THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

STATE BANK OF INDIA (DIFC BRANCH)

Claimant

and

(1) NMC HEALTHCARE LLC
(2) NMC SPECIALITY HOSPITAL LLC, ABU DHABI
(3) NEW MEDICAL CENTRE LLC DUBAI
(4) NEW MEDICAL CENTRE SPECIALITY HOSPITAL LLC, AL AIN
(5) MR. B.R SHETTY

Defendants

ORDER WITH REASONS OF JUSTICE WAYNE MARTIN

UPON the Case Management Order of H.E. Chief Justice Wayne Martin dated 2 April 2025 (the "Order")

AND UPON the Fifth Defendant's Permission to Appeal Application dated 15 April 2025 (the "Application for Permission"

AND UPON the Fifth Defendant's Certificate of Service dated 12 May 2025

IT IS HEREBY ORDERED THAT the Application for Permission is dismissed.

Issued by:
Delvin Sumo
Assistant Registrar
Date of issue: 18 June 2025
Time: 8am

SCHEDULE OF REASONS

1. The Fifth Defendant, Mr B R Shetty (Mr Shetty), applies for permission to appeal from a decision dismissing almost all of an application to amend his Defence (the "Application for Permission"). For the reasons which follow the Application for Permission must be dismissed.

The nature of the claim against Mr Shetty

2. The Claimant, State Bank of India (DIFC Branch) (the "Bank"), asserts that Mr Shetty guaranteed the repayment of funds advanced by the Bank to NMC Healthcare LLC, the First Defendant, which is part of the NMC Healthcare Group. In April 2020, the parent company of that Group, NMC Health Plc went into administration following allegations of widespread fraud within the Group. The Bank asserts that the Second-Fourth Defendants, which are also members of the NMC Healthcare Group, also provided guarantees in respect of the funds advanced by the Bank to the First Defendant.

The application to amend

3. These proceedings were commenced in June 2020. Particulars of the Bank's claim were served on 16 July 2020. Pleadings, witness statements and expert reports were exchanged over the years which followed, together with disclosure of documents. It was evident that the case was nearly ready for trial, and a Case Management Conference was listed before me on 24 March 2025.

4. On 7 March 2025, Mr Shetty applied for leave to amend his Defence. The proposed amendments were extensive. They were opposed by the Bank.

5. After hearing argument in support of the application to amend, I dismissed the application for reasons which were given orally. The transcript of those reasons serves as the record of the reasons for the dismissal of the application. That transcript should be read in conjunction with these reasons.

6. After the application to amend was dismissed, a timetable was set for expert conferral and the provision of a joint expert report, and the matter was listed for trial on 29 April 2025 on the basis that the hearing would occupy no more than one day. However, in the result, the trial was later rescheduled and fixed for a date in August due to issues with respect to party availability.

Permission to appeal - principles

7. Rule 44.117 of the Rules of the DIFC Courts (the "RDC") provides:

"44.117 The Court of Appeal will allow an appeal from the decision of the Court of First Instance where the decision of the lower Court was:

(1) Wrong; or

(2) Unjust because of a serious procedural or other irregularity in the proceedings in the lower Court."

8. RDC 44.5 requires that an appellant obtain permission to appeal to the Court of Appeal except where the appeal is against a committal order.

9. RDC 44.19 provides:

"44.19 Permission to appeal may only be given where the lower Court or the Appeal Court considers that:

(1) The appeal would have a real prospect of success; or

(2) There is some other compelling reason why the appeal should be heard."

10. In this case, the Applicant does not contend that there is some other compelling reason why the appeal should be heard. Rather, they contend that the appeal would have a real prospect of success because the decision of the Judge at first instance was wrong.

11. It is established that "real" in the context of an assessment of the prospects of success means realistic rather than fanciful, applying the same test as is applied in an application for immediate judgment.[1]

12. It is also established that a real prospect of success does not mean a probability of success, but more than mere arguability.[2]

13. Accordingly, in order to obtain the grant of permission, a prospective appellant needs to establish more than the proposition that the proposed appeal is reasonably arguable - rather, it must be established that there is a real prospect of success.[3]

14. Particular principles apply to applications for permission to appeal against case management decisions and multi factorial assessments undertaken by a Judge at first instance.

15. This is an application for permission to appeal against a case management decision. It's well established in this and other comparable commercial courts that Courts of Appeal are generally reluctant to interfere with case management decisions made in the exercise of the broad discretion conferred upon Case Managers by rules of court, including the rules of this Court. Generally speaking, appellate intervention will only be justified if the case management decision is so outside the range of a sound discretionary judgment as to manifest error and if the consequence of the decision would be to cause substantial and irremediable injustice.

16. For the reasons which follow, there is no prospect that an appellate court would conclude that the decision to dismiss the application for amendment was wrong or that the decision would occasion substantial injustice if not reversed.

The grounds of appeal

17. The grounds of appeal take the form of short headings in the skeleton argument advanced in support of the application for permission. The headings are cast in extremely general terms. No attempt has been made to comply with RDC 44.31, which provides:

"44.31 The grounds of appeal must:

(1) set out clearly the reasons why it is said the decision of the lower Court was:

(a) wrong; or

(b) unjust because of a serious procedural or other irregularity in the proceedings in the lower Court;

(2) specify, in respect of each ground, whether the ground raises an appeal on a point of law or is an appeal against a finding of fact; and

(3) state the orders sought on appeal."

Ground 1

18. Ground 1 asserts that "the application was not made at a late stage".

19. The argument advanced in support of this ground is specious and destroyed by the undeniable objective facts. The application was made to amend the Defence almost five years after the proceedings were commenced, and 2.5 years after the Defence was originally filed. The case was, in all other respects, ready for trial, and after the application to amend was dismissed, was in fact listed for trial a month later, although the parties later agreed to reschedule the trial for reasons of their own.

20. The circumstances of this case provide a paradigm example of the circumstances referred to by Lady Justice Carr DBE[4] in *Quah Su-Ling v Goldman Sachs International*[5] where her Honour observed:

> "Very late applications for permission to amend in circumstances where (a) there is no good reason for the delay and (b) amendment would result in real disruption or prejudice to the parties and/or the court are unlikely to be allowed, irrespective of the merits of the proposed amendment."

21. That principle takes on irresistible force where, as in this case, for the reasons which were given when the application was dismissed, and to

which some reference will be made later in these reasons, the proposed amendments were entirely without merit and did not disclose any reasonable ground of defence.

22. Ground 1 has no prospect of success.

Ground 2

23. Ground 2 asserts that "the impugned order is contrary to the interests of justice".

24. This ground is cast in such broad and general terms as to be meaningless.

25. One is left to try and winkle out the asserted error from the argument which accompanies the ground. The difficulty of that task is compounded by the fact that the argument contains a diverse range of apparently unconnected propositions.

26. Doing the best one can to identify a theme in the argument, it seems to embody the proposition that:

(a) The proposed amendments were properly pleaded and disclosed a real prospect of success; and

(b) The Claimant would suffer no injustice or prejudice if the amendments were allowed.

27. However, neither of these propositions is developed in any material or substantive way in this section of the skeleton.

28. Reference is made to specific amendments later in relation to other grounds of appeal but, for reasons which will be developed in that context, none of the proposed amendments disclosed any reasonable ground of defence.

29. There was no doubt that the Claimant would suffer prejudice if the amendments were allowed in the form of delay in the matter proceeding to trial and increased cost responding to expanded grounds of defence.

30. Ground 2 has no prospect of success.

Ground 3

31. Ground 3 is said to be "constricting the appellant's case solely to the issue of signature".

32. This is another ground which is very difficult to comprehend. The Defence which was served 2.5 years earlier was based entirely on the proposition that Mr Shetty did not sign the Guarantee. If the amendments were disallowed, as they were, that was the only defence available to be put at trial. The restriction of the issues to those pleaded in the Defence originally served was the inevitable consequence of the dismissal of a late application to amend by adding grounds which were not properly pleaded and which disclosed no reasonable ground of defence.

33. Ground 3 has no prospect of success.

Ground 4

34. Ground 4 is described as "need for evidence at amendment stage".

35. This ground appears to contest the proposition expressed in the oral reasons to the effect that when an application was made to introduce a new issue at a very late stage of proceedings which would have the effect of disrupting the proceedings, it was generally appropriate to adduce some evidence in support of the issue.

36. The context in which the proposition was enunciated was in relation to the amendments which sought to introduce the assertion that the Bank was in breach of a duty which it owed to Mr Shetty to explain to Mr Shetty the effect of the Guarantee before or at the time which he signed it.

37. Leaving to one side the lack of any identified legal source for the alleged duty it was clear that no evidence could be led in support of the alleged breach of duty because Mr Shetty emphatically denies ever signing or having any knowledge of the Guarantee upon which the Bank sues. Obviously in these circumstances it is impossible for him to assert that he was ignorant of the terms and effect of the Guarantee at the time he signed it and that his ignorance would have been cured by some form of an explanation provided by the Bank. The position emphatically adopted by Mr Shetty in his pleadings and witness statements makes this ground of defence impossible, even if it had any legal basis, which it doesn't.

38. Ground 4 has no prospect of success.

Ground 5

39. Ground 5 asserts that "the amendments were properly pleaded and disclosed a real prospect of success".

40. It seems from the argument advanced in support of this ground that it has three specific subgrounds which relate to specific portions of the amended pleading which were disallowed.

The composition of the principal debt

41. The first sub-ground relates to the disallowance of a plea based upon the Bank's entry into a composition with the principal debtor in the context of the insolvent administration of that debtor. The ground asserts that the composition extinguished the principal debt, with the result that the Guarantee is also extinguished.

42. The application to amend the Defence to include a defence along these lines was dismissed because of clause 5.3 of the Guarantee which

provides, in conventional terms, that the obligations of the guarantor would not be affected by any act, omission matter or thing which would, but for that clause, have reduced released or prejudiced any of the guarantor's obligations under the guarantee including any waiver or composition with the borrower or the release of the borrower under the terms of any composition.

43. As was observed in the reasons given at the time the application to amend was dismissed, the clauses are entirely standard in guarantees, their purpose being to avoid the rule in *Holme v Brunskill*. [6] Mr Shetty has not advanced any credible contention or argument in support of the proposition that the clause would not take effect in accordance with its clear and express terms. Accordingly, the proposed amendment disclosed no reasonable ground of defence.

Clause 3.3 of the proposed amendments

44. Proposed clause 3.3 was in the following terms:

> 3.3 Without prejudice to the above defences, the Personal Guarantee is not a valid guarantee recognised by applicable law with regards to transactions in the nature of the Facility and the Claimant has not taken the due care required for obtaining the Personal Guarantee, allegedly from Mr Shetty. The actions of the Claimant in illegally procuring a personal guarantee, not taking due care in such procurement, and not properly securing the credit facility it has extended, has left Mr Shetty in a position to defend himself in claims arising from agreements he has no knowledge of.

45. As I observed in the course of my reasons for disallowing the amendment, its generality and incoherence were sufficient in themselves to require its disallowance.

46. It is now said that the paragraph must be read with paragraphs 32 to 44 of the proposed amendments which provide the legal basis for a challenge to the enforceability of the Guarantee.

47. However, those paragraphs suffer their own deficiencies which were identified in the reasons for their disallowance. Most particularly, to the extent that they rely upon conduct rules issued by the DFSA relating to the conduct of regulated financial institutions, such rules pertain to the relationship between the regulator and the regulated institution, but have no affect on the contractual relationship between the regulated institution and its clients, for the reasons which I gave in *Barclays Bank v Shetty*. [7] Proposed paragraph 3.3, read in isolation or in conjunction with proposed paragraphs 32-44 disclosed no reasonable ground of defence.

Paragraphs 7-14

48. Proposed paragraphs 7-14 of the Defence contravene a fundamental principle of common law pleading in that they consist entirely of argumentative and evidentiary assertions. They include references to decided cases. Of course, there is no reason why those cases can't be referred to a trial, and evidence led in respect of material facts properly pleaded, provided the evidence has been served in advance in accordance with the pretrial directions made by the Court. However, proposed paragraphs 7-14 do not plead any material facts, but rather comprise a string of argumentative and evidentiary assertions.

49. There is no prospect that the Court of Appeal would uphold the application to amend to introduce proposed paragraphs 7-14.

50. For these various reasons ground 5 has no prospect of success.

Conclusion

51. As none of the grounds of appeal has any prospect of success, real or otherwise, the Application for Permission must be dismissed.

52. As the Bank did not respond to the Application, there is no need to make any order with respect to the costs of the Application.