**Claim No. ARB 005/2025**

**IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS**

**IN THE COURT OF FIRST INSTANCE**

BETWEEN

**NASHRAH**

Claimant

and

**(1) NAJEM**
**(2) NEX**

Defendants

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**ORDER WITH REASONS OF H.E. JUSTICE SHAMLAN AL SAWALEHI**

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**UPON** the Order of H.E. Justice Shamlan Al Sawalehi dated 6 February 2025, with reasons subsequently issued on 19 February 2025 (the "Order")

**AND UPON** the Defendants' Appeal Notice dated 12 March 2025 seeking permission to appeal the Order (the "Application for Permission to Appeal")

**AND UPON** the Defendants' Application No. ARB-005-2025/3 dated 19 February 2025 seeking to challenge DIFC jurisdiction (the "Jurisdiction Application")

**AND UPON** the Defendants' Application No. ARB-005-2025/4 dated 20 March 2025 seeking a stay of the Claim and the Jurisdiction Application (the "Stay Application")

**AND UPON** the Court having reviewed the parties' submissions and supporting materials, and determined that the matter be dealt with on the papers

**IT IS HEREBY ORDERED THAT:**

1. The Permission to Appeal Application is dismissed.

2. The Stay Application is dismissed.

3. The Jurisdiction Application is dismissed

4. The Defendant shall pay the Claimant's costs of the Applications on the standard basis. A statement of cost, not exceeding 3 pages shall be submitted by the Claimant within 5 working days.

Issued by:
**Delvin Sumo**
Assistant Registrar
Date of Issue: 23 June 2025
At: 1pm

**SCHEDULE OF REASONS**

**Introduction**

1. The Claimant, Nashrah, is a provider of medical repatriation services. The First Defendant, Mr Najem, is deceased and is represented by his estate acting through its executors. The Second Defendant, Mr Nex, is said to have acted on the First Defendant's behalf in connection with the underlying contract. The Defendants are referred to collectively as the "Applicants", and the Claimant as the "Respondent".

2. The Defendants have brought three applications before the Court: (i) an application dated 12 March 2025 for permission to appeal the Order of 6 February 2025, with reasons subsequently issued on 19 February 2025 (the "PTA Application"); (ii) an application dated 19 February 2025 challenging the jurisdiction of the Court (the "Jurisdiction Application"); and (iii) an application dated 20 March 2025 seeking a stay of the proceedings and of the Jurisdiction Application pending the outcome of the appeal (the "Stay Application").

3. For the reasons set out below, all three Applications are dismissed.

**Background**

4. On 20 January 2025, the Claimant obtained an ex parte interim anti-suit injunction issued by this Court restraining the Defendants from continuing proceedings in the English High Court in alleged breach of an arbitration agreement.

5. The injunction was granted on an urgent basis pursuant to the Court's interim jurisdiction under Article 22 of the DIFC Court Law, pending a return date hearing fixed for 5 February 2025.

6. Following that hearing, and having considered evidence and submissions from both parties, I issued an Order on 6 February 2025 rejecting the Defendants' application to discharge the injunction, upholding the Injunction Order, and awarding costs to the Claimant.

7. My detailed reasons were issued on 19 February 2025, affirming the jurisdiction of the DIFC Courts to grant interim relief in support of arbitration and concluding that the injunction was appropriate and justified on the facts.

8. On 19 February 2025, the Defendants filed the Jurisdiction Application challenging the jurisdiction of the DIFC Courts pursuant to Rule 12.1 and Rule 23.1 of the Rules of the DIFC Courts (the "RDC").

9. On 12 March 2025, the Defendants filed an Application for Permission to Appeal seeking permission to appeal the Order dated 6 February 2025 pursuant to RDC 44.19.

10. Subsequently, on 20 March 2025, the Defendants filed the Stay Application which seeks to stay both the underlying Claim and the pending Jurisdiction Application pending the determination of the appeal under RDC 4.2(6).

11. I note that multiple applications were filed in close succession, including the Jurisdiction Application, the Application for Permission to Appeal, and the Stay Application. Pursuant to the Court's case management powers under RDC 4.2, the Court determined that these applications should be addressed sequentially and, on the papers, in the interest of procedural efficiency and judicial economy.

**The Applicant's Submissions**

12. The Applicants advance twelve grounds of appeal. These may be grouped thematically into three categories: procedural fairness (Grounds 1-5), jurisdictional and legal error (Grounds 6-9), and uncertainty of relief (Grounds 10-12).

13. Grounds 1 and 2 submit that the Order of 6 February 2025 is inconsistent with the Reasons subsequently issued. The Applicants contend that the Court granted a permanent or materially broader injunction than had been sought or authorised at the ex parte stage. They argue that such relief exceeded the scope of the interim application and was not properly foreshadowed at the return hearing.

14. Grounds 3 through 5 assert that the Applicants were denied a fair opportunity to be heard, particularly in relation to the scope of the injunction. They submit that the Court failed to require a cross-undertaking in damages and further contend that the absence of a penal notice, despite the coercive nature of the relief renders the Order procedurally defective.

15. In Grounds 6 to 9, the Applicants argue that the Court erred in determining the arbitration agreement to be valid and enforceable, in finding that the DIFC was a proper or possible seat, and in rejecting the Applicants' contention that the agreement was a "consumer contract" under Article 12(2) of the DIFC Arbitration Law.

16. The Applicants maintain that the contract in question was concluded in a personal context, for the benefit of the First Applicant's ill spouse, and not in the course of trade or commerce. They submit that the DIFC Arbitration Law affords a distinct treatment to consumer contracts, and that this contract fell within that category.

17. The Applicants further submit that the parties and dispute have no meaningful connection with the DIFC, and that the Court erred in finding a sufficient basis for exercising supportive jurisdiction under Article 32 of the Court Law.

18. Grounds 10 to 12 argue that the injunction as drafted is vague, overly broad, and lacking defined limits. The Applicants submit that the Order fails to delineate the scope of prohibited conduct and does not clearly distinguish between present claims and future proceedings. They further allege that the Respondent failed to make full and frank disclosure at the ex parte stage and that this omission was not remedied at the return hearing.

**The Respondent's Submissions**

19. The Respondent opposes the Application for Permission to Appeal and submits that none of the twelve grounds advanced raises a real prospect of success or discloses any compelling reason for the Appeal to be heard within the meaning of RDC 44.19.

20. In response to Grounds 1 and 2, the Respondent submits that the Order and Reasons are not inconsistent. The 6 February Order expressly upheld the interim injunction issued on 20 January 2025. Any perceived ambiguity was addressed by the Court's subsequent clarification of 20 February 2025, confirming the intended scope of the Order.

21. As to the scope of relief, the Respondent maintains that the Applicants were on notice that a continuation or extension of the injunction could be sought at the return hearing. The Court was entitled to grant such relief on the basis of the material before it and the inherent powers conferred under Article 32.

22. With respect to the alleged failure to require a cross-undertaking in damages (Ground 3), the Respondent notes that the Court exercised its discretion judicially, taking into account the balance of convenience and the context of the relief.

23. On the issue of consumer status (Ground 6), the Respondent submits that the evidence did not support the conclusion that the contract was a consumer contract. The Respondent contends that the First Applicant, through his representative, engaged a commercial repatriation service, and that the Court was entitled to determine that the contract was entered into in a non-consumer capacity.

24. The Respondent also rejects the Applicants' jurisdictional objections, noting that the arbitration clause referred disputes to DIFC-LCIA arbitration, and that the DIFC Courts had a sufficient nexus to entertain interim relief under Article 32. The fact that the arbitration is seated outside

the DIFC does not negate the Court's supportive jurisdiction.

25. In relation to Grounds 10 and 11, the Respondent contends that the injunction was sufficiently clear in its scope and wording. The Order and the accompanying Reasons make plain what conduct is prohibited. The risk of inadvertent contempt is remote and not a proper ground for appeal.

26. The Respondent denies any failure to disclose material facts at the ex parte stage. They submit that the disclosure obligations were complied with, and all relevant matters were raised and addressed at the return hearing and no new evidence or material procedural irregularity has been identified that would undermine the integrity of the Order.

27. Finally, the Respondent further argued that the relief granted was proportionate, necessary to preserve the integrity of the arbitral process, and consistent with DIFC Court precedent affirming the availability of anti-suit injunctions in appropriate cases.

**Discussion**

28. Having reviewed the Appeal, the supporting materials, and the submissions of both parties, I am not satisfied that the Application discloses a real prospect of success or raises any compelling reason for the appeal to be heard, as required under RDC 44.19.

29. RDC 44.19 provides that

> "Permission to appeal may only be given where the lower Court or the appeal Court considers that (1) the appeal would have a real prospect of success; or (2) there is some other compelling reason why the appeal should be heard."

30. The Applicants have not demonstrated that either limb of RDC 44.19 is met. Their arguments repeat matters already determined, raise no new points of law, and do not show any error of principle.

31. I consider the submission that the Order is inconsistent with the Reasons to be without merit. The scope of the Orders is expressly set out, and any ambiguity was addressed and resolved by subsequent clarification. The Applicants' interpretation involves an unduly strained reading of the procedural history.

32. I do not accept the contention that I exceeded my powers by granting relief not sought. The relief granted fell within the reasonable scope of the application and was, in my view, supported by the evidence.

33. The absence of a penal notice or cross-undertaking does not, in my judgment, render the Orders defective. These are discretionary matters. The Applicants have not demonstrated that the inclusion of either would have resulted in a different outcome.

34. The arguments raised concerning consumer status rest on factual disputes. I assessed the evidence before me and made findings that were open to me on the basis of that material. I am not persuaded that any error of law or principle has been shown in that evaluation.

35. I reach the same conclusion in respect of the issues concerning the validity of the arbitration agreement and the identification of the seat. I formed a provisional view for the purpose of granting interim relief, in the context of ongoing arbitration proceedings in which final determinations remain for the tribunal.

36. In my view, the jurisdiction conferred by Article 22 of the Court Law is well established. It is not a requirement that the seat of arbitration be the DIFC in order for the Court to grant interim protective relief. The DIFC Courts have consistently recognised jurisdiction to grant such measures in support of arbitration where a sufficient connection is established.

37. I do not accept the assertion that the injunction is vague. The Order and Reasons, read together, provide a clear articulation of the specific conduct that is restrained. The injunction is directed to the specific proceedings underlying the dispute and does not purport to prohibit unrelated or hypothetical future litigation.

38. Finally, I am not satisfied that any procedural irregularity or breach of duty occurred in relation to the ex parte application. The Applicants have been afforded a full and fair opportunity to address the injunction and to put forward their case, both in writing and at the return hearing.

39. In relation to the Stay Application, the Applicants submit that it is necessary to maintain the status quo pending the outcome of the appeal. They contend that if the appeal is successful, it may render the Claim and Jurisdiction Application moot. However, this argument no longer holds force. The Application for Permission to Appeal has now been refused. There is no pending appeal, and thus no basis for a stay under RDC 4.2(6).

40. Further, the Stay Application was filed after the Jurisdiction Application, and both were contingent upon the Appeal proceeding. The Defendants did not advance any distinct legal basis or factual justification for staying the Jurisdiction Application separately. As such, there is no procedural or substantive reason to maintain the Stay Application.

41. As for the Jurisdiction Application, I am satisfied that the reasoning in my earlier judgment of 19 February 2025 addressed all relevant matters under RDC 12.1 and 23.1. The Defendants' assertion that the DIFC Courts lack jurisdiction rests on the consumer contract argument and an alleged absence of nexus. Both have been dealt with in detail and rejected on the basis of the evidence and law.

42. No new evidence or legal basis has been advanced that would justify reopening the Court's earlier findings. Nor do the submissions identify any jurisdictional defect or procedural irregularity. The Jurisdiction Application must therefore also be dismissed.

**Conclusion**

43. The Application for Permission to Appeal does not raise any arguable legal error, nor does it involve any issue of wider importance or a new legal question that would justify granting permission to appeal.

44. The Stay Application and Jurisdiction Application were predicated on the appeal continuing. As permission to appeal has now been refused, both are dismissed for lack of purpose and merit.

45. The Defendants shall pay the Claimant's costs of the Applications on the standard basis. A statement of costs, not exceeding three pages, shall be submitted within five working days.