THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

LARA BASEM MUSA KHOURY

Claimant/Appellant

and

MASHREQ BANK PSC

Defendant/Respondent

ORDER OF THE CHIEF JUSTICE ZAKI AZMI

UPON the Order with Reasons of Justice Lord Angus Glennie dated 29 March 2022 (the **"Order"**)

AND UPON the Claimant's Permission Application filed against the Order on 4 April 2022 (the **"First Permission Application"**)

AND UPON the Defendant's written submissions in opposition to the Permission Application dated 20 April 2022

AND UPON the Order of Justice Lord Angus Glennie dated 29 April 2022 refusing the Claimant's Permission Application

AND UPON the Claimant having filed a second Permission Application dated 19 May 2022 (the **"Second Permission Application"**)

AND UPON the Defendant's written submissions in opposition to the Second Permission Application dated 13 June 2022

AND PURSUANT to Part 44 of the Rules of the DIFC Courts (**"RDC"**)

IT IS HEREBY ORDERED THAT:

1. The Second Permission Application is granted.

2. Costs of the Second Permission Application are costs in the appeal.

Issued by:
Nour Hineidi
Registrar
Date of issue: 7 July 2022
At:10am

SCHEDULE OF REASONS

1. This is the Second Permission Application. The Court of First Instance Judge, Justice Lord Angus Glennie, refused the First Permission Application.

2. There are several issues arising in this case, the first being the interpretation of Rules 7.20, 7.21- 7.25 of the Rules of the DIFC Courts (**"RDC"**). It involves the interpretation of service of a claim form, whether it is to be served under RDC rr.7.30(a) or 7.30(b).

3. Within that argument arises the issue of whether on-shore Dubai is to be treated as falling within or outside of the DIFC or of the Emirate of Dubai. He concluded that in this particular case, service falls within RDC r.7.20 (a) and therefore, the claim form was served out of time (i.e. outside the four months provided under the rule). In my opinion the interpretation of this rule should be finally determined by the Court of Appeal and therefore, my view is that permission to appeal should be allowed on the basis that there is some other compelling reason for why the appeal should be heard (see RDC r.44.19(2)).

4. Reading the judgment, I find there are arguments that can go either way. The Judge however went on to discuss whether clause 22 of the disputed agreement could be read as to whether the parties have agreed to opt-in to the jurisdiction of the DIFC Courts as provided in Article 5 of the Judicial Authority Law. I have read through Article 5 in the context of the agreement, and I find it difficult to conclusively arrive that the parties to the agreement never intended to opt in to the DIFC Courts jurisdiction. The Judge had concluded in his judgment that both parties must agree to opt-in to the jurisdiction. It was argued that in this case it was not so because the Claimant agreed to submit to the DIFC Courts jurisdiction although the Bank could file its claim under any courts of competent jurisdiction. The Judge held that the word "may" used in clause 22.1 gives a discretion to the Bank to file its case in the DIFC Courts or elsewhere. In my opinion and only for the purpose of granting this permission, clause 22.1 and clause 22.2 of the agreement could also be interpreted as both parties opting-in to the jurisdiction of the DIFC Courts. The question of whether Article 5 is to be read that both parties must agree to submit to the jurisdiction of DIFC Courts, before it is to be deemed as opting into, is a point that needs to finally determine by the Court of Appeal.

5. In conclusion:

(a) I grant the Second Permission Application to the Claimant under RDC r.44.19;

(b) since all the other issues raised in this case are also directly or indirectly connected with those two issues, I am also granting permission to appeal on all the grounds put in by the Claimant/ Applicant; and

(c) costs of the Second Permission Application are costs in the appeal.