THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

CPD MIDDLE EAST LLC

Claimant

and

UNITED ARAB BANK P.J.S.C

Defendant

ORDER WITH REASONS OF JUSTICE RENE LE MIERE

UPON the Claimant's Part 8 Claim Form dated 29 June 2017

AND UPON the order of H.E. Justice Omar Al Muhairi dated 14 January 2018 (the "Inspection Order")

AND UPON the consent order dated 28 May 2018 (the "Stay Order")

AND UPON the Claimant's Application No. CFI-031-2017/5 dated 2 August 2024 seeking an order to revoke the Consent Order and continue proceedings in accordance with Part 8 of the Rules of the DIFC Courts (the "RDC") and for a substantive hearing to be listed by the Registry

IT IS HEREBY ORDERED THAT:

1. The Claim shall proceed to continue under the Part 7 procedure.

2. The Inspection Order shall be discharged.

3. The Stay Order shall be discharged.

4. The Registry shall list a Case Management Conference on a date suitable to the Court and the parties.

5. Costs of the Application shall be costs in the case.

Issued by:
Delvin Sumo
Assistant Registrar
Date of Issue: 31 October 2024
At: 8am

SCHEDULE OF REASONS

1. In 2017 the Claimant, Mr. Kian Saadat Yazdi, filed a Part 8 Claim Form dated 29 June 2017 seeking a declaration that a signature on a Personal Guarantee in his name in favour of the Defendant, United Arab Bank P.J.S.C ("UAB" or "the Bank") is a forgery (the "Claim").

2. UAB denied the Claim and contended that the Part 8 procedure should not be used.

3. On 14 January 2018, the Court issued an order that UAB give inspection of the original of the Personal Guarantee; and verification of Mr Yazdi's signature by Mr Zeshan Mahmood, who was an employee of UAB at the time of the purported execution (the "Inspection Order").

4. UAB was unable to comply with the order for inspection because the Personal Guarantee was in the possession of Kuwaiti courts in which UAB had sought to enforce the Personal Guarantee.

5. On 28 May 2018, the Court issued a consent order staying the proceedings until 31 September 2018 to allow for the examination of the original Personal Guarantee held by the Kuwaiti courts, or until the Kuwaiti proceedings permit such examination (the "Consent Order").

6. The proceedings in the Kuwaiti Courts have concluded but the Kuwaiti Courts have not returned the Personal Guarantee to UAB because it has determined the signature is a forgery

7. The Claimant has applied to this Court for an order that the Consent Order be revoked, and the proceedings continue in accordance with Part 8 of the Rules of the Dubai International Finance Centre Courts (the "RDC") and a substantive hearing be listed by the Registry.

8. UAB opposes the revocation of the Consent Order and submits that if the Consent Order is revoked, the Court should order that the Claim continue as if the Claimant had not used the Part 8 procedure.

9. For the reasons that follow the Court will order:

a) The Inspection Order of 14 January 2018 be discharged.

b) The Consent Order be discharged.

c) The Claim shall continue as if the Claimant had not used the Part 8 procedure.

d) The parties will attend a case management conference.

e) The costs of the Application will be costs in the case.

The Personal Guarantee

10. This dispute arises from a banking relationship between the Bank and Pacific Control Systems LLC ("PCS"), a UAE incorporated company. The Bank provided various banking facilities to PCS, including a substantial (more than AED 100 million) credit facility, an invoice discounting facility, and various facilities relating to letters of credit.

11. Mr Yazdi is a major shareholder in PCS. He and his father, together, own 35% of the shares in PCS.

12. The Bank required Mr Yazdi to provide a personal guarantee in support of the facilities provided by the Bank.

13. UAB says that in 2016 it was reported in the press that PCS had run into financial difficulty, PCS failed to resolve its financial difficulties, and the Bank sought to rely on a personal guarantee signed by Mr Yazdi and dated 10 December 2014 (the "Personal Guarantee"). That guarantee extended to AED 125 million, together with interest, charges, and expenses.

14. Mr Yazdi challenges the authenticity of the Personal Guarantee. Mr Yazdi says:

a) he and his father had "delegated all managerial and governance powers" in PCS to its CEO;

b) he was unaware of the Personal Guarantee, or the banking facilities provided by the Bank; and

c) the signature on the guarantee is forged.

The Claim

15. By a Part 8 Claim Form issued on 29 June 2017, Mr. Yazdi seeks a binding declaratory judgment that the Personal Guarantee was signed by another person using his name and signature and is therefore void ab initio as a binding instrument.

16. On 29 November 2017, UAB filed its Defence. UAB denies Mr Yazdi's Part 8 Claim and claims:

a) The Personal Guarantee was executed by Mr Yazdi;

b) Mr Yazdi willingly, intentionally and validly executed the Personal Guarantee and is now seeking to avoid paying the amounts owing to UAB thereunder; and

c) The signature of Mr Yazdi was verified by an employee of UAB, Mr Zeshan Mahmood.

The Inspection Order

17. In 2017, UAB had initiated proceedings in Kuwait to enforce the Personal Guarantee.

18. UAB resisted Mr Yazdi's application for inspection of the Personal Guarantee, claiming that the original was held as evidence by the Courts of Kuwait and, therefore, it could not produce the Personal Guarantee for inspection in the DIFC proceedings until the end of the proceedings in Kuwait.

19. UAB alleged, amongst other things:

a) it would be subject to Kuwaiti Courts' requirements for retrieving and delivering the original Personal Guarantee;

b) producing the original Personal Guarantee would be unreasonably burdensome and face legal impediments; and

c) Mr. Yazdi's request aimed to address deficiencies in his claim.

20. On 14 January 2018, the Court issued an order granting Mr. Yazdi's application for inspection and ordered UAB to give inspection by 28 January 2018 of:

a) the original of the Personal Guarantee; and

b) the independent verification of Mr Yazdi's signature by Mr Zeshan Mahmood, who was an employee of UAB at the time of the purported execution.

(The "Inspection Order")

21. UAB failed to comply with the Inspection Order by 28 January 2017.

22. UAB's lawyer wrote to Mr Yazdi on 1 February 2017 and stated the following points.

a) UAB is attempting to comply with the Inspection Order but faces challenges.

b) The original guarantee is held by Kuwaiti authorities.

c) Mr. Zeeshan Mahmoud left UAB on 30 January 2016. Efforts are ongoing to contact him for cooperation.

d) Given these issues, UAB requests an extension of time to comply with the Inspection Order.

The Stay Order

23. On 25 April 2018, the Registry requested an in-chamber meeting regarding UAB's application.

24. This meeting took place on 8 May 2018 before H.E. Justice Omar Al Muhairi, where the parties agreed to stay the DIFC proceedings.

25. This agreement was formalized in a Consent Order dated 28 May 2018 which states:

a) UAB must make reasonable efforts to contact ex-employee Mr. Zeeshan Mahmood for his cooperation in verifying Mr Yazdi's signature on the Personal Guarantee.

b) Proceedings are stayed until 31 September 2018 to allow for the examination of the original Personal Guarantee held by the Kuwaiti courts, or until the Kuwaiti proceedings permit such examination.

c) Liberty to apply is granted.

(The "Stay Order")

Proceedings in Kuwait

26. In late 2017, UAB had initiated proceedings in Kuwait to enforce the Personal Guarantee against Mr Yazdi.

27. On 23 January 2024, the Court of Cassation of Kuwait ("KCoC") rejected the final cassation appeal by UAB.

28. The KCoC confirmed the two prior rulings by the Court of Appeal ("KCoA") dated 27 October 2021 and the Court of First Instance ("KCFI") dated 19 November 2017.

29. Those decisions ruled that the purported personal guarantees in favour of UAB bore the forged signatures of Mr Yazdi and his father, Hassan Yazdi, and were invalid and unenforceable.

30. The KCFI and the KCoA decisions that declared the Personal Guarantee null and void were made following a report produced by handwriting experts at the General Department of Criminal Evidence of the Ministry of Interior of the State of Kuwait appointed by the KCFI, who examined the original of the Personal Guarantee and conducted an in-person verification of Mr Yazdi's signature in Kuwait.

31. The conclusions of the experts' report were later confirmed by a committee of experts appointed by the KCoA.

32. Between late January and early April 2024, Mr Yazdi's lawyer communicated with UAB's lawyer about concluding the proceedings in Kuwait following the KCoC ruling on 23 January 2024, lifting the stay, and scheduling and disposing of these proceedings. UAB's lawyers did not update Mr Yazdi's lawyer on UAB's efforts to retrieve the original Personal Guarantee from Kuwait and stated they could not contact the UAB's general counsel regarding the proceedings or the stay.

33. On 17 April 2024, Mr Yazdi's lawyer wrote to the Registry about his unsuccessful attempts to lift the stay and requested an in-chambers meeting to discuss scheduling and disposal.

34. On 3 May 2024, UAB's lawyer responded to Mr Yazdi's lawyer's email from 17 April 2024, stating:

a) UAB A intends to oppose Mr. Yazdi's application; and

b) UAB has requested the return of the original personal guarantees from the Kuwaiti courts, but due to bureaucratic delays, they are not yet in UAB's possession.

35. On 14 May and 24 June 2024, the Registry directed the parties to file whatever application they deem fit to progress the claim.

Application notice CFI-031-2017/5

36. On 2 August 2024, Mr Yazdi filed Application No. CFI-031-2017/5 for an order as follows:

a) The Stay Order be revoked.

b) The proceedings continue in accordance with RDC Part 8.

c) A substantive hearing be listed by the Registry.

Personal Guarantee remains in Kuwait

37. On 4 August 2024, at the request of UAB's Kuwaiti lawyer, Mr. Hossam Abdullah, his partner Salem Al-Turqi formally asked the Judge of the KCFI for the return of the Personal Guarantee. A few days later, the request was dismissed without explanation. A member of Mr Abdullah's team inquired informally with the Judge's secretary and learned that the Court believed the signature on the Personal Guarantee was forged, rendering it tainted by fraud. Mr Al Turqi then met with the Judge to explain that the original Personal Guarantee was needed for proceedings in the DIFC Courts. Despite this, the Judge refused to release it but suggested that a formal request through the usual channels might yield assistance.

Claimant's position

38. The Claimant's position is that:

a) the Claimant no longer seeks delivery up of the original Personal Guarantee;

b) the Bank has had enough time and opportunity to retrieve the original Personal Guarantee;

c) the Kuwaiti Courts have indicated that they will not release the Personal Guarantee; and

d) the Bank cannot insist that the claim remains in abeyance.

UAB opposes lift of stay

39. UAB opposes lifting the stay and submits it cannot provide inspection of the Personal Guarantee until it has possession. The document remains with Kuwaiti judicial authorities despite the Bank's retrieval efforts.

Stay should be lifted

40. The Court has the power to vary or discharge an order made by another judge where there has been a material change of circumstances and the interests of justice require it.

41. The Court made the Inspection Order to give effect to the parties' agreement because UAB was unable to comply with the Inspection Order unless and until it obtained possession of the original Personal Guarantee from the Kuwaiti judicial authorities.

42. There has been a material change of circumstances. Over six years have passed, and UAB still does not have the original Personal Guarantee. There is no evidence UAB will obtain it soon. The Claimant does not insist on its inspection. The document remains with Kuwaiti judicial authorities despite the Bank's efforts. The Claimant cannot proceed with the case.

43. In those circumstances, it is not in the interests of justice that the proceedings should be stayed indefinitely

44. The Inspection Order and the Stay Order will be discharged.

Case should proceed under Part 7

45. The Claimant seeks to continue under RDC Part 8, while UAB argues for Part 7.

46. UAB cites RDC 8.1(1), stating Part 8 is for cases unlikely to involve substantial factual disputes.

47. Mr. Yazdi claims the Personal Guarantee was forged. UAB lacks direct proof Mr. Yazdi signed it. UAB's case is circumstantial.

48. UAB argues substantial evidentiary factual issues exist, including:

a) Mr. Yazdi's involvement in PCS's management.

b) Mr Yazdi's knowledge of PCS's relationship with the Bank.

c) Previous guarantees signed by Mr. Yazdi.

d) Circumstances around the Personal Guarantee.

e) Whether signatures were forged.

49. RDC 8.17 outlines how a defendant can object to using Part 8. If a defendant believes there's a substantial factual dispute or Part 8 is not applicable, they must explain why in their acknowledgment of service, with evidence verified by a statement of truth. When UAB filed its acknowledgement of service it contended that the Part 8 procedure should not be used but did not state its reasons.

50. UAB denied Part 8's appropriateness in its defence, but Mr. Yazdi argues UAB failed to dispute the Part 8 procedure with evidence.

51. Mr. Yazdi asserts the Guarantee is a forgery, supported by handwriting experts whose evidence was accepted by the Kuwaiti courts. But those findings are not binding on this Court.

52. The Court has discretion to manage proceedings in a way that ensures justice and efficiency. There are substantial disputes of fact. UAB should be allowed to contest the signature issue under Part 7. The appropriate procedure is Part 7.

53. The Court orders the Claim to proceed as if Part 8 was not used and will schedule a case management conference.

Costs

54. The parties have enjoyed mixed success.

55. Justice is done by ordering the costs of the Application be costs in the case.