**Claim Nos: CFI 016/2021**
**CFI 023/2021**

**THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS**

**IN THE COURT OF FIRST INSTANCE**

BETWEEN

**IGPL GENERAL TRADING LLC**

Claimant in CFI-016-2021 and CFI-023-2021

and

**(1) HORTIN HOLDINGS LIMITED**
**(2) LODGE HILL LIMITED**
**(3) WESTDENE INVESTMENT LIMITED**

Defendants in CFI-016-2021 and CFI-023-2021

**(4) PAUL PRETLOVE (RECEIVER)**

Defendant in CFI-016-2021

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**ORDERS WITH REASONS OF JUSTICE ROGER GILES**

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**UPON** reviewing the Order with Reasons of Justice Roger Giles dated 22 August 2021 (the **"Order"**)

**AND UPON** reviewing the Statement of Costs filed by the Defendants on 25 August 2021 (the **"Defendant's Statement of Costs"**)

**AND UPON** reviewing the Claimant's Appeal Notice dated 7 September 2021 filed against the Order (the **"Appeal Notice"**)

**AND UPON** reviewing the Claimant's Application No. CFI-023-2021/5 dated 7 September 2021 for a stay of paragraphs 3-4 and 6 of the Order pending resolution of the Claimant's appeal proceeding (the **"Stay Application"**)

**AND UPON** reviewing the Defendants' costs submissions dated 8 September 2021 following paragraph 6 of the Order (the **"Submission on Costs"**)

**AND UPON** reviewing the Claimant's Application No. CFI-023-2021/6 dated 12 September 2021 for an extension of time to comply with paragraph 6 of the Order (the **"Extension of Time Application"**)

**AND UPON** reviewing the Defendants' evidence in answer dated 13 September 2021 in relation to the Stay Application

**AND UPON** reviewing the Claimant's evidence in reply dated 14 September 2021 in relation to the Stay Application

**AND UPON** the direction of Justice Roger Giles dated 15 September 2021 for the parties to provide any further submissions in relation to either application

**AND UPON** reviewing the Claimant's written submissions filed pursuant to the direction of Justice Roger Giles dated 16 September 2021

**AND UPON** reviewing the Defendant's written submissions filed pursuant to the direction of Justice Roger Giles dated 16 September 2021

**IT IS HEREBY ORDERED:**

1. In proceedings CFI-016-2021, extend the period of suspension of the operation of order 3 in the Order until the decision on the application for permission to appeal, and if permission is granted until the decision of the Court of Appeal.

2. In proceedings CFI-023-2021:

   i. dismiss the application for a stay of order 6 in the Order; and

   ii. extend the period of seven days in order 6 in the Order to seven days after the issue of this judgment.

3. There be no order as to the costs of the Stay Application and the Extension of Time Application.

Issued by:
**Nour Hineidi**
Registrar
Date of issue: 20 September 2021
At: 1:50pm

**SCHEDULE OF REASONS**

1. The Claimant claims to have an agreement to lease premises in London (the **"London Properties"**), made between the Defendants as lessors and the Claimant and others as lessees (the **"Tenancy Agreement"**). In CFI-016-2021, on 31 January 2021, it obtained ex parte orders restraining the Defendants and the Receiver with control of the Defendants, Mr Paul Pretlove, from acting in breach of the Tenancy Agreement, including by eviction or by sale of the London Properties. In CFI-023-2021, issued on 14 February 2021 as the substantive proceedings following the grant of the restraining orders, the Claimant sought specific performance of the Tenancy Agreement.

2. The orders in CFI-016-2021 were initially in force until a return date and were extended by consent until further order. By an application notice issued on 30 March 2021, the Defendants applied in CFI-023-2021 for immediate judgment. For the reasons given in a judgment issued on 22 August 2021 (the **"Judgment"**), the application was successful. In the Order, immediate judgment was granted and the proceedings in CFI-023-2021 were dismissed, and it was further ordered -

> "3. In proceedings CFI 016-2021, order that the orders made on 31 January 2021 as thereafter extended be discharged.
>
> 4. Suspend the operation of order 3 for 28 days.
>
> 5. Grant liberty to apply in relation to orders 3 and 4.
>
> 6. Order that, if the parties are unable to agree on costs within ten days, written submissions on costs not exceeding three pages be exchanged and filed within a further seven days."

3. By way of the Appeal Notice, the Claimant applied for permission to appeal from the Order. The grounds of appeal and skeleton argument did not accompany the Appeal Notice and have not yet been filed and are due by 28 September 2021 (see Rules of the DIFC Courts (**"RDC"** or the **"Rules"**) r.44.29, r.44.30). By way of the Stay Application, the Claimant applied for orders that orders 3, 4 and 6 in the Order be stayed pending the decision of the appeal.

4. The parties did not agree on costs. Conformably with its application that order 6 in the Order be stayed, the Claimant did not file submissions on costs in accordance with that order. By way of the Extension of Time Application, the Claimant applied for an extension of the time for filing costs submissions until 14 days after the decision of the appeal, alternatively until 14 days after the decision of the Stay Application.

5. The Stay Application and the Extension of Time Application came before me for decision without a hearing, the former as a matter of some urgency given that the suspension of the operation of order 3 in the Order, discharging the restraining orders, expires on 20 September 2021. The Claimant relies on the Fourth and Fifth Witness Statements of Ms. Sara Sheffield of the Claimant's lawyers, which include material in the nature of submissions, and a separate written submission over the lawyers' firm name. The Defendants rely on the Sixth Witness Statement of Mr. Carlo Fedrigoli of the Defendants' lawyers, which also includes material in the nature of submissions, and a separate written submission by Mr. Faisal Osman of Counsel.

**A procedural matter**

6. Orders 3 and 4 in the Order were consequential on dismissal of the proceedings in CFI-023-2021; the restraints fell with the falling of that which they were to protect. They were made in CFI-016-2021. The Stay Application was filed in CFI-023-2021, when an application to stay orders 3 and 4 in the Order should have been filed in CFI-016-2021. No point was taken, and I treat the Stay Application in relation to those orders as if filed in CFI-016-2021, pursuant to Article 44 of the DIFC Court Law, DIFC Law No. 10 of 2004, and RDC r.4.51.

**The stay of orders 3 and 4 in the Order**

7. An appeal does not operate as a stay of the orders appealed from. A stay pending an appeal is an exercise of discretion in all the circumstances: the outcome of the appeal being uncertain, essentially a consideration the relative risk of injustice to one party or the other if the stay is granted or refused.

8. As appears from the Judgment, the Defendants are now controlled by the Commercial Bank of Dubai (the **"Bank"**), which wishes to realise the London Properties in order to satisfy or contribute to satisfaction of a judgment obtained against members of the Al-Sari family. The Claimant initially submitted, via Ms. Sheffield's witness statement, that absent a stay there was a real and immediate risk of the London Properties being sold before the decision of the appeal, rendering its claim to specific performance of the Tenancy Agreement nugatory and the appeal futile, and depriving the Al-Sari family of their possession and occasional occupation of the London Properties enjoyed for many years. Against this, it said, any delay in realising the London Properties attendant on an unsuccessful appeal would be short and would not be a hardship to the Bank, particularly when the judgment was obtained as long ago as 2016. According to these submissions, the relative risk of injustice favoured a stay.

9. The real and imminent risk of sale of the London Properties needs further consideration. It is difficult to see effective marketing and sale until CFI-023-2021 is finally resolved by refusal of permission to appeal or decision of an appeal; the shadow of the Claimant's claim would be cast over the process and the subject-matter. This appears to be recognised in Mr. Fedrigoli's Witness Statement. He says that the Bank does desire to "get on" with the process of selling the London Properties, but that disclosure of the appeal would have to be made in any marketing and realisable value would be materially affected. Referring to a protective notice lodged in England, he continues-

> "Because of that, [the Bank] will only sell the London Properties i) once the unilateral notice has been withdrawn or removed, and ii) possession proceedings (if necessary) are concluded. Both of those steps will follow once the issue of the Tenancy Agreement has been finally put to bed.
>
> ..
>
> The Bank's] Position is that immediate judgment was properly ordered, the court's careful ruling is unimpeachable, and these proceedings will soon have a finality. It does not make sense, therefore, to market the London Properties now. Ms. Sheffield is consequently wrong when she says that there `is a real and immediate risk of the properties being sold before the determination of the appeal'.".

10. This cuts both ways. So far as it rejects any risk of injustice to the Claimant by action of the Bank if a stay is not granted, it also negates risk of injustice to the Defendants (effectively, the Bank) if a stay is granted - because the Bank will not take action in any event. The Claimant's subsequent submissions made this point, while indicating distrust of the Defendants' adherence to the position stated above and maintaining that "the fair course is to `hold the ring'.".

11. Without expressing a view on the reason given for distrust, which was contested, the Defendants' position falls short of a satisfactory answer to the risk of injustice to the Claimant. The focus on the sale of the London Properties is understandable, but there are other ways in which, if the restraining orders were discharged, action to the detriment of the Claimant as asserted lessee could be taken. They may or may not so affect the Claimant as to make the appeal nugatory, but there should not be exposure to the uncertainty. The Defendants do not offer an undertaking, whether directed to removal of the unilateral notice, possession proceedings and sale, or more widely to action in breach of the Tenancy Agreement; whether or not the distrust is soundly based, the Claimant would not have the protection of the restraining orders. There remains a risk of injustice to the Claimant.

12. The Defendant otherwise submitted that it was necessary that the Court be satisfied that the Claimant "had some prospect of success" in an appeal before a stay would be granted, and that the Claimant had failed to do. No authority was cited, nor was there explanation of what was meant by "some prospect of success": it appears to involve a lesser test than the test of reasonable prospects of success for permission to appeal, something like absence of manifest futility. The submission fails to take account of the circumstances brought about by the Rules. In accordance with the Rules, the time for the Claimant to establish a real prospect of success has not yet arrived. If it obtains permission to appeal, there must be satisfaction as to some prospect of success. A stay pending the decision of the application for permission to appeal is open, but in any event as the Judge deciding the application for immediate judgment, I do not exclude some prospect of success.

13. As stated above, there is a risk of injustice to the Claimant if a stay is not granted. On the Defendants' position, nothing is suggested of which they would be deprived by a stay. In my view, having regard to the relative risk of injustice, a stay should be granted until the decision of the application for permission to appeal, and if permission is granted, until the decision of the appeal. That can be done by extension of the period of suspension of the operation of order 3 in the Order.

**The stay of order 6 in the Order**

14. The nub of the Claimant's submissions was that it would be an inefficient use of the time of the Court and the parties to file submissions on costs when there is the prospect of a successful appeal. It was submitted also that the relative financial positions of the parties should be taken into account, with the suggestion that the Claimant was "financially weaker" than the Bank, but I am not satisfied either that the relative financial positions are relevant or that the Claimant's financial position is weak.

15. For the hearing of the application for immediate judgment, both sides had filed their respective statement of costs. The Defendants filed their Submissions on Costs within the period stated in order 6 of the Order, the submissions including that the Defendant's Statement of Costs was not just the costs of the application for immediate judgment, but the costs of the proceedings as a whole. There is insufficient reason why it should not be decided whether the Defendants as the successful parties should be entitled to the costs of CFI-023-2021 in full, or whether their entitlement should be reduced, or some other disposition of costs should be made, and that should be decided, so that the adjudication at first instance is concluded (and perhaps, so that any discontent with the disposition of costs can be included in any appeal). That is not a major endeavour, and I do not consider it disproportionate to undertake it despite the prospect of an appeal.

16. Quantum is another matter. Assuming an order is made in favour of the Defendants, the Defendant's Statement of Costs is in the briefest form, and although RDC r. 38.30 contemplates that it may occur, I do not consider that I am in a position to make an immediate assessment. The Claimant's apparent assumption that the submissions the subject of order 6 in the Order must address quantum may be put aside, and there will need to be an assessment by the Registrar. With that clarification, there is no occasion otherwise to stay the order for submissions.

17. A stay of the order for submissions is not appropriate and should be refused. It would be open for a party to propose in those submissions a stay of assessment according to the usual course, or of payment of the assessed costs, but the submissions should be made.

**The extension of time for costs submissions**

18. The Extension of Time Application is obscurely framed, sometimes as an application to extend the time for the Claimant's submissions and sometimes as an application to extend the time for the filing and exchange of costs submissions as a general proposition. As noted above, the extension requested is until 14 days after the decision of the appeal, alternatively until 14 days after the decision of the Stay Application.

19. The point of the Extension of Time Application is not clear. From the Fifth Witness Statement of Ms. Sheffield, it appears that the Extension of Time Application was made following advice from the Registry that the Stay Application would not operate as an extension of the time for filing and exchange of submissions; if so, an extension should have been requested only against the possibility that the application to stay order 6 in the Order was not granted. From its application seeking an extension of time until 14 days after the decision of the appeal, it could be that the Claimant had in mind preserving an ability to make submissions on costs in the event that, a stay of that order having been granted, it was unsuccessful in obtaining permission to appeal or the appeal was unsuccessful. But the narrative in the Extension of Time Application goes further, and is effectively a request in different form for a stay of order 6 in the Order, and the Claimant's submissions rather melded the application for that stay and the Extension of Time Application.

20. A stay of the order for submissions being refused, so also should an extension of time for the costs submissions until after decision of the appeal be refused. The Defendants filed the Submissions on Costs within the period stated in order 6 in the Order, and the Claimant needs an extension of the period in order so that it can make its submissions now. Mr. Fedrigoli adverts to an application for extension of time, but I do not discern any reasons against allowing an extension so that the Claimant can make submissions on costs in the event that a stay of order 6 in the Order is refused, and Mr. Osman's submissions do not address the matter. The Claimant should have the opportunity to make its submissions on costs, and the period should be extended such that its submissions are to be filed and served within seven days from the date of issue of this judgment.

21. With the clarification in [16] above, the Defendants should have a similar extension so that they can provide re-cast or supplementary submissions if so advised.

**Mr Pretlove as a party**

22. Gratuitously, the Witness Statements included debate over whether Mr. Pretlove should be removed as a party in CFI-016-2021. That is not a matter in these applications. If the parties are agreed, a consent order can be filed; if they are not, an application can be made to remove him.

**Costs**

23. Taking the Stay Application and the Extension of Time Application together, in the round there is equal success and failure. No order for costs of the applications should be made, to the intent that the parties each bear its and their own costs.

**Orders**

24. I make the following orders:

(a) In proceedings CFI 016-2021, extend the period of suspension of the operation of order 3 in the Order until decision of the application for permission to appeal, and if permission is granted until decision of the Court of Appeal.

(b) In proceedings CFI 023-2021:

i. dismiss the application for a stay of order 6 in the Order; and

ii. extend the period of seven days in order 6, in the Order, to a time seven days after the issue of this judgment.

(c) Make no order as to the costs of the Stay Application and the Extension of Time Application.