THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

In the name of His Highness Sheikh Mohammad Bin Rashid Al Maktoum, Ruler of Dubai

N/A

IN THE COURT OF APPEAL

BEFORE H.E. JUSTICE ROBERT FRENCH, H.E. JUSTICE THOMAS BATHURST AND H.E. JUSTICE ROGER STEWART

BETWEEN

ZUZANA KAPOVA

Claimant/Appellant

and

(1) MILOSLAV MAKOVINI

(2) PHARM TRADE HOLDING LTD

Defendants/Respondents

and

SEBASTIAN KAPA

Third Party

ORDER WITH REASONS OF THE COURT OF APPEAL

UPON the settlement agreement between the parties (the "Settlement Agreement") executed on 13 January 2026 providing, among other things, for the Claimant to pay the First Defendant the sum of EUR 1,000,000 (the "Settlement Sum") in three instalments of EUR 400,000 (the "First Instalment") EUR 300,000 and EUR 300,000 respectively, with the First Instalment falling due within fourteen days of the date of the execution of the Settlement Agreement, and, in the event of default in payment of the First Instalment, for the Settlement Sum to fall due at the election of the non-defaulting party (the "Accelerated Settlement Sum") and for the stay of existing proceedings to be lifted in that event

AND UPON H.E. Justice Sir Jeremy Cooke providing an ex tempore decision in favour of the Defendants (the "Decision")

AND UPON the Order with Reasons of H.E. Justice Sir Jeremy Cooke dated 29 April 2026: (i) granting the Immediate Judgment Application; (ii) entering judgment for the First Defendant against the Claimant at paragraphs 3, 4, 5 and 6; and (iii) dismissing the Claimant's Initial PTA Application (the "29 April Order")

AND UPON the Claimant's Appeal Notice dated 20 May 2026 seeking renewed permission to appeal the Decision (the "Renewed PTA Application")

AND UPON the Claimant's Application No. CFI-004-2023/21 dated 20 May 2026 seeking a stay of execution of paragraphs 3, 4, 5 and 6 of the 29 April Order pending determination of the Renewed PTA Application (the "Stay Application")

AND UPON the Order of H.E. Chief Justice Wayne Martin dated 23 June 2026 granting the Stay Application (the "Stay Order" or the "Stay")

AND UPON the Order with Reasons of H.E. Chief Justice Wayne Martin dated 20 July 2026 (the "20 July Order") granting the Renewed PTA Application and continuing the Stay Order (the "Appeal")

AND UPON the Judgment of the Court of Appeal dated 14 October 2026 dismissing the Appeal, lifting the Stay and requiring the Claimant to pay the Defendants' costs of the Appeal, including the costs of the applications for permission to appeal and the Stay Application on a standard basis to be summarily assessed by the Court (the "Judgment")

AND UPON the First Respondent's Statement of Costs dated 20 October 2026 seeking total costs of AED 258,547.33

AND UPON the Appellant's Submissions in respect of such costs dated 26 October 2026

IT IS HEREBY ORDERED THAT:

1. The First Respondent's costs are summarily assessed in the sum of **AED 220,000**.

2. The Appellant is to pay the said sum to the First Respondent within 14 days of this Order.

Issued by:
Hayley Norton
Assistant Registrar
Date of issue: 16 November 2026
At: 10am

SCHEDULE OF REASONS

1. This is the immediate assessment of costs pursuant to the Court's Judgment dated 14 October 2026.

2. The First Respondent seeks a total of AED 258,547.33 and provided a breakdown totalling the slightly different amount of AED 258,637.33 made up as follows:

(a) AED 213,926.83 in lawyers' fees charged at hourly rates;

(b) Unidentified expenses incurred by Khaitan & Co - AED 3,500;

(c) Court fee for Respondents' Notice - AED 18,382.50

(d) SK Legal Consultants Fixed fee for Renewed PTA and Stay applications - AED 17,500; and

(e) Irrecoverable VAT on professional fees AED 5,328.

3. The First Respondent submits that its fees should be assessed on an indemnity basis pursuant to clauses 11.3 and 11.5 of the Settlement Agreement.

4. The Appellant objects to the costs claimed submitting that:

(a) Costs should only be assessed on the standard basis as the costs payable are payable in the exercise of the Court's discretion pursuant to the Judgment rather than as matters of contract (although it was accepted that the Court could take the clauses into account in the exercise of its discretion);

(b) Clause 11.3 in any event limited the indemnity to "reasonable legal fees" and costs of the PTA Applications and Stay Applications were not "incurred by the non-breaching Party in enforcing its rights under this Agreement" within clause 11.5;

(c) That the same application had been made below and costs were only granted on the standard basis;

(d) In any event substantial sums were not reasonably incurred or were unreasonable in amount in that:

(i) 151 hours and 38 minutes of time for seven fee earners were incurred from two firms under a single heading "Work Done on Documents" with no breakdown as to time spent;

(ii) Although there is a statement of truth from Mr Khan, there is no statement pursuant to Paragraph 7 of Practice Direction No. 5 of 2014 ("PD 5 of 2014") stating "that the amounts claimed accurately reflect the amounts the client is liable to pay and that no arrangement reduces them by reference to the outcome of the assessment";

(iii) a total of four firms of lawyers were employed by the First Respondent with:

a. MB Kemp for trial who acted till February 2026;

b. NHB Legal acted from 10 April 2026 and instructed Max Marenbon of Counsel for the hearing on 14 April 2026;

c. SK Legal Consultants coming on the record on 1 June 2026; and

d. Khaitan & Co appointed after the grant of permission to appeal on 20 July 2026;

(iv) The costs of the Respondents' Notice should not fall for the Appellant's account; and

(v) The costs of four fee earners should not be charged for the Hearing; and

(vi) That the costs charged are disproportionate to those at first instance;

(e) The only amount shown to be reasonably and proportionately incurred was AED 24,924;

(f) Records were not produced substantiating the claims;

(g) No allowance was made for duplication of lawyers who had worked on the case; and

(h) Only Mr Mahajan was recorded as counsel on the case.

<u>The Relevant Rules, the Provisions of the Agreement and the Approach to the Award of Costs</u>

5. The RDC provisions most relevant to the exercise of the Court's discretion are:

(a) The Overriding Objective in RDC 1.6 requiring the Court to deal with a case justly which relevantly involves, so far as practicable:

(i) saving expense;

(ii) dealing with the case in ways which are proportionate;

(iii) ensuring that it is dealt with expeditiously and fairly; and

(iv) allocating to it an appropriate share of the Courts' resources, while taking into account the need to allot resources to other cases;

(b) The definitions of immediate and detailed assessment in RDC 38.3 and 38.4;

(c) The general provisions as to the exercise of the Court's discretion in RDC 38.6 to 38.8;

(d) The definition of bases of assessment in RDC 38.17; and

(e) RDC 38.20 providing that in the absence of an express order, costs will be assessed on the standard basis.

6. In this case, the Court has already determined that the costs will be payable by the Appellant and subject to immediate assessment. The costs include not only the costs of the Appeal itself but also of reserved costs of the PTA Application and the Stay.

7. There are plain and obvious differences between the procedure and approach of the Court when conducting an immediate assessment and that undertaken when detailed assessment is undertaken pursuant to RDC Part 40. At the most basic level there is a trade-off between the precision involved in detailed assessment which comes with a substantial cost and time penalty and the much less precise approach for an immediate assessment where the Court will be less certain that it has got to the "right" number but will do so considerably faster and at less cost to the parties.

8. In very general terms, the Court will order an immediate assessment where it considers that it can fairly do so given the likely amount of costs at stake, its knowledge of what was involved in the relevant tasks (and therefore its ability to assess costs) and other relevant factors.

9. In this case, the Court, through having conducted the Appeal, considers itself to be in a relatively good position to conduct the immediate assessment which it has ordered. An appeal, unlike a large action at first instance, is a process where what was done, what was needed to be done and, in broad terms, what costs should have been incurred are matters which the Court is able fairly to assess from its general knowledge of similar matters and its particular knowledge of the case in question. An appeal necessarily consists of a review of a previous decision rather than an investigation into documents and the preparation of evidence into which a trial Judge, even after a lengthy trial, may have relatively little insight.

10. In the context of the immediate assessment which has been ordered in this case, the Court considers that the differences between indemnity and standard costs are unlikely to have a significant effect. The two differences are the requirements to take proportionality into account when assessing costs on the standard basis and the difference in burden (i.e. the task is to decide what costs were reasonably incurred on the standard basis or unreasonably incurred on the indemnity basis).

11. No submissions at all have been made as to proportionality. This is unsurprising. The immediate consequence of the appeal is that the Appellant will have to pay 1 million Euros (approximately AED 4,166,666) plus interest. The total sum claimed as costs in this assessment is therefore only some 6.2% of the amount in issue before interest.

12. Although the burden could make a difference in circumstances where the Court was uncertain as to whether costs were or were not reasonably incurred, immediate assessment is not a process which can or does require precise and rigorous proof. On this sort of application, the Court will be considering the matter at a level where the answer to the questions as to whether it is satisfied that costs of the amount awarded were reasonably incurred as distinct from whether it is satisfied that any of the costs claimed were unreasonably incurred are not likely to be materially different.

13. That said, the Court considers that notwithstanding the provisions of clauses 11.3 and 11.5 of the Settlement Agreement it should approach the assessment on the standard basis and award only such costs as it is satisfied were reasonably incurred.

14. This is because:

(a) The Appellant is correct to say that this is a discretionary and not a contractual assessment; and

(b) Although the Court could take contractual provisions into account in exercising its discretion as to the basis of assessment:

(i) neither clause expressly defines the basis for assessment of contractual costs;

(ii) Clause 11.3 does provide for an indemnity "from and against all losses, damages, costs, and expenses (including reasonable legal fees) incurred as a result of such breach" but does not identify how reasonableness of fees is to be assessed; and

(iii) Clause 11.5 provides that all costs and expenses incurred by the non-breaching party in enforcing its rights under the Agreement, including legal and professional fees should be borne by the breaching party but, as the Appellant points out, this is inapt to describe costs incurred in responding to the permission or stay applications; and

(c) As a general matter, this is not otherwise a case where the Court would consider that an award of indemnity costs would be appropriate.

The Sum of Costs to be Awarded

15. The starting point is the totality of costs claimed by the First Respondent. The Court considers the overall amount claimed of some AED 258,000 to appear, in general terms, reasonable having regard to the work required to be covered (including not just the Appeal but responding to the PTA Application and the Stay Application). The Court takes this view having regard to the documents prepared for the Appeal, the issues

canvassed on the Appeal and the hearing itself.

16. The Court also considers the rates charged to be reasonable. It should be noted that the highest rate charged, that for Mr Mahajan at AED 1,836 per hour for a partner with 15 years' experience is below the indicative Registrar's 2023 rate for trainees or lawyers with up to 5 years' experience (AED 2,391). The other rates are broadly equivalent to or below rates for paralegals. There is some relationship between rates charged and the amount of time which it is reasonable to expend. More expensive practitioners will be expected to be able to complete tasks more quickly than cheaper ones. The fact that the rates charged are reasonable (even modest) means the Court may well consider the overall sums charged to be reasonable even in cases where the hours seem slightly high.

17. The Court regards the submission made by the Appellant, to the effect that the First Respondent has only established an entitlement to costs of AED 24,924 to be entirely unrealistic. It is plain that lawyers have been involved providing professional services for a substantive Appeal and no one could conceive that this would reasonably be done for a sum of anything like as low as AED 24,924.

18. The Court also considers:

(a) That the First Respondent was plainly entitled to submit a Respondent's Notice;

(b) That there is nothing in the point as to technical non-compliance with paragraph 7 of PD 5 of 2014 given the statement of truth and the body of the costs submissions;

(c) That, in general terms, there is no requirement for the submission of vouchers or proof on an immediate assessment; and

(d) There is no basis to doubt the claim for VAT.

19. As to the other points:

(a) The Court does accept that there is likely to have been some modest overlap between the fees of the third and fourth legal firms involved for the Appeal (the first two firms not being involved in the Appeal and therefore being irrelevant);

(b) The Court also accepts that charging for four fee earners at the hearing was unreasonable although it considers three to have been reasonable; and

(c) That there is no indication as to what expenses of AED 3,500 were incurred.

20. Items 19(b) and (c) above indicate a deduction of AED 6,804 (taking off the amount for the most junior fee earner).

21. The question as to the unreasonable overlap of fees between firms is more difficult but, looking at the figures as a whole, the Court considers that a further deduction leading to a total award of costs of AED 220,000 does justice between the parties and accordingly assesses costs in that sum.