THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

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

IN THE COURT OF FIRST INSTANCE

BETWEEN

PEACE

Claimant/Respondent

and

POSIE

Defendant/Appellant

ORDER WITH REASONS OF H.E. JUSTICE ROGER STEWART

UPON the claim having been filed on 30 June 2025 (the "Claim")

AND UPON the Judgment of H.E. Justice Maha Al Mheiri dated 18 May 2026 (the "Judgment") giving judgment for the Claimant (the "Judgment")

AND UPON considering the Defendant's Appeal Notice dated 1 June 2026 seeking permission to appeal the Judgment (the "Permission to Appeal Application")

AND UPON considering the Claimant's Reply to the Permission to Appeal Application dated 16 June 2026

AND PURSUANT TO Part 4 and Part 53 of the Rules of the DIFC Courts ("RDC")

IT IS HEREBY ORDERED THAT:

1. The Permission to Appeal Application is refused.

2. There shall be no order as to the costs of the Permission to Appeal Application.

Issued by:
Delvin Sumo
SCT Judge and Assistant Registrar
Date of issue: 31 August 2026
At: 11am

SCHEDULE OF REASONS

The Parties

1. The Claimant is Peace, the owner of Apartment Unit in���DIFC, Dubai, UAE.

2. The Defendant is Posie, owner of Apartment Unit in DIFC, Dubai, UAE.

Background and Procedural History

3. The Defendant's apartment is located above that of the Claimant, DIFC Building. As set out in the Judgment from shortly after the Defendant took handover of his apartment in March 2023, there have been problems of water leakage which appear to have been from the Defendant's apartment into the Claimant's apartment.

4. Thereafter:

(a) The Defendant engaged contractors to undertake refurbishment works including waterproofing to wet areas which were signed off in July 2023;

(b) During the course of testing and refurbishment, there were further complaints of water leakage which led to remedial works and the repair of damage to the Claimant's ceiling in or around October 2023;

(c) In December 2024 and January 2025 further complaints were raised by the Claimant and the Defendant also recorded issues of odours in his own apartment which led to discussions between the parties and with building management in February 2025;

(d) There was no agreement between the parties as to the scope and methodology of the inspection and whether alternative remedial measures should be taken; and

(e) On 30 June 2025, the Claimant filed a claim in the SCT seeking remedial works, AED 1,890 for repair of the Claimant's ceiling and AED 11,550 in legal costs.

5. The central issues in the dispute revolved around responsibility for the problems which appear, undoubtedly, to have occurred and as to the appropriate method of resolution.

The Course of the Proceedings in the SCT

6. After the Defendant filed an acknowledgment of service on 7 July 2025, the parties met for a consultation with SCT Judge Delvin Sumo on 18 August 2025. Unfortunately, no resolution was reached with the result that a hearing took place with the Judge on 25 September 2025.

7. She considered that, given the nature of the dispute, it was desirable that an independent expert be appointed and issued an order on 30 September 2025 with the following material provisions:

(a) Paragraph 1 required the parties to agree on an expert in the field of building construction and waterproofing diagnostics by no later than 10 October 2025;

(b) Paragraph 2 required, that in the event there was no agreement, each party should nominate 2 individuals to the Registry with the Registry appointing an expert taking into consideration the experience of the individual, the suitability of the individual to provide a report and the rates charged;

(c) Paragraph 3 identified the issues to be addressed by the expert;

(d) Paragraph 4 required the report to be provided within 14 days of appointment;

(e) Paragraph 5 required the parties to provide their comments no later than 7 days from the date of filing of the expert report;

(f) Paragraph 6 required the parties to be jointly and severally liable for the expert's fees and expenses with provision for this to be altered by the Court in due course; and

(g) Paragraph 7 provided for the claim to be stayed pending submission of the expert report and the parties' responses.

8. It can be seen that the plain intention of the judge was that the appointment of the expert and the provision of the report was to take place swiftly so that the case could be determined.

9. The parties did not agree on an expert. On 10 October 2025, the Claimant filed a quotation from Petronilla for acting as an expert in the sum of AED 6,825 including VAT. The Claimant then filed a second quotation from Pompey in the sum of AED 2,835 including VAT which was valid until 1 November 2025. There is no record of the Defendant having filed quotations for the investigation work although in his application of 15 December 2025 (referred to below), it appears that he did obtain a quotation on 17 October 2025 from Pinchas for some limited repair work in the sum of AED 1,100. This was plainly not investigative work. It appears that he also obtained a quotation in June of 2025 for different and more extensive repair work from Pryce. This was, again, not for investigative work.

10. On 12 November 2025, the Registry appointed Pompey to be the expert. Unfortunately, that company was not prepared to proceed with the quotation, which was, by then, past its stated period of applicability, with the consequence that the Registry appointed Petronilla on 5 December 2025 and reminded the parties that the report was required within 14 days of appointment - that is by 19 December 2025.

11. Thereafter:

(a) On Monday 8 December, the Claimant sought 3 timing options from the Defendant for Petronilla to visit the Defendant and his apartment with a requirement that the visit take half a day; and

(b) The Defendant did not respond and the Claimant sent a reminder on Thursday 11 December to which the Defendant said that he was out of the country and would respond the following week.

12. On Monday 15 December 2025, the Defendant issued an application seeking two forms of relief:

(a) "That any expert appointment be limited to a proportionately priced scope and must include investigation of water ingress from above Apartment"; and

(b) That the Tribunal direct implementation of the remedial solution identified by Pheba, Pinchas and Pryce".

13. Thereafter:

(a) On Tuesday 16 December, the Claimant again sought dates for access from the Defendant;

(b) On Wednesday 17 December, the Registry sought an update by the following day to which the Claimant responded stating that dates for access were awaited from the Defendant;

(c) The Registry then stated to the parties that it requested that the Defendant immediately respond to the Claimant's request and move forward with the expert report;

(d) The Defendant then sent two emails:

(i) The first stated that he was out of the country and could not arrange access but proposed dates on Saturday or Sunday 20 and 21

December between 12pm and 3pm; and

(ii) The second, addressed to the Registry referred to his application and asked for an urgent hearing to discuss the same;

(e) The Claimant immediately responded to the first email stating that access was required during the working week and asked for dates from 22 December with either a morning or an afternoon slot and also stated that the parties would be required to pay equal shares of the required fee;

(f) No response was received with the result that the Claimant sent a follow up email on 30 December 2025;

(g) On 8 January 2026, the Claimant again sought three time-slots during the working week for the inspection;

(h) On the same day, the Registry stated that it was imperative that the expert report be provided no later than 4pm on 15 January 2026;

(i) On 15 January 2026, the Claimant informed the Registry that no dates had been provided for access by the Defendant;

(j) On 21 January 2026, the Registry stated that if the Defendant failed to respond by the end of the week, the Court would proceed and required a response no later than 23 January 2026;

(k) On the same day, the Claimant sought a response to his email to the Registry requiring an urgent hearing;

(l) On 22 January 2026, the Claimant stated to the Registry and the Defendant that the Defendant had failed to cooperate and respond in providing access to the expert;

(m) The Registry responded the following day stating that the application would be addressed by the Judge in the final judgment;

(n) No response was then received until 10 February 2026 when the Defendant offered dates to which the Claimant responded that the email was "out of sequence with the chronology" and set out parts of the material history.

The Judgment

14. After summarising the background facts, the Judge:

(a) Stated (at [12]) that after an initial hearing before her, the Court "directed the parties to appoint an independent expert to investigate the root cause of the leakage. The parties failed to agree on an expert or scope, and the Defendant ultimately refused to pay the expert's fees or permit access to his apartment. The Court therefore reserved judgment based on the evidence available."

(b) Stated (at [14 - 15]) "The central issue is the source of water leakage affecting Unit and liability for resulting damage. The Court had directed the appointment of an independent expert; however, the Defendant objected to the first expert and later refused access to a second appointed expert."

"This refusal prevented completion of an independent technical investigation. The Court therefore proceeds on the basis of the available evidence, including expert material submitted by the Claimant."

(c) Referred at [16] to remedial proposals referred to by the Defendant in an email from Pheba dated 29 January 2025 but stated that the proposal was not supported by formal diagnostic testing or expert verification of causation;

(d) Referred at [17] to [21] to an expert report prepared by Paityn by building management in February 2025 and its conclusions;

(e) Stated at [22] that is a well-established principle that the Court may draw an adverse inference against a party who prevents the production of relevant evidence within their control;

(f) Acknowledged that [23] the Defendant's argument that the coring hole may pre-date his ownership but referred to the Paityn report to improper treatment within the waterproofing system linked to the Defendant's works;

(g) Identified at [24] that the recommended remedial works required intervention from the Defendant's apartment to reinstate waterproofing integrity;

(h) Found:

(i) At [25] that in the absence of competing expert evidence "and in light of the Defendant's obstruction" that the Claimant's expert report constituted the most reliable evidence available;

(ii) At [26] that the water leakage originated from the Defendant's apartment and was liable for damage caused to the Claimant's ceiling;

(i) Ordered the Defendant to undertake remedial works and pay the Claimant AED 1,890 for repairs to the ceiling at [27]; and

(j) Refused to make an order for legal fees at [29] save in respect of the Court filing fee.

The Test for Permission to Appeal

15. The circumstances in which the Court of First instance may give permission to appeal, are strictly circumscribed by Article 21 of the DIFC Courts Law No. 2 2025 which provides:

"21. Appeals Against Small Claims Tribunal Judgments

A. Judgments of the Small Claims Tribunal may be appealed before the Courts of First Instance in accordance with the procedures established under the DIFC Laws, DIFC Regulations, Rules of the Courts or any Practice Direction or Order issued by the DIFC Courts, where the appeal relates to:

1. A question of law

2. An allegation of a miscarriage of justice

3. An issue of procedural fairness; or

4. A matter provided for in or under DIFC Laws."

16. There is no right to appeal on questions of fact. This is unsurprising given that hearings before the SCT are intended to be informal as set out in RDC 53.51 and that the strict rules of evidence do not apply as set out in RDC 53.53.

17. It should be noted that the SCT procedures are intended to be straightforward and not unduly legalistic. This is a necessary consequence of seeking to make justice available at proportional cost and within a reasonable time period.

The Proposed Grounds of Appeal

18. There are 9 grounds of appeal.

19. The first is the failure to address the urgent application of 15 December 2025 which it had been stated in the email of 22 January 2026 would be addressed in the final judgment. The Defendant contends that there were three substantive matters raised by the application namely:

(a) The alleged disproportionate cost of the Petronilla report;

(b) The sufficiency of the evidence before the Tribunal; and

(c) The procedural basis of the appointment.

20. The Defendant also contends that "the Tribunal's silence on the Urgent Application underpins its late finding at [12] of the Judgment that the Appellant had failed to engage with the expert process".

21. It is correct that the Judgment does not expressly deal with the Defendant's application of 15 December despite the email from the Registry of 22 January 2026 stating that it would do so.

22. I consider that the fact that the Judgment did not deal with the application, in circumstances where it had been stated that it would, can fairly be stated to amount to a procedural irregularity. I further consider that the Judgment should have dealt with the application, albeit no doubt briefly, in order to explain why it had no bearing on the conclusions reached by the Judge.

23. Despite finding that there was a procedural irregularity, I do not consider that it gives rise to a real prospect of success in relation to this appeal for the following reasons.

24. First, the Grounds of Appeal mis-state the ambit of the application which I have set out at paragraph 12 above. Two forms of relief were sought not three. Further, in relation to those grounds of relief:

(a) The first sought both a limitation and extension of the scope of the expert report which had been ordered almost two and a half months previously on 30 September 2025;

(b) The second sought immediate relief when the Judge had already indicated she required an independent report before considering the merits of the dispute; and

(c) There was no prospect of either form of relief being granted, particularly in circumstances where the report was meant to have been made available urgently and where there was a contractor ready, willing and able to carry out the inspection which was required and had already been ordered.

25. Secondly, it was made completely clear to the Defendant that his application did not operate to stay the previous order or the requirement for the appointment of an expert. The repeated emails and reminders from the Registry which I have set out above were clear and specific. The Defendant had no entitlement or expectation that he was entitled not to facilitate the inspection which was plainly required for the expert process to go ahead. In particular he was told in terms, that in the absence of compliance by 23 January the Court would determine the matter without the expert evidence it desired.

26. Thirdly I do not consider that the failure to deal expressly with the application did underlie the holding at [12] that the Defendant failed to engage with the expert process. The detailed history I have set out above shows that there was overwhelming evidence to support this finding. The Defendant had repeated opportunities to offer dates for inspection during the working week but did not do so until February 2026 after he had been told that the final time limit was 23 January 2026.

27. The second ground of appeal is that the Tribunal was wrong to find that the parties failed to appoint an independent expert and that the Appellant failed to pay the expert's fees and permit access to his apartment.

28. When the chronology I have set out above is considered, it is plain this ground is hopeless. There was no agreement as to a jointly appointed

expert. The Defendant did not nominate any expert who was capable of carrying out an investigation (as distinct from remedial works). The Defendant did not offer access during the working week until February 2026 despite the numerous reminders he was given and the fact that he was told that 23 January 2026 was the final time for inspection.

29. The third ground is that the adverse inference relied on by the Judge at [22] is unsupported. This ground is also hopeless given the chronology. The only dates offered before 23 January (itself more than a month after the report should have been produced) were two 3 hour slots on a Saturday and Sunday afternoon. The Defendant does not suggest that the reality was that it was impossible to provide access for half a day during the working week. He had every opportunity to provide access but chose not to do so. In the circumstances there was plainly a proper basis for the inference the Judge drew.

30. The fourth ground is that the Judge was wrong to base her findings on the evidence before her rather than an independent report. This is also hopeless. The Judge had wanted an independent report, but the Defendant obstructed it. She therefore had to proceed on the basis of the evidence before her. The challenges as to assessment of evidence are inadmissible as they go to findings of fact.

31. The fifth ground is that the judgment was issued whilst the case was stayed. This is also hopeless. The purpose of the stay was to get expert evidence. The Registry's email of 21 January 2026 made it clear that in the absence of the expert evidence, the matter would proceed - as it subsequently did.

32. The sixth ground is an alleged failure to give weight to particular recommendations and the pre-existing state of the apartment. This squarely raises issues of fact, which were considered by the Judge. They cannot form grounds for an appeal from the SCT.

33. The seventh ground is that an alleged direction of the Tribunal dated 6 February 2026 was not executed. No such direction has been produced and its existence is incompatible with the documentary record. The offer of dates on 10 February was 18 days after the Defendant had been directed to respond and was made on an email chain with the previous email of 30 December. The ground is misconceived.

34. Ground 8 is a complaint about the amount of damages awarded. The relatively modest amount was originally claimed. Its assessment is a matter of fact. There is no admissible ground of appeal.

35. Ground 9 is a complaint about failure to address ingress into the Defendant's apartment. This is, again, a factual issue which cannot be appealed. Further it is very difficult to see its relevance given that the dispute was with the Claimant who was below the Defendant.

Conclusion

36. Although I have found that there was a procedural irregularity in failing to deal with the Defendant's 15 December application, I nonetheless refuse permission to appeal for the reasons set out.

37. In the circumstances I do not consider it appropriate to make any order for costs.