Claim No: CFI 046/2023
ENF 022/2023
ENF 023/2023

IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURT

IN THE COURT OF APPEAL

BETWEEN

GTC TRADING S.A.

Claimant/Respondent

and

(1) HAZEM ABDOLSHAHID MAHMOUDI RASHED

First Defendant/Appellant

(2) H.M.R. INVESTMENT HOLDING LIMITED

Second Defendant

ORDER WITH REASONS OF JUSTICE ZAKI AZMI

UPON the Order with Reasons of Justice Sir Jeremy Cooke dated 19 December 2023, refusing to set aside the Enforcement Order, the Worldwide Freezing Order and the Charging Order (the "Original Order")

AND UPON the First Defendant's Application for permission to appeal the Original Order filed on 22 December 2023 (the "First PTA Application")

AND UPON the Orders of Justice Sir Jeremy Cooke dated 30 May 2024 dismissing the First PTA Application (the "Order refusing PTA")

AND UPON the First Defendant's Application No. CFI-046-2023/3 dated 21 June 2024 seeking to extend the time to file a renewed application seeking permission to appeal (the "Extension Application")

AND UPON the Order of Chief Justice Zaki Azmi dated 4 July 2024 granting the Extension Application

AND UPON the First Defendant's renewed application for permission to appeal the Order refusing PTA dated 24 June 2024 (the "Renewed Application for Permission to Appeal")

AND UPON hearing Counsel for the Claimant and Counsel for the First Defendant on 2 September 2024

AND UPON reviewing documents filed on the case file

IT IS HEREBY ORDERED THAT:

1. The Renewed Application for Permission to Appeal is dismissed.

2. The First Defendant shall pay the Claimant's costs of the Renewed Application for Permission to Appeal to be paid on the standard basis, to be assessed by the Registrar unless agreed by the parties.

Issued by:
Hayley Norton
Assistant Registrar
Date of issue: 13 September 2024
At: 11am

SCHEDULE OF REASONS

1. This renewed application for permission to appeal was heard orally and took over three hours (the "Renewed PTA Application").

2. Counsel for the Appellant relied on speaking notes filed in addition to his written submissions.

3. The main issue in this application boils down to the interpretation of JAL Article 7(5) and Article 24 of the Courts Law. Do these laws when read together empower the DIFC Courts on the facts of this case to enforce the final judgment entered in the onshore Dubai courts?

4. I do not intend to go into details of the facts of this case because they can be found in the judgments of Justice Sir Jeremy Cooke as well as the submissions filed by both parties. Briefly, however, the facts show that the First Defendant ("D1"), owed the Claimant a certain sum of money. The case was heard in the onshore Dubai Courts and their Court of Appeal and finally to the apex court in onshore Dubai. For some reason, which is not clear, the Dubai Courts did not enforce the judgment against D1. The Claimant filed a case with the DIFC Courts to enforce that judgment.

The DIFC Courts made several orders against D1. The orders issued by the DIFC Courts are the (i) Enforcement Order, (ii) Interim Charging Order, (iii) Worldwide Freezing Order, as well as consequential order for the sale of D1's shares in the Second Defendant ("D2"). D2 is the company which is owned by D1. The shares were originally in D1's name but after final judgment in the Dubai Courts the shares were transferred to D2. It was alleged that the transfer was made to protect the shares from being taken over by the Claimant towards settlement of the debt. These orders were issued and dated 3rd of February 2023. I note that the case before onshore the Dubai Courts commenced in 2016. So, about nine years had lapsed before the enforcement orders were sought in the DIFC Courts. D1 did not comply with any of the orders. D1 could be considered a recalcitrant defendant, but for the purpose of this judgment, I shall not take that into consideration. What I shall determine is merely whether the Renewed PTA Application should or should not be allowed strictly based on the requirements of RDC 44.19 which is to determine if there is a real prospect of success at appeal, if permission to appeal is granted.

5. Factually, even after the final judgment of the apex court of the onshore Dubai Courts, there were still instructions coming from the Dubai Courts as to how the execution is to be carried out. Basically, the Applicant is saying that on the interpretation of Article 7 of the JAL, the DIFC Courts have no jurisdiction to enforce the judgment against D1. The Claimant/Respondent, of course, relied strongly on the judgments and the findings by Justice Sir Jeremy Cooke which held otherwise.

6. Counsel for D1, contends that this case falls within Article 7(5)(a) of the JAL. Actually, I find it is necessary to start from Article 5(A)(1)(e) which empowers the DIFC Courts to hear and determine "any claim or action over which the Courts have jurisdiction in accordance with the DIFC Laws and the DIFC Regulations". It is this paragraph which applies as to whether the DIFC Courts have jurisdiction over this case at hand. When it comes to execution, this is provided by Article 7 of the JAL, and this is where the dispute arises as to the interpretation of Article 7(5)(a) and (c). Counsel for the Applicant argues that the words "the procedure to be carried out" as set out within (a) means that the DIFC Courts are to follow the terms stated in the execution letter from the Dubai Courts to the Chief Justice of the DIFC Courts. If he is right, then this is a procedural issue which D1 is not permitted to raise as ordered by Justice Sir Jeremy Cooke. This is because D1 had failed to purge his contempt. He is only allowed to challenge the jurisdictional issue on powers of the DIFC Courts. Counsel for the Respondent/Claimant referred to this as the "prima facie" jurisdiction of the Courts. Article 7(1) uses the words "shall have jurisdiction over execution of judgments, decisions and orders rendered by the Courts. if the subject matter of the execution is situated within the DIFC, and such execution shall be in accordance with the Rules of the Courts." Although this subsection (1) uses the word "jurisdiction", reading the whole of the execution provisions, all the provisions of Article 7 look as if they set out the procedure as to how the order or judgment is to be executed. Since that is so, the Applicant is therefore not allowed to raise the issue of procedure of enforcement of the Dubai Courts' judgment or order. This ground therefore fails *in limine*. Even taking the position that what is provided in Article 4 is actually a conferment of jurisdiction and therefore the Applicant is not prevented from raising them, it is now necessary to determine whether what the Applicant contends is right or not, and whether the DIFC Courts is obliged to follow the directive given in the execution letter from the Dubai Courts.

7. There is no doubt that the impugned judgment or order of the DIFC Courts falls within Article 7(5) which uses the term "the judgments, decisions or orders issued by Dubai Courts". Article 7(5) is in fact a follow-up to Article 7(4). In my opinion, any provision of the JAL cannot be read in isolation. The provisions have to be read in the context of each other as well as the other surrounding laws. In Article 6, it is clearly stated that the DIFC Courts shall apply the Centre's Laws and Regulations. This supports my view that all of these Rules must be read together. If that is so, then paragraph (a) of Article 7(5) must be read with paragraph (c) of the same Article. Paragraph (a) cannot be read in isolation. Paragraph (c) provides that the execution judge shall apply the execution procedures and rules stipulated in the Rules of the Courts including any objections to execution. The objections to execution are objections that may be raised which are provided by the Rules of the Courts. If we are to apply (c), we cannot therefore interpret paragraph (a) as meaning that the DIFC Courts is to follow the procedure laid out by the Dubai Courts in the execution letter. It does not make sense. In any case, I asked for authorities or examples of cases elsewhere in the other courts of England and Wales, or any Commonwealth countries wherein the court making the judgment or order can direct the enforcement court as to how the enforcement is to be carried out. Unfortunately, neither party could assist me there. I say it does not make sense because I cannot see how the judgment court would know how the enforcement courts are to enforce their judgment. It must follow the procedure set out by the enforcement court of the DIFC Courts. So, how are the words "procedure to be carried out" to be interpreted? In my opinion, the words "procedure to be carried out" appearing in paragraph (a), must necessarily be, as Counsel for the Respondent/Claimant suggested, i,e, that payment to the Claimant is to be denominated in a certain currency. The RDC provides for many ways of how a judgment can be enforced. The Applicant also raised the issue that the DIFC judgment is not a foreign judgment. To me, it is irrelevant because the JAL clearly distinguishes between enforcement of judgments and orders of the onshore Dubai Courts and judgments and orders of courts outside onshore Dubai. It seems there is to be a special relationship between the DIFC Courts and the onshore Dubai o Courts, and I think it is only right because it actually falls under one Ruler and that is His Highness the Ruler of Dubai.

8. As to the issue of whether the assets must be in the DIFC Courts' jurisdiction, the Applicant says that there is no asset within the DIFC. According to the Claimant/Respondent, they do not know whether D1 has any other assets other than the shares in the DIFC because the Applicant refuses to disclose as required by the court order. To me, the issue of whether the order of the Dubai Courts refers to shares and whether shares are assets or *Amwal* is a mere red herring. To me, whatever that has value which the Claimant can dispose to recover what is due to them under the Dubai Courts' order must be an asset.

9. I also note from page 6345 of the bundle there is a table indicating letters addressed from the Dubai Courts to the DIFC Courts and in the last column of the table there is a brief indication of what the letters were about. These letters were dated from 18 November 2022 to 15 February 2024. I find those requests coming from the Dubai Courts very confusing because, for example, in the letter dated 18 November 2022 it says, "To lift the attachment and cancel what was stated in our previous letter and consider as if it never existed". I do not know what the previous letter is about. The next letter dated 9 May 2023, directs the DIFC Courts "To Execute the Operative Part The Judgement based on the Decision of the Honoured Execution Judge" and then on 1 August 2023 there was a request to lift the freeze imposed on the shares of the judgment debtor in HMR Investment Holding Limited. The last letter dated 2 February 2024 requested the DIFC Courts to reject the request for sale of D1's shares in the said company. The reference to the letter dated 15 May 2024 in the last column of the table appearing at page 6345 of the bundle is totally Greek to me. The authority that interprets the law of the DIFC Courts is the DIFC judge and not the Dubai Courts' judge. For that matter, any foreign judgment court cannot direct the enforcement court in another jurisdiction as to how to carry out an enforcement and how to interpret its laws. As I have said earlier, Article 7(5) of the JAL provides that the Dubai Courts can only seek for the DIFC Courts to enforce that judgment which it refers to the DIFC Courts. In the DIFC Courts, once a judgment is made and appealed to the highest court, that judgment becomes final

and I assume this is the same with the Dubai Courts. The freeze on the shares has been ordered by the DIFC Courts and it can only be lifted according to the laws of the DIFC. As I had stated earlier this is clearly provided for in Article 6 of the JAL. In this case D1 did not make any effort to appear and seek to set aside or object against the orders made against him, to the extent that he was committed for contempt and was ordered to pay a penalty of USD 500,000 by the DIFC Courts to which he has ignored until today.

10. As regards the case of *Invest Bank PSC v El-Husseini* (2023) WL06144504 (2023), it is not relevant here against the Applicant because in that case the court held that the guarantees are valid and enforceable as a matter of UAE law, whereas before me the contention is that the judgment entered in the onshore Dubai Courts is wrong since it is claimed that the DIFC Courts cannot go after the shares because it had been so instructed by the onshore Dubai Courts, but for reasons which I have stated earlier, I am confused by those instructions and I am interpreting our DIFC Courts the way it should be interpreted. The Applicant referred to the case of *DNB Bank ASA* (2015), DIFC CA-007-2015, and the ruling in that case is consistent with what I had said earlier in this judgment which is that the procedure for enforcing a judgment of the onshore Dubai Courts and judgments of any other countries are different. As was mentioned by the Applicant, in the case of *Ledger v Leeor* (2022) DIFC CA-013 it is said that "it was not for the DIFC Court of First Instance to interfere with the procedures of an injuncting litigant. rather their procedures are to be treated with comity and respect". I would also say that it is not for the onshore Dubai Courts to direct the DIFC Courts as to how to exercise their procedure for enforcement of judgments of the onshore Dubai Courts.

11. Turning to the laws relating to RDC 44.19, I do not think I need to go into much detail because they are well established. I am satisfied that even if this case goes on to an appeal there is no real prospect of success. To me, it is only a fanciful idea that the Court of Appeal will agree with the submissions by the Applicant.

12. I therefore dismiss this Renewed PTA Application with costs. Costs will be determined by the Registrar on a standard basis.

13. As I was preparing this judgment, I received an email from the DIFC Courts' Registry containing a request by the Respondent to bring to my attention an order from the onshore Dubai Courts. The email contained an order from the onshore Dubai Courts involving the same parties dated 3 September 2024. The order recited the history that D1 had filed to cancel direction of the Enforcement Judge to the DIFC Courts. However, the conclusion of the order is important. In particular, it refers to the order of the DIFC Courts to seize and sell the disputed shares. It also held that the DIFC Courts are competent to hear such dispute and the Execution Judge of the Dubai Courts is not competent to hear and adjudicate it and that the Dubai Courts lacks territorial jurisdiction to examine the dispute. This is consistent with my ruling before receiving the email, which in simple words is that the Dubai Courts has no right to direct the DIFC Courts as to how to enforce the Dubai Courts' judgments or orders.