**THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS**

**IN THE COURT OF FIRST INSTANCE**

BETWEEN

**LARA BASEM MUSA KHOURY**

Claimant

and

**MASHREQ BANK PSC**

Defendant

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**ORDER WITH REASONS OF JUSTICE LORD ANGUS GLENNIE**

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**UPON** the Order with Reasons of Justice Lord Angus Glennie dated 29 March 2022 (the **"Order"**)

**AND UPON** the Claimant's permission to appeal application filed against the Order on 4 April 2022 (the **"Permission Application"**)

**AND UPON** reviewing the Defendant's written submissions in opposition to the Permission Application dated 20 April 2022

**AND UPON** directing that the Permission Application be determined without a hearing

**AND PURSUANT** to Part 44 of the Rules of the DIFC Courts (**"RDC"**)

**IT IS HEREBY ORDERED THAT:**

1. The Claimant's Permission Application is refused.

2. The Claimant shall pay the Defendant its costs of the Permission Application, to be assessed by the Registrar on the standard basis, if not agreed.

Issued by:
**Nour Hineidi**
Registrar
Date of issue: 29 April 2022
At:10am

**SCHEDULE OF REASONS**

1. This is the Claimant's application under RDC 44.5 for permission to appeal my Order of 29 March 2022 setting aside the Claim Form and service thereof and declaring that the Court had no jurisdiction over the Defendant in respect of the subject matter of this action. The application is opposed by the Defendant (the **"Bank"**).

2. The Claimant applied to have the application for permission to appeal considered at an oral hearing (RDC 44.17). I have read carefully the grounds advanced in support of that application. Nothing in those grounds persuades me that there is any need for an oral hearing or that it would be in the interests of justice to have one. The arguments sought to be raised on appeal are in substance the same as were presented to me on the hearing of the Defendant's substantive application. An oral hearing would simply add to the costs. Nothing advanced by the Claimant on this application leads me to believe that an oral hearing is required.

3. Permission to appeal may only be given where the Court considers that (1) the appeal would have a real prospect of success ("real" in this context meaning realistic rather than fanciful) or (2) there is some other compelling reason why the appeal should be heard: RDC 44.19.

4. Having considered the various grounds of appeal advanced in the Claimant's Skeleton Argument - not in an "appellant's notice" as required by RDC 44.6, 44.28 and 44.29 - I am not persuaded that the appeal has any realistic prospect of success. For reasons summarised below, I regard the proposed appeal as hopeless. Nor am I persuaded that there is some other compelling reason why the appeal should be heard. The fact that the Claimant cannot sue in the Courts of the DIFC does not deprive her altogether of the opportunity of pursuing her claim against the Defendant. There is at least one other court which does have jurisdiction over this claim, namely the court in onshore Dubai where she has already brought proceedings.

5. My reasons for regarding the appeal as without merit are set out below under reference to paragraph numbers on the Claimant's Skeleton Argument (hereafter **"Ske"**).

6. Ske paragraphs 4-10: The Claimant alleges that the judgment contains some factual errors relating to the onshore Dubai proceedings and the ineffective attempt by the Claimant to serve the DIFC proceedings on the Bank in May 2021. These matters arise out of the introductory part of my judgment in which I was seeking to summarise how the issue came before the Court. They form no part of my reasoning on the issues between the parties. It was in any event not disputed by the Claimant that the attempted service in May 2021 was ineffective. The "working day" contention

(S/A paragraph 9) also has no significance, since as I said in paragraph 17 of the judgment, working days and non-working days are treated alike where a period of six pays or more is specified in the RDC.

7. Ske paragraphs 11-20: In these paragraphs the Claimant repeats arguments made at the hearing. My own view of the matter is set out in paragraphs 8-15 of my judgment. I do not propose to repeat the reasoning that led me to that view. However, it is right to say that one point raised by the Bank, namely that if the Claimant is correct on her construction of RDC 7.20 it results in their being two different and inconsistent time limits for service of proceedings in a case such as this, did impress me. The Claimant's proposed construction of RDC 7.20 led to an absurdity, which was avoided on the Bank's construction of the Rule (see paragraph 11 of the judgment). I note that the Claimant does not attempt to grapple with this difficulty in these paragraphs of her Skeleton Argument.

8. Ske paragraphs 21-25: These paragraphs concern my finding, on the limited evidence before me, of when the claim form was delivered. My assessment of the evidence is at paragraphs 18-20 of my judgment. I made certain findings of fact. Nothing in the Claimant's Skeleton Argument causes me to change my mind. In any event the point is irrelevant if I am right in my view on the Deemed Service provisions in the Rules.

9. Ske paragraphs 26-29: This is the Deemed Service point. My reasoning on this point is at paragraphs 21-24 of my judgment. I need not repeat it. Suffice it to say that for this point to assist the Claimant she would also have to succeed on the previous issue.

10. Ske paragraphs 30-33: The Claimant advances an argument to the effect that late service of the claim form should be excused because of some "Test of Reasonableness". My judgment deals with this at paragraph 25. I regard this point as unarguable.

11. It is important to observe that the points discussed thus far only concern the validity of service of the claim form and whether it was served within time. However arguable any of the Claimant's points may be - and, for reasons already set out, I do not consider them to be arguable - they do not enable the Claimant to succeed unless she also succeeds on the jurisdiction arguments discussed below, because even if it were held (for whatever reason) that service was effected within time, the proceedings in the DIFC could not proceed unless it was held that the DIFC courts had jurisdiction over the subject matter of the Claimant's claim against the Bank.

12. Ske paragraphs 34-42: In these paragraphs the Claimant disputes my interpretation of clause 22 of the Agreement, particularly clause 22.1. The point is a simple one. What is the effect of clause 22.1? Who does the pronoun "it" refer to, the Client (the Claimant) or the Bank? My clear view, expressed in paragraph 31 of my judgment, is that the pronoun "it" refers to the Client (the Claimant) and that clause 22.1 is an asymmetric agreement, whereby the Client/ Claimant agrees (for the benefit of the Bank) that any claims against her or any of her assets may be brought in the courts of the DIFC, without there being any reciprocal agreement by the Bank that it will accept DIFC jurisdiction over claims against it by the Client. There is no difficulty in the word "it" referring to a natural person - as is stated in the Bank's written submission opposing the grant of permission to appeal, this usage occurs in several places in the Agreement, which is a standard form Agreement obviously designed for use with natural persons as well as legal entities. And the structure of the second sentence of clause 22.1 makes it clear that "it" must refer to the Client. The Client agrees that legal proceedings against it (i.e. the Client) may be brought in the DIFC - if "it" referred to the Bank, the sentence would say that the Bank agreed that proceedings against it may be brought in the DIFC. Clause 22.1 therefore amounts to an agreement that claims by the Bank against the Client may be brought in the DIFC. It says nothing about claims by the Client against the Bank. That construction is reinforced by the language of clause 22.2: the Client (not the Bank, the Client) submits to the jurisdiction of the courts of the DIFC, while it is open to the Bank to take proceedings against the Client in the courts of any competent jurisdiction. Nothing is said in clause 22 about where the Bank can be sued by the Client, but it does not follow (as suggested in Ske paragraph 40) that the Claimant is left without any means of legal recourse against the Bank - she can sue the Bank in onshore Dubai (as she has done) or in any other courts where she can establish jurisdiction.

13. I remain wholly unconvinced that the Claimant's construction of clause 22 is even arguable.

14. Ske paragraphs 43-48: It is suggested that I misconstrued Article 5(A)(2) of the JAL. In fact no issue arose as to the proper construction of that Article. My decision was simply that - for the reasons just discussed - the parties had not agreed that claims against the Bank could be brought in the courts of the DIFC. There is nothing in this point.

15. Ske paragraphs 49-56: The Claimant asserts that I wrongly held that the judgment in the onshore Dubai courts was final. I did no such thing. I made it clear in paragraph 36 of my judgment that I was not deciding that point. I decided the case in favour of the Bank on other grounds, leaving the question of whether the Dubai court judgment was final to be decided on another occasion should it ever become relevant.

16. Reference is made in Ske paragraph 55 to the fact that the Claimant has made an application to the Joint Judicial Committee (**"JJC"**). That was brought to my attention as I was finalising my judgment, though it was not, I think, submitted that I should not proceed to decide the case. This point is, in my opinion, a complete red herring. There is no conflict of jurisdiction in this case between the courts of the DIFC and the courts of onshore Dubai. If my judgment is correct, the DIFC courts do not claim or assert that they have jurisdiction over this matter.

17. In summary the position is this. Despite the many and varied grounds of appeal advanced by the Claimant, she cannot succeed in establishing DIFC jurisdiction over her claim against the Bank unless she succeeds in her arguments as to the proper construction of clause 22.1 of the Agreement. That clause, construed in the way advanced in her Skeleton Argument, is her only possible route to establishing jurisdiction. If her argument on this point fails, as I consider that it must, then her proposed appeal must fail.

18. For all these reasons, I refuse permission to appeal.