the DIFC Court shall comply with the terms of such treaty.” (emphasis added)

- 1.3 But if the application is for setting aside, then Article 41(1) of the same law will apply:-

“Recourse to a Court against an arbitral award made in the Seat of the DIFC may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this Article” (emphasis added).

This means that the DIFC Courts can only set aside awards which are issued by a tribunal seated in the DIFC.

- 1.4 In fact, the DIFC Courts have already issued an Order for recognition and enforcement of this Arbitration Award, and there is nothing further for the DIFC Courts to do in this case.
- 1.5 However, if there is an application by the winning party under the Award (Mr Essam Al Tamimi) to levy execution on the decision of the DIFC Courts in onshore Dubai, then Mr Tamimi will need to proceed in Dubai Courts under Article 7(2) of Dubai Law no 12 of 2004 (as amended by Dubai Law No. 16 of 2011) (the "Judicial Authority Law"), which provides as follows:-

"Where the subject matter of execution is situated outside the DIFC, the judgments decisions and orders rendered by the Courts (which term is defined in this Law as the DIFC Courts) and the Arbitral Awards ratified by the Courts shall be executed by the competent entity having jurisdiction outside DIFC (i.e. by Dubai Courts) in accordance with the procedure and rules adopted by such entities in this regard, as well as with any agreements or memoranda of understanding between the Courts and these entities..." (emphasis added)

2. If and when that happens, then Dubai Courts will deal with that application as the law requires, and no doubt consider the effect of the pending application by the Applicant (Sinbad) to set aside the Arbitration Award. Accordingly, this is a relatively common situation in international arbitration where the winner of an arbitration case will try to enforce its Award in any other arbitration jurisdiction it chooses, and recognition and enforcement will be given by all the jurisdictions which have signed the New York Convention 1958 (which the UAE acceded to in 2008).
3. However, if the loser of the arbitration case manages to apply to the Court of the seat to set aside the Award, and is successful in that application, then (save for very exceptional situations which probably do not apply in this case) the recognition and enforcement of the original Award in other jurisdictions will either be denied or cancelled.
4. In the present case, the seat of the arbitration is onshore Dubai, and therefore Dubai Courts are the only court with jurisdiction to set aside the Award. DIFC Courts can deal (as it has) with an application for recognition and enforcement of the Award, but not an application for setting aside.

Accordingly, in our respectful view, the correct decision in this case should be that there is no conflict of jurisdiction because the case is over in the DIFC Courts, and the setting aside

application in Dubai Courts can still proceed, and indeed should proceed, otherwise the appellant will have no place to go to set aside the Award.

And it therefore follows that, in addition to the first and third decisions of the majority, a further order should be made that both Dubai Courts and DIFC Courts may make such orders as the relevant laws relating to their respective jurisdictions may allow, and the setting aside application in Dubai Courts should be allowed to continue.

Chief Justice Michael Hwang

Deputy Chief Justice Sir David Steel

HE Justice Omar Al Muhairi

