THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

ARCHITERIORS INTERIOR DESIGN (L.L.C)

Claimant

and

EMIRATES NATIONAL INVESTMENT CO (L.L.C)

Defendant

ORDER WITH REASONS OF H.E. JUSTICE ROGER STEWART

UPON the Part 7 Claim Form dated 24 April 2024

AND UPON the Case Management Order of H.E. Justice Maha Al Mheiri of 8 October 2024 (the "CMO")

AND UPON hearing Counsel for the Claimant and Counsel for the Defendant at the Pre-Trial Review before H.E. Justice Roger Stewart on 2 June 2025

AND UPON hearing Counsel for the Claimant and Counsel for the Defendant at the Trial listed on 30 June 2025 to 3 July 2025 before H.E. Justice Roger Stewart (the "Trial")

AND UPON the Judgment of H.E. Justice Roger Stewart dated 31 July 2025 (the "Judgment")

AND UPON the Defendant's submissions on costs and interests dared 31 July 2025

AND UPON the Claimant's submissions on costs and interests dated 8 August 2025

AND UPON the Claimant's response to the Defendant's submission on costs and interests dated 12 August 2025

AND UPON the Defendant's reply submissions to the Claimant's responsive submissions on costs and interests

AND PURUANT TO the Rules of the DIFC Courts (the "RDC")

IT IS HEREBY ORDERED THAT:

1. The Judgment be corrected so that the first sentence of paragraph 25 of the reasons reads "I do not consider."

2. The Defendant is to pay interest on the judgment sum of AED 522,796.53 to 19 August 2025 and continuing at a daily rate of AED 670.61 until payment.

3. The Defendant is to pay the Claimant the costs assessed at AED 935,778.83.

Issued by:
Delvin Sumo
Assistant Registrar
Date of Issue: 22 August 2025
At: 8am

SCHEDULE OF REASONS

1. On 31 July 2025, the Court circulated its substantive judgment to the parties and, at paragraph 2 of the Judgment and paragraph 68 of the Reasons, the Court directed the parties to check the Court's figures and to seek to agree issues in relation to interest and costs or, in the absence of agreement, to set out their respective positions by 7 August 2025 in relation to the same.

2. The parties agreed that the Court's figures were correct although the Defendant pointed out a typographical error at paragraph 25 of the Judgment where the word "not" was omitted in the first sentence which should commence "I do not consider."

3. The parties were, however, unable to agree to the issues of interest or costs and accordingly filed submissions relating to the same on 7 August. On 11August, without permission from the Court, the Claimant filed responsive submissions claiming that the Defendant's submissions were not those permitted by the Court. The Defendant objected to those submissions and, in the alternative, sought permission to put in its own responsive submissions. The Court permitted the Defendant to do this, and the Defendant filed further submissions on 15 August.

4. I would observe that, although the submissions filed by the Defendant did not, in my view, go beyond those permitted by the main judgment, the

responsive submissions were nonetheless of assistance and I have taken account of all four sets of submissions.

Interest

5. The Claimant seeks simple interest at a rate of 9% per annum on the judgment sum of AED 2,719,662.58 from 2July 2023, being 7 days after the statement at completion was issued until payment. This was in accordance with its claim in the proceedings and, indeed, both parties had claimed interest at 9%.

6. The total claimed until 7 August 2025 amounted to AED 514,749.21 and continuing at a daily rate of AED 670.61.

7. The Defendant objected to the claim for interest on the basis:

(a) That Particular Condition 14.8 of the contract precluded such recovery; and

(b) The Claimant failed to recover more than the amount the Defendant had already agreed was owing to the Claimant less the amount due on the counterclaim.

8. The Claimant, in its Response, asserted:

(a) That clause 14.8 was limited to a claim for finance charges under sub-clause 14.7 and did not apply to a claim for statutory interest; and

(b) That the position now taken by the Defendant was contrary to its own claim for interest at a rate of 9%.

9. I consider that the Claimant's first point is correct. As to this:

(a) Both of the standard Red Book sub-clauses 14.7 and 14.8 were substantively amended by the Particular Conditions;

(b) The term "financing charges" is well understood in the contracting industry to be a claim for damages arising as a result of late or insufficient payments;

(c) It is separate and distinct from a claim for statutory interest;

(d) The parties could have agreed to preclude a claim for statutory interest but they did not; and

(e) As such the claim is not precluded and is properly claimable.

10. As to the second point:

(a) The Defendant did take the point as to sub-clause 14.8 precluding recovery of interest in its Defence and Counterclaim;

(b) It is true that it, itself, made a claim for statutory interest in its Defence and Counterclaim; and

(c) Although this did, perhaps, throw into sharp relief how unattractive its position was, it would have been valid if that had been the parties' agreement - but it was not.

11. As to the Defendant's point that the Claimant failed to recover more than the Defendant had agreed was owing to the Claimant on its claim less the counterclaim:

(a) The Defendant has not paid any part of the judgment sum to the Claimant;

(b) This is because it claimed to be entitled to set off, as a defence, its Counterclaim;

(c) It is also not the case that there was any clear agreement as to sums due to the Claimant - particularly given the Defendant's departure from the position taken by the Engineer;

(d) To the extent of the judgment sum, the Defendant's defence of set-off failed; and

(e) I consider that the Claimant is, accordingly, entitled to interest on the amount of the judgment sum.

12. I accordingly award interest as sought by the Claimant on the judgment sum amounting to AED 522,796.53 to 19 August 2025 and continuing at a daily rate of AED 670.61 until payment.

Costs

13. The Claimant seeks total legal costs to 31 July 2025 of AED 1,683,686.18 on the basis that it was the successful party in the litigation amounting to:

(a) AED 651,000 for Hamdan Al Shamsi's fee;

(b) Court fees of AED 156,059.95;

(c) Total expert costs of AED 682,500 including AED 52,500 from CBBG Group Construction Expert Services;

(d) An advocate's fee of AED 183,750; and

(e) Other costs of AED 10,376.23.

14. The Defendant seeks its own costs on the basis:

(a) That it was actually the real victor of the proceedings;

(b) That the Claimant should never have brought the claim and failed to agree and pay the sums it owed to the Defendant; and

(c) It only brought the claim as a vehicle to put forward exaggerated claims.

15. It also seeks to reduce the sums payable by pointing to

(a) Exaggerated claims by the Claimant, in particular relating to the specification claim and the effect of the MOM settlement;

(b) The fact that the Claimant called no expert from CBBG Group;

(c) The lack of particularization of the other costs of AED 10,376.23; and

(d) The fact that the Claimant appeared to be seeking to recover VAT of 5% which would be recoverable.

16. n response, aside from contesting the allegations as to who was the real winner and the basis upon which the case was run, the Claimant asserted:

(a) That the Claimant's solicitor was engaged on the basis of an hourly rate with a cap and the claim for the increase to AED 651,000 reflected work done between 30 June and 7 August;

(b) That CBBG Group fees related to preparation and advisory work; and

(c) That VAT recovery is a matter depending on whether VAT has been reclaimed and is for enforceability with DIFC costs awards including VAT unless stated otherwise.

17. In its own final submission, the Defendant made a number of points including that the Claimant had not produced its letter of engagement and had previously asserted that there was a fixed fee but increased its costs without justification. It also re-iterated its points concerning VAT.

Discussion

18. The general rules concerning costs are well known. In the present case, I consider the following to be of particular importance:

(a) RDC 38.7 providing the general rule that the unsuccessful party will pay the costs of the successful party but permitting the Court to make a different order; and

(b) RDC 38.8 requiring the Court to have regard to all the circumstances including conduct, whether a party has succeeded on part of its case and any payment into court or admissible order to settle.

19. For reasons already expressed in relation to interest, I consider the Claimant was the successful party. This dispute was the equivalent of a final account with additions of counterclaims from the Defendant. The Claimant received a judgment in its favour. The Defendant neither made an offer nor tendered payment as it could have done if it wished to reduce its cost risk. Accordingly, the starting point is that the Claimant should receive its costs.

20. In relation to the amounts sought by way of costs:

(a) The costs are being assessed by way of an immediate assessment where the Court necessarily has to form something of a broad view as to the points being made;

(b) In general terms, given the issues which were actually fought at trial (as distinct from those which should have been fought), the Claimant's costs do not appear unreasonable and are substantially less than those sought by the Defendant;

(c) Specific challenges were made by the Defendant to the recoverability of VAT, the recoverability of miscellaneous charges and those to the CBBG group and the increase in charges after 30 June 2025 when the Claimant had asserted that its solicitors were working on a fixed fee; and

(d) It appears to be accepted that the Claimant is VAT registered but the inference that VAT is nonetheless claimed.

21. In relation to these issues:

(a) Given the absence of any justification for the miscellaneous amounts, it would not be appropriate to make an award of costs for these sums;

(b) I consider that the CBBG group invoices are likely to have been incurred in relation to advice and are not, per se, irrecoverable;

(c) It does seem that VAT has been sought when the Claimant could have reclaimed the same;

(d) I do not consider it right to make an award for costs which includes sums which could have been reclaimed for VAT and either have been reclaimed or have not but could have been;

(e) I consider that the Claimant has not established that costs beyond the original AED 607,500 sought on 30 June are claimable for its solicitors' costs.

22. It follows that the starting point for costs is a total of AED 1,559,631.38 as follows:

(a) AED 578,571.43 for Hamdan Al Shamsi's fee (AED 607,500 less VAT);

(b) Court fees of AED 156,059.95 (no VAT is chargeable on DIFC court fees);

(c) Total expert costs of AED 650,000 including AED 52,500 from CBBG Group Construction Expert Services (amounts claimed less VAT); and

(d) An advocate's fee of AED 175,000 (amount less VAT).

23. From this, I consider that a deduction should be made to reflect the fact that the Claimant included claims which were untenable - in particular the large claim in relation to change of specification and the failure to take account of the MOM settlement which led to unnecessary delay evidence and also making claims for sums which had been settled.

24. In overall terms, I consider that a deduction of 40% is appropriate given:

(a) The amount of time devoted to these matters;

(b) Costs incurred by the Defendant; and

(c) The importance of the matters at trial.

25. I do not consider that any further deductions are appropriate as urged by the Defendant. The total costs will accordingly be AED 935,778.83.