THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

COMMERCIAL BANK OF DUBAI PSC

Claimant

and

(1) M/S TOTORA RESTAURANT AND LOUNGE LLC

(2) ALI ABDULLAH AL SIDANI

(3) SHAIKHA RANEYA HAMAD MUBARAK HAMAD AL KHALIFA

(4) AHMAD MOHAMED RAMADHAN AL RAFEI

Defendants

ORDER WITH REASONS OF JUDICIAL OFFICER NASSIR AL NASSER

UPON reviewing the Claimant's Application No. CFI-047-2017/5 dated 14 May 2018 (the "Application") seeking an order that Notice of Commencement of Assessments of Costs dated 22 April 2018, be struck out because the assessment proceedings commenced prematurely in breach of Rule 40.1 of the Rules of the DIFC Courts ("RDC"), and an Order that the Third Defendant pay the Claimant's wasted costs of the assessment proceedings and the costs of this Application;

AND UPON reviewing the Third Defendant's response to the Application;

AND UPON reviewing the order of H.E. Justice Ali Al Madhani dated 11 March 2018;

IT IS HEREBY ORDERED THAT:

1. The Application is dismissed.

2. The Claimant shall pay the Third Defendant costs of the Application, to be assessed by the Registrar if not agreed.

Issued by:

Ayesha Bin Kalban

Assistant Registrar

Date of issue: 21 June 2018

At: 10am

SCHEDULE OF REASONS

Introduction

1. The Applicant, as Claimant in the proceedings, has requested that the Notice of Commencement of Assessment of Costs filed by the Third Defendant on 22 April 2018 be struck out as it is in breach of RDC 40.1. It also has applied for an Order that the Third Defendant pay the Claimant's wasted costs of the assessment proceedings and the costs of this Application.

Procedural Background

2. The Third Defendant on 31 January 2018 filed an Application to strike out the witness statement of Rebecca Copley, Counsel of record for the Claimant, filed as part of the Claimant's evidence in answer to the Third Defendant's Application contesting jurisdiction dated 7 December 2017.

3. On 11 March 2018, H.E. Justice Ali Al Madhani issued an order granting the Third Defendant's application dated 31 January 2018 and ordered the Claimant to pay the costs of the Third Defendant's Application to be assessed by the Registrar if not agreed.

4. Subsequently, the Third Defendant filed the Notice of Commencement of Assessment of Costs on 22 April 2018.

The Parties' Arguments

5. The Claimant argues that the general rule is that the costs of any proceedings or any part of the proceedings are not to be assessed by the detailed procedure until the conclusion of the proceedings. However, the Court may order them to be assessed immediately.

6. The Claimant adds that the Third Defendant's bill relates to costs incurred in respect of an interim application, namely, the Third Defendant's application to strike out the First Witness Statement of Rebecca Copley.

7. The Claimant also argues that the order dated 11 March 2018 does not order the Third's Defendant application costs to be assessed immediately, and since the substantive proceeding remain ongoing, the Third Defendant has commenced assessment proceedings prematurely, in breach of Rule 40.1 of the RDC.

8. The Claimant also requests an order that the Third Defendant pay the Claimant's wasted costs of the assessment proceedings and the costs of this Application, to be assessed if not agreed.

9. On the other hand, the Third Defendant argues that the Claimant's Application is based on the incorrect premise that the Third Defendant commenced the Detailed Assessment prematurely and in breach of RDC 40.1. The Third Defendant rejects this argument entirely and maintains that the Detailed Assessment was commenced at the proper time and in accordance with the directions of the Court and the Registry. Furthermore, the Third Defendant asserts that Claimant's Application appears to be an effort to avoid paying costs rightfully recoverable by the Third Defendant, and to force the Third Defendant to incur further unnecessary costs by responding to the Claimant's Application.

10. The Third Defendant also argues that RDC 40.1 states that "the general rule is that the costs of any proceedings or any part of the proceedings are not to be assessed by the detailed procedure until the conclusion of the proceedings."

11. In addition, the Third Defendant's position that the part of the proceedings subject to the Order had concluded, because the application addressed by the Order had been granted and was unrelated to any ongoing portion of the proceedings. It is therefore the Third Defendant's position that the Detailed Assessment became available to her when the parties were unable to agree costs.

Discussion

12. RDC 40.1 states that "the general rule is that the costs of any proceedings or any part of the proceedings are not to be assessed by the detailed procedure until the conclusion of the proceedings. However, the Court may order them to be assessed immediately."

13. The Application dated 31 January 2018, was clearly to strike out the Witness Statement of Rebecca Copley, in which the Judge granted the application by way of an Order dated 11 March 2018 which provided that costs of that application were to be assessed if not agreed.

14. However, the parties failed to agree which led the Third Defendant to file a Notice of Commencement of Assessment of Bill of Costs.

15. I believe that the Judge was fully aware that the Application dated 31 January 2018 was concluded. If the Application was not concluded the Judge would have ordered that costs shall be in the case.

16. Pursuant to RDC 36.30 "A Judgment or Order takes immediate effect from the time on the day when it is given or made, or such later time or date as Court may specify."

17.Therefore, pursuant to RDC 36.30, the Third party's Notice of Commencement of Assessment of Bill of Costs was actually pursuant to the Order of H.E. Justice Ali Al Madhani dated 11 March 2018.

Costs

18.As regards this Application, I find it appropriate to apply the default rules as to costs, pursuant to RDC 38.7. Thus, as the Claimant's Application has been dismissed in full, the Claimant shall be liable for the Third Defendant's costs as to this Application. The parties are free to agree on the costs within 30 days of the issuance of this Order and should the parties fail to agree, such costs may be assessed by the Registrar of the DIFC Courts.