Claim No. CFI-033-2015

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

(1) ORION HOLDINGS OVERSEAS LIMITED (IN LIQUIDATION)

(2) ORION GLOBAL FINANCIAL SERVICES LLC (IN LIQUIDATION)

(3) ORION CAPITAL LIMITED (IN LIQUIDATION)

Claimants

and

(1) MOHAMMED ABU AL HAJ

(2) NIDAL ABDEL KHALEQ ABU AL HAJ

(3) PRIVATBANK IHAG ZURICH AG

Defendants

ORDER WITH REASONS OF H.E. JUSTICE OMAR AL MUHAIRI

UPON reviewing the Order with Reasons of H.E. Justice Shamlan Al Sawalehi dated 8 February 2018 (the "Order")

UPON the Claimants' Application No. CFI-033-22015/7 seeking various orders in relation to the Order

AND UPON reviewing the Second Witness Statement of Peter Oliver Smith dated 8 March 2018 and the Fourth Witness Statement of Shahab Haider dated 12 March 2018

IT IS HEREBY ORDERED THAT:

1.The Claimant's application for an extension of time to file the set aside application pursuant to RDC 4.2(1) is granted.

2. The Claimant's application pursuant to Rule 4.13(1) of the Rules of the DIFC Courts (the "RDC") that the Court of First Instance set aside its order as to costs dated 8 February 2018 is dismissed.

3. There be no order as to costs.

Issued by:

Ayesha Bin Kalban

Assistant Registrar

Date of Issue: 5 April 2018

At: 1pm

SCHEDULE OF REASONS

1.On 8 February 2018, H.E. Justice Shamlan Al Sawalehi made an order (the "Order") dismissing the Third Defendant's application to contest the jurisdiction of the DIFC Courts, dated 23 August 2017 (the "Jurisdiction Application"). He also ordered that the costs of the Jurisdiction Application be costs in the case.

2. On 22 February 2018, the Claimant filed an application seeking:

3. An extension of time for the filing of an application to set aside the Order pursuant to RDC Rule 4.2(1), dispensing with the usual 7-day period specified in RDC Rule 4.14(2).

4. An order pursuant to RDC Rule 4.13(1) that the Court of First Instance set aside its order as to costs respect of the Jurisdiction Application dated 23 August 2017 and the Amendment Application dated 16 November 2017, as set out at paragraph 3 of the Order.

5. An order in substitution therefore that the Third Defendant shall pay the Claimants' costs of and incidental to each of the Jurisdiction Application and the Amendment Application.

6. An order that the Third Defendant shall pay the Claimants' costs of and incidental to this application.

7. On 29 March 2018, I was allocated by the Registry to determine this application. Pursuant to RDC Rule 4.2(1), except where the RDC provides otherwise, the Court may: (1) extend or shorten the time for compliance with any Rule, Practice Direction or Court order (even if an application for extension is made after the time for compliance has expired). In the interest of justice, I allow the Claimant's application for an extension of time for the filing of the application to set aside the costs order.

8. According to RDC Rule 38.7, if the Court decides to make an order on costs, (1) the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party; but, (2) the Court may make a different order.

9. The principle is that, the unsuccessful party should pay the successful party's costs, however, this is subject to the Courts' discretion in consideration of all circumstances surrounding a case. Other matters considered are what costs orders can be made, whether the application of a set-off is appropriate, directing the filing of submissions on costs and issuing costs orders against specific persons such as solicitors or counsel. Appealing a costs order is also to be taken into consideration. In other words, the nature of costs being a discretionary remedy is dependent on circumstances. So, a decision on costs is a matter of discretion for the trial judge who is best placed, having sat through the trial, to determine whether and what costs should be granted.

10. What has happened in this case is that the Third Defendant, in the 23 January 2018 hearing held before H.E Justice Shamlan Al Sawalehi, has not pursued or achieved its objective of the Jurisdiction Application being granted. The Judge ordered that the costs of the Hearing be costs in the case.

11. It seems to me that the Judge applied RDC Rule 12, which the Court will commonly apply in proceedings before trial in relation to certain costs orders. Under "costs in the case", the effect is that the party in whose favour the Court makes an order for costs at the end of the proceedings is entitled to his costs of the part of the proceedings to which the order relates.

12. This type of order is usually made at interim hearings and means that the party entitled to costs at the end of the trial will be entitled to the costs of this part of the proceedings. It is clear that the Judge in his Reasons intended to make this order and he did not make a typographical error. Therefore, RDC 36.41 (the Slip Rule) does not apply.

13. The Court of Appeal may only interfere with the trial judge's decision on costs if it is wrong in principle, has taken into account a matter which should not have been considered or is plainly unsustainable. In those circumstances, the sensible and proper place to challenge the costs order is the Court of Appeal.

14. For the reasons stated above, I hereby order that:

15. The Claimant's application for an extension of time to file the set aside application pursuant to RDC 4.2(1) is granted.

16. The claimant's application pursuant to RDC Rule 4.13(1) that the Court of First Instance set aside its order as to costs dated 8 February 2018 is dismissed.

17. There be no order as to costs.