THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

MAFALDA

Claimant/Appellant

and

(1) MAHAKIN
(2) MAHDIS

Defendant/Respondent

ORDER WITH REASONS OF JUSTICE LORD ANGUS GLENNIE

UPON reviewing the Claimant's Appeal Notice dated 9 May 2022 seeking permission to appeal the Order with Reasons of H.E Justice Maha Al Mheiri dated 19 April 2022 (the "Claimant's Application")

AND UPON hearing the Claimant's and Defendant's submissions at the hearing held on 6 June 2022

AND UPON reviewing Rule 53.91 of the ARDC

AND UPON reviewing all relevant material in the case file

IT IS HEREBY ORDERED THAT:

1. The Claimant's Application be granted on the grounds that the Claimant has demonstrated that the appeal would have a real prospect of success.

2. Each party shall bear their own costs

Issued by:
Hayley Norton
SCT Judge
Date of issue: 8 June 2022
Time: 3pm

SCHEDULE OF REASONS

1. This is an Application by the Claimant for permission to appeal against the Judgment of H.E Justice Maha Al Mheiri dismissing the Claimant's claim against the Third Defendant for lack of jurisdiction.

2. The question before the Court at this stage relates only to jurisdiction in respect to the claim against the Third Defendant. The Court at present is not concerned with the merits of the claim, except in so far as the merits impact on the question of jurisdiction.

3. Nothing I say affects the underlying merits of the claim, or to put in another way, nothing I say affects the prospects of the Claimant recovering in the respect of the share offer in the offer letter dated 19 August 2021.

4. For the reasons which follow I have decided to grant the Application for permission to appeal.

5. There are two main reasons. The first one concerns the offer of shares themselves dealt with in paragraph 2 of the Offer letter.

6. The second part of that paragraph deals with remuneration and says this, I quote:

> "As you know, we are currently looking to establish a share scheme for certain employees, and we will look to give you 5,750 being ordinary shares in the third defendant. Once this scheme has been created and implemented, the shares will vest as per their term as contained within the articles of association for the third defendant."

7. The Offer letter in which that is written was sent by the Second Defendant and offers the possibility at least of the shares in the Third Defendant as part of the remuneration package.

8. The Claimant relies on this, seems to be entitled to share in the Third Defendant.

9. The Third Defendant, for his part, says that the share scheme was never established and whatever the Second Defendant said in the letter, the wording in the letter does not give rise to any enforceable obligation against the Third Defendant which is not a party to the letter.

10. There is some force in that point, but it must be remembered that the Third Defendant is a 100% shareholder of the First and Second Defendants.

11. Mr. Menti, on behalf of the Third Defendant accepted the argument that whatever the Second Defendant said in the letter about shares in the Third Defendant, must have been said in the knowledge and authority of the Third Defendant. That is obvious as a matter of the shareholding; the Third Defendant being a holding company, a 100% owner of the First and Second Defendants.

12. Mr. Mafalda described the same point as the indoor management principle. Mainly that within a group everyone knows, must know, must be taken to know what is going on.

13. To that extent, it is arguable that the Third Defendant is bound to the same extent as the Second Defendant. This Court would have jurisdiction on that basis.

14. The second point is this, the Claimant makes the point that as the case proceeds the Second Defendant may say, as already has said, that it could not give shares in the Third Defendant, that was the Third Defendant not the Second Defendant to do, but if the Third Defendant is not a party, then that point cannot be resolved.

15. The Rules of Court and RDC 20.7(1) deal with this situation, that provides that the Court may order a person to be added as a new party if (1) it is desirable to add the new party so that the Court can resolve all the matters in dispute in the proceedings.

16. That is this case, the Third Defendant was added as a party after the action commenced, and the addition of the Third Defendant can be justified on this basis.

17. It is necessary and desirable that the Third Defendant be added to the proceedings so the Court can resolve all matters and dispute in the proceedings. For those reasons, I am satisfied that there are realistic prospects of success on the jurisdiction of appeal.

18. I shall grant permission to appeal. I need not deal with other aspects that were raised in the argument, they can all be dealt with in due course on the appeal against the decision dismissing the claim against the Third Defendant, or in due course on the merits of the claim.