Claim No: CFI 098/2023

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE
BEFORE H.E. JUSTICE MICHAEL BLACK KC

BETWEEN

MR NANCY

Claimant

and

NARCISSA DIFC

Defendant

Hearing : **11 to 13 June 2025**

Counsel : Prateek Bagaria instructed by Singularity Legal LLP for the Claimant
Jane McCafferty KC, assisted by Stephen Doherty and instructed by Morgan, Lewis & Bockius LLP for the Defendant

Judgment : **6 August 2025**

JUDGMENT OF H.E. JUSTICE MICHAEL BLACK KC

UPON the Part 7 Claim Form filed on 29 December 2023 (the "Claim")

AND UPON hearing counsel for the Claimant and counsel for the Defendant at the Trial on 11 to 13 June 2025 before H.E. Justice Michael Black KC

IT IS HEREBY ORDERED THAT:

1. Judgment is entered in favour of the Claimant in the sum of AED 4,000.

2. All other claims are dismissed.

3. There shall be an immediate assessment of costs. The parties shall serve and exchange their submissions on interest and costs by no later than **4pm on Wednesday, 13 August 2025**, with any responses to be filed by no later than **4pm on Wednesday, 20 August 2025**.

Issued by:
Hayley Norton
Assistant Registrar
Date of issue: 6 August 2025
At: 10am

SCHEDULE OF REASONS

INTRODUCTION

1. The Claimant (**"Mr Nancy"**) is a senior Private Equity (**"PE"**) professional who makes various claims against the Defendant, his former employer.

2. Common features of the PE business are that a PE house (**"PEH"**) will invest in *"portfolio companies"* often through special purpose vehicles (**"SPVs"**) in the form of investment funds incorporated in jurisdictions like the Cayman Islands where the law and regulatory environment has developed to facilitate the business. The PEH will offer investors the opportunity to purchase units (shares) in the investment funds in order to participate in the investments in the portfolio companies.

3. Such funds are often structured whereby there is a general partner (**"GP"**) acting as investment manager. The investment manager may be an SPV owned or controlled by the PEH. The investors will be limited (or silent) partners (**"LPs"**).

4. Employees of the PEH/investment manager may be assigned as directors or managers of the portfolio companies in order to oversee the investment with the intention of achieving an ultimate sale of the portfolio company (**"exit"**), hopefully recouping the investment and making a capital profit. Prior to the exit the portfolio company may pay dividends that may be distributed to the investors.

5. The PEH will likely be remunerated in the following ways. It will receive a management fee. It may also receive **"carried interest"**. Carried

interest will be a share in the profit on the divestment of the investment in the portfolio company. It will vest over a period of time and may be subject to a **"hurdle rate"**. The hurdle rate is a return on the investment payable to the investor. The hurdle rate may be calculated by reference to the Net Asset Value (**"NAV"**) of the fund at a particular point in time. It is only if the hurdle rate is exceeded that carried interest will accrue.

6. Employees of PE houses are frequently remunerated in addition to their salaries through a share in the carried interest (or colloquially referred to as **"Carry"**). Under a typical employee Carry scheme, an employee will be allocated a number of **"points"** (representing a proportion of the **"Carry Pool"**, which itself will be a proportion of the carried interest earned by the PEH). The Carry Pool will accrue over time as and when the carried interest is earned by the PEH. Not only may employees not achieve their entitlement to Carry if they leave the employ of the PEH before it has fully accrued but the circumstances of their departure may also affect their entitlement.

FACTUAL BACKGROUND

7. On 18 June 2005 Mr Nancy began work as a Financial Analyst employed by Newland Investment House, Kuwait (**"NED"**) in its Kuwait office. Over the next 6 years he received a number of promotions to the position of Executive Vice President. In around 2009 he had been appointed a fund manager for a fund called N1 (**"N1"**) and was give a place on its investment committee.

8. He was offered the opportunity to move to Dubai in late 2011 which entailed managing Nera (**"NERA"**), a Dubai-headquartered company which had multiple businesses, including medical clinics and diagnostic laboratories. Although he was to receive a UAE employment visa sponsored by NED, setting up an entity in Dubai took time. Initially his visa was sponsored by a portfolio company, subsidiary of NERA. On 5 February 2014 Mr Nancy entered into an employment agreement with Newland Partners Limited (**"NASH"**) which designated him as "Vice President (Level C) - *Private Equity*". Although the employment agreement was signed on 5 February 2014, it was stated that his employment began on 1 January 2014.

9. On 18 September 2014 Mr Nancy was provided with a DIFC visa sponsored by Newland Investment House DIFC.

10. Around 2014-15 he was also appointed to the investment committees of the funds (i) N2 (**"N2"**); (ii) N3 (**"N3"**); and (iii) N4 (**"N4"**). He said that his role included evaluating the performance of N1, N2, N3, and N4 (collectively, **"Funds"**), as well as monitoring the underlying investments and performance of the various portfolio companies of NED and NASH. His role also included managing various portfolio companies in addition to NED, including overseeing day-to-day operations, looking after the management information systems, reviewing budgets and ensuring that the companies operate within those budgets, approving payments as the bank signatory, and verifying audits. All these tasks were undertaken with a view for the Funds eventually to divest. He also used to attend investment committee meetings which would generally take place once every quarter for each of the Funds.

11. On 6 April 2016 Mr Nancy was inducted into a "Private Equity Carried Interest Incentive Plan" (the "**Carry Plan**"/"**Carry Agreement**") introduced by NED. I will return to the terms of the Carry Plan/Agreement below.

12. In around early 2018 Mr Nancy learned that NED was to undergo an acquisition by merger with a Kuwaiti publicly listed company called NOX Investment Company KSC (**"Narcissa"**).

13. Upon the merger of NED's business with that of Narcissa all Newland entities and products were rebranded as NOX.

14. At this time the four Funds were moving towards liquidation and looking to exit the portfolio companies. Mr Nancy says that he was involved in a number of the exits. Meanwhile the COVID-19 pandemic struck. This delayed and disrupted the exits. Particularly affected was Neil (**"Neil"**) a fast-food chain in the Gulf Region of which Mr Nancy had been appointed general Manager and authorised signatory some three years earlier. Due to the pandemic Neil was unable to pay the rents on its premises and several of its trade creditors. As this might have exposed Mr Nancy to personal jeopardy he was advised to return to his homeland of India.

15. On 13 August 2020, the rebranded DIFC entity, NOX Investment Company (DIFC) Limited (**"Narcissa DIFC"** - the Defendant) wrote to Mr Nancy:

> *"Continuation of employment - NOX Investment Company (DIFC) Limited*
>
> *With effect from the date of merger between NOX Investment Company (DIFC) Limited ("Narcissa DIFC") and Newland Investment House (DIFC) Limited ("NED DIFC"), which Is expected to be approved by the DIFC shortly, you shall be an employee of Narcissa DIFC with designation/job title Senior Vice President.*
>
> *Your reporting lines and all other terms of employment as per your employment contract with NED DIFC shall be unchanged and all liabilities and responsibilities, including end of service benefits for your entire period of employment at NED DIFC and Narcissa DIFC, shall be assumed by Narcissa DIFC."*

16. Mr Nancy continued to work from India remotely. He says that he remained involved in a number of exits and the administration of various bank accounts which were linked to his telephone and require him to provide One Time Passwords (**"OTPs"**) for processing payments for portfolio companies.

17. A colleague of Mr Nancy was Mr Nadia (**"Mr Nadia"**), he is a Senior Vice President of Narcissa which is the parent company of Narcissa DIFC. He had worked in that capacity since 2011, formerly employed by NED prior to its merger with Narcissa. Mr Nancy says that he kept in regular contact with Mr Nadia during this period.

18. In March 2022 Mr Nancy was told by Mr Nida (Head of the Private Equity Department based at the NOX Liaison Office in Turkey and Mr Nancy's Division Head) that Narcissa DIFC would like him to resign. He expressed a willingness to do so but on the basis that there would be a resolution of the legal issues (including any travel bans) related to Neil.

19. On 12 May 2022 Mr Nancy received a letter from Narcissa DIFC (the **"Termination Notice"**) in the following terms:

> *"In reference to your Employment contract dated 05 February 2014, we regret inform [sic] you that your employment contract with the company is being terminated with immediate effect.*
>
> *Accordingly, your last working day with the company, in consideration with your three months notice period, is 11 August 2022.*
>
> *The company would like to thank you for your dedicated services exhibited and wish you all the best for your future endeavors."*

20. On 6 July 2022, the Dubai Court of First Instance had declared Neil bankrupt and appointed a bankruptcy trustee to administer the bankruptcy and prepare a report on Neil, the acts of its managers and board of directors.

21. On 14 August 2022 Mr Nancy's email access was revoked. Notwithstanding, Mr Nancy says that he continued to remain the authorised signatory of the bank account of one of NERA's subsidiaries, and his cell phone number was used for authorising credit card payments. His employment visa was not cancelled until 2 October 2023. He says that he continued working after 11 August 2022.

22. On 23 January 2023 Mr Nadia wrote to Mr Nancy offering him "a draft consulting contract on possible Neil related matters, where your assistance might help Nessim with protecting you in future." Mr Nancy said that this came as a surprise to him since he was not consulted prior to receiving this email. On receiving this email, he spoke to Mr Noura (**"Mr Noura"**, who had been the head of PE at NED and became Managing Director of Asset Management on the merger and who is now no longer employed within the NOX Group) and informed him that he was not going to sign such a draft consultancy contract since he was expecting to be paid by the Defendant, and was apprehensive that if he signed this contract, the Defendant would not pay him his salary.

23. Apparently, several travel bans persisted against Mr Nancy and his bank account was frozen. He was also owed salary and end of service benefits. He was anxious to sort out the situation and Mr Noura tried to assist him.

24. Mr Nancy risked going back to Dubai on 24 January 2023. He was permitted entry but was told he could not leave until the cases against him were resolved.

25. He visited his bank and succeeded in getting his account unfrozen.

26. On 1 February 2023 he received an email concerning his end of service settlement. It was accompanied by a form of waiver which he declined to sign because the end of service was only calculated to 11 August 2022 which he considered to be contrary to his discussions with Mr Noura and he considered that he was entitled to Carry payments.

27. On 2 October 2023 Mr Nancy's DIFC employment visa was cancelled.

28. The existing travel bans were only lifted by 12 October 2023 but a fresh one was imposed on 16 November 2023. The lawyer who had been acting at the expense of Narcissa DIFC ceased to act because she was no longer being paid, Mr Nancy paid her out of his own pocket on 3 January 2024 the sum of AED 4,000 and all travel bans were finally removed.

29. It is Mr Nancy's case that even after the formal termination of his employment on 11 August 2022 he undertook substantial duties on behalf of the NOX group. In summary:

(1) He assisted in exits and the sale of assets to third parties;

(2) He remained on the investment committee of the four Funds;

(3) He fielded enquiries from several investors;

(4) He was required to approve various payments made by Narcissa and its subsidiary companies both for making payments on behalf of the Funds for the portfolio companies as well as ensuring regulatory compliance. As late as 13 November 2024, he continued to remain a signatory on record for the bank account of Nourine a subsidiary of NERA;

(5) He continues to receive regular text messages for the Federal Tax Authority (**"FTA"**) demanding payment of overdue taxes of Nitya, a subsidiary of Neil. He is unaware whether the FTA will eventually demand payment from him personally and if so, whether this would lead to the imposition of further travel bans. He finds repeatedly being sent demands by the FTA and not knowing the consequences unnecessarily stressful.

THE CLAIMANT'S CLAIMS

30. It is fair to say that Mr Nancy's claims have evolved over time and only achieved their final iteration in the closing submissions of his counsel at trial.

31. On 21 August 2023 Mr Nancy commenced proceedings against Narcissa DIFC in the Small Claims Tribunal (**"SCT"**). In his witness statement of the same date, Mr Nancy alleged that the Defendant purportedly terminated his employment with `immediate effect' on 11 August 2022 in contravention of Articles 62, 63 and 64 of the Employment Law or alternately, waived the termination by its conduct since 11 August 2022.

32. He claimed that:

(1) Narcissa DIFC wrongfully terminated his employment in contravention of Articles 62, 63 and 64 of the Employment Law or waived the termination by subsequent conduct (the **"Wrongful Termination Claim"**);

(2) The Defendant be directed to:

(a) pay his salary from the date of decree till the date of lawful termination of his employment (the **"Wages Claim"**);

(b) renew/re-obtain his employment visa and insurance; and

(c) fulfil all its obligations as an Employer under the Employment Law till the date of lawful termination of his employment;

(3) In the alternative to (1) and (2), the Defendant unlawfully retained his end of service entitlement in violation of Article 66(1) of the Employment Law (the **"EOS Claim"**); is liable to pay a penalty under Article 19(2) in the sum equal to his daily wage for each day that the Defendant had failed to pay his arrears (the **"Penalties Claim"**) and failed to make payments due to him from the `Carry Pool' under the Carry Agreement (the **"Carry Claim"**);

(4) The Defendant wrongfully made an offer of settlement without giving him the benefit of independent legal advice in breach of Article 11 of the Employment Law;

(5) The Defendant had wrongfully withheld the copies of his Employment Contract and Carry Plan; and

(6) The Defendant failed to fulfil the Employers Obligations under Part 7, including under Articles 43, 44, 56 and 57 of the Employment Law.

33. Narcissa DIFC put in a Defence on 28 August 2023 in which it contended:

(1) The claim was out of time under Article 10 of the Employment Law;

(2) Mr Nancy became an employee of Narcissa in the DIFC on 5 February 2014;

(3) On 22 September 2015, Mr Nancy and Narcissa DIFC entered into the Carry Plan. Any payment or entitlement under the Carry Plan was conditional and the conditions had not been met;

(4) On or around 10 August 2022, Mr Nancy contacted the Senior Vice President of Narcissa DIFC, Mr Neha (**"Mr Neha"**), and on compassionate grounds, requested for the Company to refrain from cancelling his UAE Residency Visa for a short period of time, despite the termination of his Employment Contract. In or around 15 November 2022, Narcissa DIFC was notified by the DIFC that the visa cancellation process must be commenced;

(5) Between November 2022 and January 2023, Narcissa DIFC attempted to facilitate payment and conclude the relevant administrative documents with Mr Nancy;

(6) Narcissa DIFC denied that the Claimant's employment continued after 12 August 2022 or that Mr Nancy undertook any functions in relation to any of the portfolio companies.

34. On or about 19 September 2023 the parties settled the EOS and Penalties Claims and certain issues relating to the cancellation of the Claimant's visa.

35. On 25 October 2023 Mr Nancy amended his claim form to claim:

*"(a) an order declaring that the Termination Notice of 12 May 2022 is invalid and set aside, or waived; (b) an order that the Defendant be direct to pay my outstanding salary from August 2022 till the date of decree; (c) an order that the Defendant be directed to renew/re-obtain my employment visa and insurance; [the **"Visa Claim"**] (d) an order that the Defendant be directed to pay my salary from the date of decree till the date of lawful termination of my employment; (e) an order that the Defendant be directed to fulfil all its obligations as an Employer under the DIFC Employment law till the date of lawful termination of my employment; (f) pay entitlements under the Carry Agreement; and (g) interim reliefs, including continuation of my employment visa and insurance pending resolution of dispute; and handover of Employment Contract and Carry Agreement."*

36. Mr Nancy also filed Amended Particulars of Claim on 30 October 2023. He valued his claim at AED 2,785,581 which was above the non-consensual monetary jurisdiction of the SCT. As no agreement was made to increase the monetary jurisdiction of the SCT, the proceedings were transferred to the Court of First Instance (**"CFI"**).

37. Mr Nancy issued a Part 7 claim form in the CFI on 29 December 2023 and Particulars of Claim on 7 February 2023 claiming the following relief:

(1) unpaid wages along with the employment benefits, or compensation for lack thereof, from 11 August 2022 till 21 September 2023;

(2) alternately damages in terms for breach of duty of care;

(3) payments based on an express and/or implied indemnity (the **"Indemnity Claim"**);

(4) entitlements under the Carry Plan, including a share of investment exit incentives;

(5) interim relief, requiring Narcissa DIFC to provide him with:

(a) his executed and completed copy of the Carry Agreement;

(b) details of total sums in the Carry Pool; and

(c) details of his share of vested benefits under the Carry Plan from the Carry Pool;

(6) interim relief, requiring Narcissa DIFC to take all necessary steps to

(a) remove him as a party from the legal proceedings pending against him in the UAE by virtue of his management of entities on behalf of Narcissa DIFC;

(b) ensure no further Legal proceedings are initiated against him; and

(c) lift the travel ban imposed on him.

38. On 7 March 2024 Mr Nancy filed a request for judgment in default of defence. Narcissa DIFC responded by serving an application on 12 March 2024 in the following terms:

"1. The Claimant's claim is dismissed in its entirety. 2. The Claimant must pay the Defendant's costs of the action. [ALTERNATIVELY] 4. The Defendant's strike out application is granted in respect of the following issues: [IN EITHER CASE] 5. The Claimant must pay the Defendant' costs of the application because the statement of case and further particulars of claim of the Claimant discloses no reasonable grounds for bringing or defending the claim."

39. The application was not happily worded. There was no separate strike out application and so it was difficult to follow from the application itself which of the pleaded claims were said to disclose no reasonable grounds for bringing the same.

40. On 14 March 2024 Judicial Officer Maitha Alshehhi ordered that the Request for Default Judgment be stayed pending the determination of the Narcissa DIFC's Application and that there be no order as to costs.

41. On 19 March 2024 Mr Nancy made a lengthy application seeking a de novo review of the order of 14 March 2024. The application was dismissed without a hearing (costs in the case) by H.E. Justice Maha Al Mheiri on 4 April 2024. She held that since the Court had not yet determined the Default Judgment Application that was filed, the normal course of action would be to stay the Default Judgment Application pending determination of Narcissa DIFC's Immediate Judgment Application.

42. I was able to divine from the evidence in support that Narcissa DIFC was seeking to strike out the following claims:

(1) the Wages Claim - a claim under a new contract of employment running from 11 August 2022 until 21 September 2023;

(2) the Visa Claim - a claim for losses arising out of an alleged failure to cancel Nancy's DIFC employment visa until 21 September 2023;

(3) the Indemnity Claim - a claim for a failure to indemnify the Claimant against legal proceedings in relation to his role at Neil;

(4) the Carry Claim - a claim for an alleged failure to pay the Claimant entitlements arising from the Carry Plan.

43. On 8 July 2024 I ordered amongst other things:

(1) The Claimant's employment under the contract dated 5 February 2014 was validly terminated on 11 August 2022 under Clause 16 of that contract.

(2) All references in the Particulars of Claim to an express contract of employment following the 11 August 2022 termination of employment shall be struck out on the basis that the pleaded claim that an express contract was concluded after 11 August 2022 discloses no reasonable grounds for bringing the claim. Further, the claim that there was an express contract of employment following the 11 August 2022 termination of employment enjoys no real prospect of succeeding and judgment be entered in favour of the Defendant on the issue.

(3) Both limbs of the Visa Claim shall be struck out on the grounds that the Particulars of Claim disclose no reasonable ground for bringing the claims. Further, neither limb of the Visa Claim enjoys a real prospect of succeeding and judgment be entered in favour of the Defendant on the issues.

(4) The claim that the Claimant had the benefit of an express indemnity relating to the period after 11 August 2022 shall be struck out on the grounds that the Particulars of Claim disclose no reasonable grounds for bringing the claim. Further, the claim that the Claimant had the benefit of an express indemnity relating to the period after 11 August 2022 enjoys no real prospect of succeeding and judgment be entered in favour of the Defendant on the issue.

(5) Save as above, the Application is dismissed.

44. On 28 April 2024 Mr Nancy filed his Amended Particular of Claim. At paragraph 58 he pleaded *"The Claimant continues to be employed either as a part-time or full-time employee under a separate **express or** implied contract. Therefore, the Defendant is liable to pay the Claimant's salary from 11 August 2022 till at least 21 September 2023"* [my emphasis] notwithstanding I had struck out all references in the Particulars of Claim to an express contract of employment following the 11 August 2022 termination of employment. He claimed wages between August 2022 and September 2023 along with employment benefits such as leave encashment and gratuity *"until when the Claimant continued [sic] to be employed by the Defendant"* It would seem that it should have read *"until when the Claimant **ceased** to be employed ."*

45. He asserted that:

(1) In spite of the purported termination, Mr Nancy continued to have an employment visa from the Defendant [sic] and performed the following tasks for the Defendant during this period, he:

(a) continued to remain a member of the investment committees of the Defendant's finds [sic];

(b) also retained management control over the operations of the Defendant's portfolio companies including inter alia routine payment and sick leave approvals;

(c) continued to conduct the daily administrative operations and management for the Defendant's portfolio companies;

(2) The pending legal cases against Neil continued to have a detrimental impact on his personal and professional life;

(3) The above instances indicate that he continued to be under the employment of the Defendant until 21 September 2023. However, he was not paid any remuneration for the same;

(4) He was entitled to -

(a) Salary 12 August 2022 to 21 September 2023 - AED 906,173;

(b) Leave encashment 12 August 2022 to 21 September 2023 - AED 97,114; and

(c) Gratuity 12 August 2022 to 21 September 2023 - 39,044.

(**"Wages Claim"**)

46. Mr Nancy claimed in the alternative, *". the Claimant was at least in part-time employment with the Defendant during the period from 11 August 2022 until at least 21 September 2023. The Claimant reserves his right to quantify his claim for this alternate claim in due course."*

47. In the further alternative, he claimed that the Defendant breached the duty of care it owed to the Claimant under Articles 17 to 21 of the DIFC Law of Obligations, including by (i) failing to cancel the Claimant's DIFC Employment Visa till 21 September 2023 and (ii) terminating the Claimant's employment while the legal cases were pending, thereby preventing the Claimant from finding alternative employment. (**"Alternate Claim for Damages"**).

48. It is surprising that Mr Nancy persisted in the Visa claim given my Order of 8 July 2024 set out paragraph ?43(3) above.

49. The claim that it was a breach of a tortious duty of care to fail to terminate Mr Nancy's employment within 30 days of the termination of his employment (i.e. 14 September 2022) was a new claim and logically inconsistent with the claim that he continued to provide services under an implied contract of employment between 11 August 2022 until 21 September 2023.

50. Mr Nancy claimed that Defendant was also liable to:

(1) pay legal costs incurred by him, which are a direct consequence of the Defendant's failure to safeguard him from the abovementioned legal cases; and

(2) indemnify him against costs, liabilities and losses incurred as a result of legal cases arising from his employment with Neil which presently amounted to AED 4,000 with regard to expenses already incurred. The ongoing losses attributable to defending the legal cases cannot be quantified at this stage, and are anticipated to be incurred by Nancy due to constant travel restrictions.

(**"Indemnity Claim"**)

51. Mr Nancy claimed that the Defendant:

(1) failed to make payments due to him from the `Carry Pool' under the Carry Agreement;

(2) failed to provide the details of his vested points and when the incentives from the `Carry Pool' under the Carry Agreement will be paid out; and

(3) wrongfully withheld the copies of the Claimant's Carry Agreement.

52. Mr Nancy estimated his entitlements to be AED 1,743,288.13 based on exits from:

(1) Nara by N4 and N2;

(2) Nala by N4 and N2; and

(3) Naya by N3.

He then claimed that his total entitlements under the Carry Agreement were AED 1,743,288.13 **and USD 474,625** (my emphasis as that sum seemed subsequently to disappear).

53. Alternatively, he claimed that the Defendant had breached the Carry Plan by failing to maintain separate Newland Employee Incentive Plan Accounts in respect of each Fund and thereby causing loss to him. It was his position that:

(1) on the basis of the Defendant's own documents, it is clear that incentive fees were in fact paid by N4 to its investment manager, NASH (n/k/a "Nessim");

(2) incentive fees will be paid by N1 and N2 to their investment manager, Narcissa; and

(3) incentive fees have either already been paid by N3 to its investment manager, NASH, or may be paid upon the liquidation of N3.

54. In the quantum section of the Amended Statement of Claim the figure of AED 1,743,288.13 as "Carry Entitlement" was struck out and the figure of AED 4,820,397.51 was substituted as "Carry Entitlement/ Damages for breach of Clause 26" [of the Carry Agreement].

(**"Carry Claim"**)

55. By the start of the trial on 11 June 2025 Mr Nancy's case was said to comprise three claims:

(1) a claim under the Carry Agreement;

(2) a claim for wages due under and [sic - I assume this means "an"] implied contract of employment from 12 August 2022 to 21 September 2023; and

(3) a claim for implied indemnity against losses arising out of or in connection with the *bona fide* exercise of the Claimant's duties in the course of his employment with the Defendant.

56. The first /Carry Claim was said to be a claim for an agreed sum under a contract as Mr Nancy had been allocated points in respect of three funds - N1, N2, and N3. He asserted that he had also been allocated points in respect of N4. It was the Claimant's case that he was contractually entitled to 17% of the Distributable Amount in N1 and N4, 7% of the Distributable Amount in N2 and 10% of the Distributable Amount in N3. It is Mr Nancy's evidence that of all his points allocated across the four Funds, his highest allocation was in N4 but the Defendant had failed to produce Schedule E to his Carry Agreement and denied that any points had been allocated in N4.

57. Mr Nancy maintained the claim that the Defendant's failure to maintain Newland Employee Incentive Plan Accounts in respect of each Fund caused him loss as a consequence of which he is entitled to damages.

58. Mr Nancy quantified his loss/entitlement to any Carry as follows:

(1) As far as N1 is concerned, should the Distributable Amount be received from Narcissa, there exists no Newland Employee Incentive Plan Account into which it might be received. The Claimant quantifies his loss arising out of this breach at USD 604,242.14;

(2) As far as N2 is concerned, should the Distributable Amount be received from Narcissa, there exists no Newland Employee Incentive Plan Account into which it might be received. The Claimant quantifies his loss arising out of this breach at USD 52,657.85;

(3) As far as N3 is concerned, should any Distributable Amount be received upon the liquidation of the Fund, there exists no Newland Employee Incentive Plan Account into which it might be received; and

(4) As far as N4 is concerned, the Claimant has demonstrated that on the Defendant's own evidence, incentive fees have been paid to Nessim. However, no Distributable Amount was placed into the Newland Employee Incentive Plan Account, because such account never existed. The Claimant quantifies his loss arising out of this breach at USD 655,479.88.

59. Mr Nancy confirmed that the second/Wages Claim was based on an implied contract of employment.

60. Mr Nancy submitted that his claim for indemnity was inextricably linked with his claim that he was employed under an implied contract. If he were successful in establishing that there was an implied contract post 11 August 2022, his claim for indemnity would follow.

61. During the course of the trial Mr Nancy said the following in cross-examination:

"Q. Well, let's start with N4. What date do you say you
2 14:37:12 should have been paid money in respect of carry under
3 14:37:17 N4?
4 14:37:17 A. Say, N4 exited last investment sometime in 2025 so
5 14:37:24 probably by Q2 of 2025, they should have paid me what
6 14:37:30 they should pay me.
7 14:37:33 Q. So you accept that when you issued these proceedings,
8 14:37:36 you weren't owed any money under N4, do you?
9 14:37:43 A. Yes.
10 14:37:44 Q. What about N1, when do you say the defendant...?
11 14:37:59 A. (Inaudible) no noticeable investment.
12 14:38:04 Q. Give me a date. When do you say this money was due and
13 14:38:08 owing?
14 14:38:08 A. I wouldn't be able to give an exact date.
15 14:38:13 Q. Do you say --
16 14:38:14 A. I won't know exactly when.
17 14:38:15 Q. Do you say it is already due and owing to you?
18 14:38:34 A. No.
19 14:38:35 Q. No. What about N2, do you say you are actually owed
20 14:38:41 any money under N2 as of today?
21 14:38:50 A. No.
22 14:38:52 Q. What about N3? Do you have any claim at all under

23 14:38:57 N3?
24 14:38:58 A. Not really.
25 14:38:58 Q. Not really?
1 14:39:01 A. No.
2 14:39:01 Q. And that's because the fund was under water and could
3 14:39:10 not have generated carry even before you left
4 14:39:12 employment, isn't that right?
5 14:39:15 A. Absolutely right."

62. In consequences in oral closing submissions Mr Nancy abandoned his claims in respect of N1, N2 and N3. That left N4. The claim in respect of N4 was articulated as follows:

"JUSTICE BLACK: I see that, but with N4 you seem to accept
3 10:37:40 Mr Noura's evidence, and I agree with you, I thought
4 10:37:44 Mr Noura was a very good witness, that no points
5 10:37:49 were in fact allocated. What you are saying is they
6 10:37:52 should have been allocated. Well, that's a damages
7 10:37:56 claim, isn't it?
8 10:37:58 MR BAGARIA: Yes, in that sense it is a damages claim that
9 10:38:01 they should have been allocated. To put it correctly.
10 10:38:05 Any.
11 10:38:06 In any event I am focusing on my alternative case
12 10:38:09 clearly for the purpose of the submission, which is the
13 10:38:11 points were not allocated. So I am adopting that
14 10:38:14 position and continuing today, because after
15 10:38:17 Mr Noura's testimony it is not easy to disagree with
16 10:38:22 him.
17 10:38:37 So yes, when you read the contract it will be clear
18 10:38:43 that as of date of liquidation, which is 1 July 2020,
19 10:38:47 these points had to be allocated.
20 10:38:51 Now, of course we don't have evidence on why these
21 10:38:54 points were not allocated in 2020. Because any
22 10:39:02 explanation to the effect of since the funds were in
23 10:39:04 liquidation points were not allocated, doesn't make
24 10:39:07 sense.
25 10:39:08 Because the contract says otherwise. That if the
1 10:39:12 funds go into liquidation then you will distribute the
2 10:39:16 points even pro rata, so the fact that the funds were in
3 10:39:18 liquidation really don't supply a reason for the points
4 10:39:24 not being liquidated, and a good comparisons of N1,
5 10:39:30 N2. N1 went into liquidation three years before
6 10:39:34 N4, 2017. Yet, points were allocated in 2015/2016,
7 10:39:43 whatever that date is, in N1.
8 10:39:48 So just because N4 was into liquidation and the
9 10:39:51 points were not allocated is not really a good
10 10:39:55 explanation,
.
19 10:40:31 So there is really no explanation before us why
20 10:40:35 those points were not allocated in July 2020."

THE CARRY CLAM

63. The Carry Plan provided:

(1) Clause 2:

"The Plan will relate to four existing private equity funds which are currently managed by Newland comprising:

(a) N1, more particularly defined as N1, a Bahrain Exempt Investment Shareholding Company formed under the Commercial Companies Law No. 28 of 1975 ("N1");

(b) N2, more particularly defined as N2, a Bahrain Closed Joint Stock Company formed under the Commercial Companies Law No. 21 of 2001 ("N2"); and

(c) N3, a Guernsey company registered under the Companies (Guernsey) Law 2008 ("N3"),

(d) N4 a Cayman Islands exempted limited partnership ("N4")."

(2) Clause 3:

"Eligible Employees will be entitled to receive a Plan Payment based on the Distributions received by Newland in respect of

carried interest or special profits from the Funds. Such Plan Payments shall be awarded and paid in accordance with the provisions of this Plan."

(3) Clause 12:

"Each Eligible Employee who is invited to participate in the Plan will receive an initial allocation of Points in respect of one or more of the Funds,"

(4) Clause 13:

"The total number of Points for each Fund will be 1,000 Points, which will remain for the duration of each Fund."

(5) Clause 14:

"On the Commencement Date, up to 95 per cent of the Points for each Fund will be allocated amongst the Eligible Employees and the remaining per cent will be held as Reserve Points to be allocated at the discretion of the Plan Committee. Of the total number of Points, any points that have not been awarded from time to time shall be Reserve Points. If any Fund has Reserve Points at the date on which such Fund is liquidated, such points shall be distributed among the Eligible Employees of the said Fund on a pro-rata basis."

(6) Clause 16:

"The Points awarded to each Eligible Employee in relation to a Fund will be subject to "vesting" in accordance with the Vesting Schedule as detailed in Schedule C."

(7) Clause 20:

"If an Eligible Employee's service as a Newland employee terminates and such Eligible Employee is treated as a Good Leaver, such Good Leaver shall at the Leaving Date retain 100 per cent of their vested Points in all cases and 100 per cent of their unvested Points only if their vesting has exceeded 70 per cent at the Leaving Date and will continue to be entitled to receive Plan Payments in respect of their Points in accordance with the provisions of this Plan."

(8) Clause 26:

"Newland shall maintain a separate Newland Employee Incentive Plan Account in respect of each Fund."

(9) Clause 27:

"As soon as reasonably practicable after Newland has received a Distribution from any of the Funds, if Newland, at its sole discretion, is of the reasonable opinion that it shall not be required to return the Distribution to the relevant Fund, Newland shall credit the Distributable Amount to the respective Newland Employee Incentive Plan Account. Till such time when Newland has reasonably satisfied itself regarding lack of clawback risk, Newland will have the sole discretion to treat all the Distributions from any of the Funds as its general corporate cash."

(10) Clause 29:

"Subject to other provisions of this Plan, any such Distributable Amount credited to a Newland Employee Incentive Plan Account (other than any amount attributable to Reserve Points) will be paid as soon as practicable to Eligible Employees, pro-rata to the number of Points in the relevant Fund held by each Eligible Employee at the time of the credit to the relevant Newland Employee Incentive Plan Account referred to in paragraph 27."

(11) Clause 35:

"Following any Distribution by the Funds and a corresponding credit to the relevant Newland Employee Incentive Plan Account, any amounts which would otherwise be credited to a Newland Employee Incentive Plan Account in respect of any Reserve Points, shall instead be credited to the relevant Reserve Account."

(12) Under Schedule A - definitions:

(a) "Distribution - any amount received by Newland from any of the Funds pursuant to Newland's entitlement to carried interest / profit payments under the relevant Fund documentation for each of the Funds."

(b) "Eligible Employee - an Individual who either:

a. is engaged in the management of any Fund or its portfolio or the provision of investment advice in respect thereof for at least 1 month, and is a Newland Employee and is not under notice or has not given notice of termination of employment or retirement as an officer (as the case may be); or

b. is a Joiner,

and who is selected by the Plan Committee to be an Eligible Employee for the purposes of the Plan, whose name appears in the table of allocated Points at Schedule B of this Plan."

(c) "Newland - Narcissa, registered in Kuwait, and its subsidiaries in any jurisdiction from time to time (including NASH) and

any other business entity as the Plan Committee may in its absolute discretion decide from time to time."

(d) "Newland Employee - an employee or officer of Newland and for the avoidance of doubt, an Eligible Employee shall not be treated as ceasing to be a Newland Employee as a result of changing their employment, or their appointment as an officer, from one Newland company to another."

(e) "Good Leaver - an Eligible Employee who ceases to be employed by Newland by reason of his death or Permanent Disability or is terminated by Newland for no cause."

(13) Under Schedule B - Allocation of Points: Mr Nancy was awarded 170 points in N1, 70 points in N2 and 10 points in N3.

64. At paragraph 151 of his Fourth Witness Statement Mr Nancy said that not only had points been awarded to him but that of the four Funds, he had the highest points in N4. Conservatively, he should have been allotted at least 170 out of 1,000 points in N4 (on the basis that he was allotted 170 points in N1). It was submitted that the issue could have been resolved with ease if Schedule E to his Carry Agreement had been disclosed. Mr Nancy has explained that prior to his departure for India, he had left all his official documents, including his copy of Schedule E to the Carry Agreement in the Defendant's office. However, after his termination, when Mr Nancy collected his official documents from the Defendant in July 2023, his copy of Schedule E to the Carry Agreement was missing. He reiterated the point at paragraph 15 of his Fifth Witness statement and in his oral evidence:

"5 15:02:31 Q. And you got a similar letter. Your evidence, Mr Nancy,
6 15:02:41 at paragraph 151 of your fourth witness
7 15:02:44 statement -- this is at page 441 --your evidence is
8 15:02:57 that:
9 15:02:57 "I recall that of the four funds, I had the highest
10 15:03:02 points in N4."
11 15:03:04 You say that when you received your version of this
12 15:03:07 letter, it had a points allocation to you for N4 that
13 15:03:11 was higher than the other three funds, do you?
14 15:03:15 A. Yes.
15 15:03:16 Q. You have a recollection of that, Mr Nancy?
16 15:03:21 A. Absolutely.
.
5 15:04:06 Q. You ask the court to find that of all the eligible
6 15:04:11 employees for whom we have letters, none of them were
7 15:04:15 allocated points in N4, but you were, is that right?
8 15:04:24 A. Yes.
9 15:04:24 Q. Why do you say you were allocated points in N4 in March
10 15:04:30 2016 but, for example, Mr Nadia or Mr Noura were
11 15:04:37 not?
12 15:04:37 A. I don't know. I did not decide that.
13 15:04:39 Q. It's not very likely, is it, Mr Nancy?
14 15:04:43 A. Should not have been likely but I don't know why.
15 15:04:45 Q. No. No. You can't come up with any explanation for
16 15:04:48 that improbable results, can you?
17 15:04:51 A. No."

65. In his written evidence Mr Noura stated:

"13. . I was part of the Plan Committee, whose role was to identify and propose eligible employees to participate in the carry arrangement.

.

15. I was also an eligible employee to the Carry Plan and received a letter similar to the template letter contained in the Carry Plan as Schedule E. As the most senior of the eligible employees listed in the Carry Plan, I consider that I would have been entitled to points in all of the funds, had they been available.

.

17. I have never been allocated any points in N4 by the Carry Plan Committee. To the best of my memory, the Committee did not allocate points in N4 due to some changes on the organizational structure of the team and the fund extension. The only time any points were allocated to eligible employees was at the time of the implementation of the Carry Plan (and not to N4). To allocate any further points, the Plan Committee would have needed to meet and discuss the allocation and, consequently, a new letter would have been sent to an eligible employee setting out the allocation of points in the relevant fund. Minutes of any further meetings of the Plan Committee would have been made and Narcissa's HR and Legal Team would have had a copy of the minutes of such a committee meeting, had it taken place."

66. At the beginning of the trial Mr Nancy's position was that Mr Noura may be a liar and his evidence lacked credibility:

"As far as Mr Noura is concerned, it is accepted that as a member of the Plan Committee he should have known whether the Claimant was allocated points in N4 or not. However, his evidence that no points in N4 were ever allocated, is diametrically

opposite to the contemporaneous evidence. On 30 April 2023, upon the Claimant inquiring whether NOX intended not to pay his share of carry for N4, Mr Noura responded stating that the carry schedule still holds but has been fruitless: WhatsApp chat between Mr Nancy and Mr Noura [G/4158]. Although Mr Noura attempts to explain this in his witness statement (see [19], Mr Noura's First WS [E/497]) this explanation does not withstand scrutiny. At its best, Mr Noura had not properly considered the issue while responding to the Claimant. However, this does not support the conclusion that no points were allocated in N4 to the Claimant. At its worst, Mr Noura deliberately lied to the Claimant. If this is indeed the case, Mr Noura's evidence cannot be considered credible. This will have to be explored further in cross examination."

67. The allegations were based on a WhatsApp exchange:

"30/04/2023, 12:51 - Mr Nancy: Does NOX not intend to give my share of carry

30/04/2023, 12:51 - Mr Nancy: For N4 transactions?

30/04/2023, 16:12 - Mr Noura: This message was deleted

30/04/2023, 16:12 - Mr Noura: Hi Mr Nancy. There is no carry in N4. We are well below water. The carry schedule holds but has been fruitless (below carry line) for many years. IC is now selling Nosh and it is too at a steep discount. Nold was a write off. The small profit in Nara and Naya are far from covering these losses."

68. Of this exchange Mr Noura said in his witness statement at paragraph 19:

"I was asked by the Claimant whether he would receive any carry in N4 and, in a nutshell, I replied that there is no carry in N4 and explained why this is the case. At the time, I was not running Private Equity on a day-by-day basis any longer and rather than stop to consider which member did or did not have points in a respective fund, it was quicker on a WhatsApp message to make the point that there was no carry in N4 as the fund was under water."

69. It was not put to Mr Noura in cross-examination that he lied to Mr Nancy or even that his evidence lacked credibility, instead Mr Nancy's counsel executed the volte face set out at paragraph 62 above and accepted that it was not easy to disagree with Mr Noura's evidence. This coincided with my view that Mr Noura was an impressive and independent witness.

70. The acceptance that no points in N4 were allocated forced Claimant's counsel to raise a new case - a claim for damages for failure to allocate points. The first problem is that it entails rejection of the Claimant's evidence that he was in fact allocated points in N4.

71. This is hardly a promising start, but the problems mount up after that:

(1) The case had not been pleaded or even foreshadowed when the case was opened. It was not put to the Defendant's witnesses. That alone would render it unfair to allow the Claimant to proceed with the new case;

(2) Even if Mr Nancy were permitted to raise the new case it is lacking in sufficient certainty,

(a) He would first have to identify an obligation on the Defendant to allocate points in N4. He has not done so, nor could he, Clause 12 provides that Eligible Employees will receive an initial allocation of points in "one or more of the Funds". This does not oblige the Defendant to allocate points in a specific fund;

(b) Even if the Defendant were obliged to allocate points in N4, I have been supplied with no metric whereby the number of points may be calculated especially given that the argument is predicated on the rejection of Mr Nancy's evidence that he received the highest allocation of points in N4;

(c) Even if it were possible to calculate the number of points it is not possible to identify the date at which the points would have been allocated to Mr Nancy. The point was not raised before oral closings and was not put to the Defendant's witnesses. This is important as the date of allocation will determine the proportion of the points that will have vested by the date of the termination of Mr Nancy's employment;

(d) Mr Nancy claims that even if he cannot establish whether or when points would have been allocated to him the unallocated points would constitute Reserve Points within the meaning Clause 14 of the Carry Plan. Consequently, when N4 is liquidated the points should be distributed to him "on a pro-rata basis". That begs and reverts to the question - how is his allocation to be calculated or to put it as Mr Noura did in evidence, "If there is no pro rata, pro rata to what", i.e. if Mr Nancy did not already hold points, there is nothing to which to prorate the Reserve Points;

(3) Even if Mr Nancy were able to overcome the difficulties set out above, he would still have to prove loss. The Defendant makes the following points:

(a) Mr Nancy accepts that he will only become entitled to Carry at some future date in 2026 after (i) N4 receives the final tranche of the sale proceeds of the Nish (a portfolio company) exit and (ii) N4 then pays a Distribution to NOX - the Receipt of Distribution under clause 26 of the Carry Plan;

(b) The Claimant accepts that that he had no right to contractual damages when his claim was issued; and

(c) The Claimant has to accept that he has no right to contractual damages as at date of trial;

(4) I am willing to accept for the purposes of argument that (albeit it is an unpleaded argument) Mr Nancy may be able to argue that an expectation of entitlement at some future date in 2026 may nevertheless amount to a present cause of action in the form of claim for a loss of a

chance. Mr Nancy would have to prove that there is a real and substantial possibility that the Defendant will allocate Reserve Points to him. I also accept that *"real and substantial possibility"* means (at its lowest) more than a negligible possibility. In my judgment even that threshold (assuming the availability of the argument) would not be crossed by the evidence before me:

(a) Clause 35 of the Carry Plan provides it is only after following any Distribution by the Funds will there be a credit to the relevant Reserve Account. A Distribution is an amount received by Newland from any of the Funds pursuant to Newland's entitlement to carried interest/profit payments under the relevant Fund documentation;

(b) Mr Nancy would therefore have to establish a real and substantial possibility that N4 would make a Distribution to the Defendant (leaving aside whether the Defendant is the correct entity);

(c) In my judgment the evidence is all the other way. In short, I do not see how Mr Nancy can go behind the audited financial statements for N4 for 2024 which stated at Note 6:

> *"No performance fee or carried interest was ever paid to the Investment Manager or the General Partner during the lifespan of the Fund. A provision for carried interest was previously recorded in relation to the exits of Naya and Nara; however, this provision was fully reversed during the year ended December 31, 2023. Accordingly, there is no performance fee or carried interest payable by the Fund."*

(d) Nor can it be said that there might be a better than negligible chance that the position might change in 2026. The Claimant sought to argue in oral closing submissions that the position may change on the final liquidation and the reversal of the provision for carried interest would itself be reversed. The audited financial statements are dated 30 May 2025 and at Note 14 state:

> *"On February 18, 2025, the sale of Nish completed. Nish was sold for US$50.4 million with US$40.4 million received while the remaining US$10 million is committed through an irrevocable bank guarantee maturing after December 31, 2025. The Partnership has evaluated the effect of subsequent events from December 31, 2024, to the date the financial statements were available to be issued. There were no other subsequent events that would require adjustment to or disclosure in the financial statements."*

(e) On 7 March 2017, the term of N4 was extended to 30 June 2020 under the terms of an Amended and Restated Limited Partnership Agreement of N4. An Amended and Restated Management Services Agreement was also executed between N4 and NASH (subsequently Nessim) (**"the Amended N4 MSA"**). Under the Amended N4 MSA there were provisions whereby Nessim would receive Management and Incentive Fees, the latter subject to a Hurdle Rate (distributions to LPs from individual exits higher than the "Benchmark Value" - the NAV as at June 2016) and clawback in the event that the Benchmark Value was not achieved. Critically, Clause 3.1(e) stated that Management and Incentive Fees would only be payable from 1 July 2017 to 30 June 2020 and would not apply during liquidation or further extension of the term beyond 30 June 2020;

(f) The Claimant seeks to get round the express words of Clause 3.1(e) by reference to a letter dated 18 June 2020 from the GP (Nixie) to the LPs in which it is said:

> *"In our role as the liquidator, we intend to retain all the existing service providers of the Partnership namely Bank of New York, the Administrator, Ernst & Young, the Auditor, Walkers the Cayman Islands legal counsel under the same terms and conditions. The Investment Manager, NASH ("NASH") shall be retained under the current Investment Management Agreement ("IMA") but without the management fee (0.5%) and the performance fee (1.25%) as defined in the current IMA. The GP may compensate NASH out of the liquidation fee which the GP is proposing. For the sake of clarity, the already accrued performance fee on Naya exit and distributions prior to 1st July 2020 shall not be affected and will stay due to the Investment Manager, subject to the clawback provision.*
>
> *Please note that Section 14.03 of the A&R LPA sets out the expenses that the General Partner as the liquidator is entitled to receive from the Partnership in connection with winding up the affairs of the Partnership. Pursuant to this the General Partner shall be entitled to receive "reasonable compensation" to perform the services of the liquidator. To manage its expenses and costs in the liquidation phase, the GP proposes a liquidation fee of 0.8% per annum of the Net Asset Value ("NAV"), to be charged quarterly. The rationale for linking the liquidation fee to the NAV as opposed to fixed invested capital is to align the liquidation compensation with the carrying values of the investments, more so in the present times when the COVID-19 outbreak has impacted the business and exit prospects and valuations are likely to be impacted."*

(g) I find that the letter does not assist the Claimant. The letter reaffirms that following the liquidation NASH would not be entitled to management or performance fees. It did seek to preserve accrued performance fees but subject to the clawback provision. The audited financial statements disclose that was a subsequent clawback. The letter is clear that management and incentive fees are not recoverable during a liquidation. The Claimant seeks to argue that the liquidation fees should be considered as a Distribution. I cannot see that as a natural use of language liquidation fees could be regarded as "carried interest / profit payments";

(h) It follows that any sums received in 2026 are excluded from amounting to a Distribution and therefore there is no real and substantial possibility that the Claimant would receive Reserve Points in respect of the same.

72. Ultimately the Claimant's elaborate and inventive arguments are based on inadequate foundations in that the final iteration of his case on Carry entitlement is: (1) inadmissible as outlined at paragraph ?71(1) above; (2) without legal foundation as outlined at paragraphs ?71(2) and ?71(3) above; and speculative as outlined at ?71(4) above. Accordingly, the Carry claim fails.

THE WAGES CLAIM

73. The final iteration of the Wages Claim was that he continued to provide services to the Defendant after the Termination of his employment

under an implied contract of employment. He claimed to be entitled to the same monthly wages for the period 12 August 2022 to 21 September 2023, as his monthly wages prior to termination. There was no mention of his alternative claims (see paragraphs ?46 and ?47 above). As to the former, a claim based on part-time employment, this would be inconsistent with Mr Nancy's evidence in his Fourth Witness Statement at paragraph 161:

> *"It is difficult to estimate how many hours of my daily time this took, because that used to vary. However, it was similar to the amount of time these activities used to take when the Funds were not involved in active exits, even prior to my termination. I should therefore be entitled to the same monthly compensation that I was entitled to when I was employed with the Defendant."*

As to the latter, the breach of duty of care claim, the abandonment of the claim was no doubt due to an entirely correct recognition that it was hopeless. The first limb in relation to the visa had already been struck out, and as to the second limb, it is unarguable that the Defendant owed a tortious duty of care to Mr Nancy not to terminate his employment. Further the assumption underlying that claim would be that, but for the allegedly negligent termination of Mr Nancy's employment on 11 August 2022, his employment would have continued. That would be inconsistent with (and a collateral attack on) my finding on 8 July 2024 that Mr Nancy's employment was validly terminated on 11 August 2022.

74. The first question therefore is whether DIFC law recognises implied contracts of employment and, if so, how are they to be identified?

75. *"Employment Contracts"* are defined in Paragraph 3 of Schedule 1 to the DIFC Employment Law as:

> *"A contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing and any permitted amendment or replacement thereof as agreed between the Employer and Employee."*

76. There is therefore no doubt that DIFC does recognise implied contracts of employment but there is no other reference to implied contracts in the Law. The Defendant submits that that definition is materially the same as that set out at s. 230(2) of the English Employment Rights Act 1996 and as such, English case law is likely to be of assistance. I accept that the definition is identical up to the word *"writing"* and the English cases may be of some assistance. The Defendant referred me to the judgment of Lord Justice Elias (an acknowledged expert in the field of employment law) in the case of Tilson v Alstom Transport [2011] IRLR 169.

77. In Tilson the issue was whether an agency worker had a contract of service with the end user. In a section of his judgment entitled "When can a contract be implied", Elias LJ set out the principles of English law:

> *"7 . First, the onus is on a claimant to establish that a contract should be implied .*
>
> *8. Second, a contract can be implied only if it is necessary to do so. This is as true when considering whether or not to imply a contract between worker and end user in an agency context as it is in other areas of contract law. This principle was reiterated most recently in a judgment of the Court of Appeal in James v Greenwich London Borough Council [2008] ICR 545 which considered two earlier decisions on agency workers in this court, Dacas v Brook Street Bureau (UK) Ltd [2004] ICR 1437 and Cable and Wireless plc v Muscat [2006] ICR 975. It is sufficient to quote the following passage from the judgment of Mummery LJ, with whose judgment Thomas and Lloyd LJ agreed: (paras 23 - 24). Mummery LJ stated that the EAT in that case*
>
> > *". correctly pointed out, at para 35, that, in order to imply a contract to give business reality to what was happening, the question was whether it was necessary to imply a contract of service between the worker and the end-user, the test being that laid down by Bingham LJ in The Aramis [1989] 1 Lloyd's Rep*
> >
> > *213, 224:*
> >
> > *"necessary . . . in order to give business reality to a transaction and to create enforceable obligations between parties who are dealing with one another in circumstances in which one would expect that business reality and those enforceable obligations to exist."*
>
> *As Bingham LJ went on to point out in the same case it was*
> *insufficient to imply a contract that the conduct of the parties*
> *was more consistent with an intention to contract than with an intention not to contract. It would be fatal to the implication of a contract that the parties would or might have acted exactly as they did in the absence of a contract."*
>
> .
>
> *10. It is important to emphasise that if these principles are not satisfied, no contract can be implied. It is not against public policy for a worker to provide services to an employer without being in a direct contractual relationship with him. Statute has imposed certain obligations on an end user with respect to such workers, for example under health and safety and discrimination legislation, even where no contract is in place between them. But it has not done so with respect to claims for unfair dismissal. It is impermissible for a tribunal to conclude that because a worker does the kind of work that an employee typically does, or even of a kind that other employees engaged by the same employer actually do, that worker must be an employee.*
>
> *11. Nor is it legitimate for a tribunal to imply a contract because it objects to the practice of employers entering into arrangements of this kind in order to avoid incurring the obligations they owe to their employees.."*

78. I have cited Ellias LJ's judgment in extenso not only to pay deference to his expertise in this area of law but also to indicate that he was considering a different situation from the present. There the alleged employee was providing services to the alleged employer through *"a complex quadripartite relationship involving three contractual relationships."* In the present case the issues are much simpler - what services did Mr Nancy continue to supply to the Defendant and were those services such as to give rise to an implied contract of employment?

79. This underlines that it is a question of fact in each case whether an employment relationship could be implied from the circumstances: Newnham Farms Ltd v Mrs V L Powell (2003) EAT/0711/01/MAA.

80. The Claimant points to Canadian and Singaporean cases where the courts have held that a continuing contract may be implied even after a contract has expired or terminated.

81. In Coffee Time Donuts Inc. v Ontario Inc. and Tirath Singh Gill, [2022] ONCA 435 [7] the Ontario Court of Appeal followed the earlier decision of the Supreme Court of Canada in Saint John Tug Boat Co. Ltd. v. Irving Refining Ltd., [1964] S.C.R. 614, at pp. 621-22 where it held that:

> *"The question to be determined on this appeal is whether or not the respondent's course of conduct during the months in question constituted a continuing acceptance of these offers so as to give rise to a binding contract to pay for the "stand-by" services of the tug at the rate specified in the invoices furnished by the appellant.*
>
> *The test of whether conduct, unaccompanied by any verbal or written undertaking, can constitute an acceptance of an offer so as to bind the acceptor to the fulfilment of the contract, is made the subject of comment in Anson on Contracts, 21st ed., p.28, where it is said:*
>
> > *The test of such a contract is an objective and not a subjective one, that is to say, the intention which the law will attribute to a man is always that which his conduct bears when reasonably construed, and not that which was present in his own mind. So if A allows B to work for him under such circumstances that no reasonable man would suppose that B meant to do the work for nothing, A will be liable to pay for it. The doing of the work is the offer; the permission to do it, or the acquiescence in its being done, constitutes the acceptance.*
>
> *In this connection reference is frequently made to following statement contained in the judgment of Lord Blackburn in Smith v. Hughes, which I adopt as a proper test under the present circumstances:*
>
> > *If, whatever a man's real intention may be he so conducts himself that a reasonable man would believe that he was consenting to the terms proposed by the other party and that other party upon that belief enters into a contract with him, the man thus conducting himself would be equally bound as if he had intended to agree to the other party's terms.*
>
> *The American authorities on the same subject are well summarized in Williston on Contracts, 3rd ed., vol. I, para. 91A where it is said:*
>
> > *Silence may be so deceptive that it may become necessary for one who receives beneficial services to speak in order to escape the inference of a promise to pay for them. It is immaterial in this connection whether the services are requested and the silence relates merely to an undertaking to pay for them, or whether the services are rendered without a preliminary request but with knowledge on the part of the person receiving them that they are rendered with the expectation of payment. In either case, the ordinary implication is that the services are to be paid for at their fair value, or at the offered price, if that is known to the offeree before he accepts them."*

82. I find the Singaporean case of *OMG Holdings Pte Ltd v Pos Ad Sdn Bhd* [2012] SGCA 36 less helpful in that the Court of Appeal observed obiter that apart from the main issue on the evidence, it would encounter no difficulties in concluding in the light of the conduct of the parties there was an informal or implied agreement during the interim period between two agreements along the lines of the earlier terminated agreement.

83. I accept that the threshold question is whether it is necessary to imply a contract to give business reality to a transaction and to create enforceable obligations between parties and that the material facts may be tested by considering whether parties would or might have acted exactly as they did in the absence of a contract: *The Aramis* [1989] 1 Lloyd's Rep 213 at 224, per Bingham LJ.

84. Secondly, if the conduct relied upon is no more consistent with an intention to contract than with an intention not to contract it is not enough. It must be necessary to identify conduct referable to the contract contended for or, at least, conduct inconsistent with there being no contract made between the parties to the effect contended for. It will be fatal to the implication of a contract if the parties would or might have acted exactly as they did in the absence of a contract: ibid.

85. Thirdly, the Court must be able to infer an intention to create legal relations: *Mackie Motors (Brechin) Limited v RCI Financial Services Limited* [2023] EWCA Civ 476 [37].

86. Fourthly, while whether a contract should be implied is ultimately a matter of law and involves an objective analysis of all the relevant circumstances. Lord Justice Steyn (as he then was) held in *G. Percy Trentham Limited v Archital Luxfer Limited & or* (1993) 1 Lloyd's Rep 25:

> "The first is the fact that English law generally adopts an objective theory of contract formation. That means that in practice our law generally ignores the subjective expectations and the unexpressed mental reservations of the parties. .The fact that the transaction was performed on both sides will often make it unrealistic to argue that there was no intention to enter into legal relations. It will often make it difficult to submit that the contract is void for vagueness or uncertainty. Specifically, the fact that the transaction is executed makes it easier to imply a term resolving any uncertainty, or, alternatively, it may make it possible to treat a matter not finalised in negotiations as inessential. In this case fully executed transactions are under consideration. Clearly, similar considerations may sometimes be relevant in partly executed transactions. Fourthly, if a contract only comes into existence during and as a result of performance of the transaction it will frequently be possible to hold that the contract impliedly and retrospectively covers pre-contractual performance."

He emphasized that this was a commercial transaction which involved one party carrying out work and the other paying for it. Both parties had

intended to enter into binding contractual relations. It did not matter that the parties' conduct could not be precisely analysed in terms of offer and acceptance.

87. Fifthly, while the test is objective, the parties' understanding that there is no such contract in place explaining the terms of their relationship, and their inability to reach an agreement on the terms which such a contract should contain, are extremely powerful factors militating against any such implication. It will be unrealistic to imply a contract in a case where a party has deliberately sought to avoid entering into a contract: Tilson [50]-[51].

88. Sixthly, where the contract sought to be implied is a contract of employment, the implied contract must fulfil the minimum requirements of a contract employment, namely mutuality of obligation (i.e. the obligation on the part of the potential employer to provide work for remuneration and the obligation on the part of the potential employee to perform it) and control on the part of the potential employer: *Montgomery v Johnson Underwood Ltd* [2001] ICR 819 [46], *Cable & Wireless Plc v Muscat* [2006] IRLR 354 [35], *Newnham Farms Ltd v Mrs V L Powell* (2003) EAT/0711/01/MAA.

89. Turning to the facts of the present case, it is necessary to observe that the jurisprudence set out in the preceding paragraphs developed in two perhaps conflicting contexts. The English employment authorities developed around employment agency cases where the alleged employee had a contract with a third party who was contracted with the alleged employer to supply their services and the alleged employee was seeking to circumvent that relationship in order to claim statutory employment rights. In contrast, the English and other common law authorities that developed around commercial relationships were not constrained by irreducible minimum criteria and the courts were arguably freer to discover an enforceable contract than they would have been had they been considering employment relationships.

90. Mr Nancy points to 7 respects in which he says he continued to act as an employee notwithstanding the Termination Notice:

(1) He continued to be named as part of the investment committees of all the Funds. Although the Claimant did not attend investment committee meetings after 11 August 2022, he was not removed from the investment committees of any of the four Funds. In the Prospectus of N1 dated 13 December 2023 he was named as a member of the Operating Committee and *"currently part of the transaction team"*. The Prospectus for N2 issued 9 August 2022 (just under 3 months after the Termination Notice and two days before the expiry of the notice period) was in similar terms. Clearly it was intended that the Prospectus would be in circulation after 11 August 2022;

(2) The Claimant was not removed as the signatory on the bank accounts of portfolio companies. He noted that as recently as 13 November 2024, more than two years after the Claimant's termination, he continued to remain a signatory on the bank account of Nourine, a subsidiary company of NERA. The Claimant's signature was sought to release funds of Nourine's bank account: see emails dated 13 November 2024 exchanged between Mr Netra (Nourine), Mr Nancy and Mr Nadia;

(3) The Claimant's personal details were not removed from the regulatory authorities such as the FTA, for portfolio companies. The Claimant continues to receive reminders from the FTA for pending tax dues of Nitya, a subsidiary of Neil - the most recent being 21 April 2025. At paragraphs 67 and 68 of his Second Witness Statement Mr Nadia said that, *"Upon his termination of employment with the Defendant, it was not a straightforward process to subsequently remove him as manager of Neil" and admitted that, "The Claimant continued to receive some messages relating to activities of Neil following his termination of employment"*;

(4) The Claimant continued making payments on behalf of the funds for the portfolio companies where he was a general manager and ensuring regulatory compliance of the portfolio companies. His authorisation was routinely sought for payments on behalf of portfolio companies. He referred to communications with a Ms Nathan;

(5) He says he continued conducting negotiations and meetings with potential buyers, acquirers of fund assets, and bringing their proposals to the funds management team. For instance, until at least 25 October 2022, the Claimant was involved in discussions with Mr Naomi, the Managing Director (as well as a shareholder) of Naz, for the sale of diagnostic laboratories of NERA. Although the negotiations began while the Claimant was still employed with the Defendant the Claimant's involvement continued even after his termination. On 26 April 2023, the Claimant was contacted by one of the NOX's own officers, seeking assistance with finding buyers for the sale of NERA's assets in Kuwait. On the same day, the Claimant recommended potential buyers based in Kuwait and the UAE;

(6) Travel bans continued to be imposed against the Claimant by reason of his employment with Neil and the Defendant continued to appoint lawyers to represent the Claimant across these proceedings;

(7) He continued to hold an employment visa with the Defendant until 2 October 2023.

91. The Claimant suggests the evidence of Mr Noura was that he believes that the Claimant should be compensated for this period.

92. The Defendant made the following submissions in reply in oral closing:

(1) The Claimant merely supplied some OTPs to Ms Nathan at a time when, as he admitted, it was difficult to know whether the clinic for which she worked had been sold by NERA. He cannot say that his actions were only consistent with the existence of a contract of employment;

(2) As soon as Mr Nancy's employment visa was cancelled, he began working for Mr Naomi. His conduct, rather than an example of conduct only consistent with him being employed by the Defendant, is conduct far more consistent with the Claimant working for Mr Naomi's business;

(3) The Claimant relies on some text messages with a member of NOX's investment banking team in April 2023. This is at least as consistent with the Claimant doing a favour for a friend, a former colleague, or indeed acting in the interests of Mr Naomi's business. The individual was not part of the fund management team, he was in the investment banking team, and, for information barrier reasons, the investment banking team was separate from the fund management team. The Claimant does not suggest that anyone else from the Defendant authorised or even

knew about this call;

(4) The Claimant relies on his receipt of some text from the FTA but again, on his own evidence he ignored the text messages during the period of his alleged employment. He only started doing something in response long after he accepts his employment ended;

(5) The Defendant did not cancel the Claimant's visa because it was sympathetic to his personal circumstances. There was no common intention to enter into a new contract of employment;

(6) The Defendant had no control over legal cases brought arising out of the liquidation of Neil but was sympathetic to the Claimant. Mr Noura in particular was sympathetic with him, and as he said in evidence he had discussions post termination on the subject of compensation or something to help. That lobbying is inconsistent with the Claimant remaining in employment, and continuing to be entitled to wages;

(7) All the other conduct of the parties in this period is at least equally consistent with no contract whatsoever, and that includes the calculation of end of service payments on 17 November 2022;

(8) Another NOX entity, not the Defendant, offered the Claimant a consulting contract in respect of any assistance he might provide with the Neil issue. That contract would not have been necessary if the Claimant had remained an employee of the Defendant;

(9) Mr Nancy cannot point to any positive conduct by the Defendant that is at all consistent with a contract of employment after 11 August 2022, still less that is only consistent with such a contract;

(10) The Claimant makes no attempt to explain what might have been the terms of the implied contract - whether he would get his full salary, whether it was full or part time.

93. I am not persuaded on the facts that it was necessary for there to be an **employment** contract between Mr Nancy and the Defendant to give business reality to their relationship after the termination of his employment. Putting the Claimant's case at its highest, the facts are consistent with a different form of contract from an employment contract. The irreducible minima of an employment contract (the obligation on the part of the potential employer to provide work for remuneration, the obligation on the part of the potential employee to perform the work and control by the potential employer) are not present. The only unequivocal evidence consistent with an employment relationship is the inclusion of Mr Nancy's name in the Prospectuses for N1 and N2 but this is as easily explained by carelessness as it is by an intention that Mr Nancy should remain an employee. All the other evidence may be explained (again) by a degree of carelessness of the part of the Defendant in not removing Mr Nancy's name from bank accounts and tax records or an intention that Mr Nancy should provide assistance to the Defendant on an ad hoc basis from time to time.

94. The parties' conduct is more consistent with some sort of consultancy arrangement. It is unfortunate that he did not take up the Defendant's offer of a consultancy agreement. His claim now is for an implied contract of employment and that claim must fail.

95. I reach that conclusion with some regret as, while Mr Noura's subjective view that the Claimant should have been paid for the services he rendered post termination is irrelevant for legal purposes, I share that opinion as a matter of law. The Defendant freely accepted Mr Nancy's services and by offering a consultancy contract it must be taken to have understood that he ought to have been fairly remunerated. That is not the claim brought and there is no material before me on which I could calculate a value to be attributed to those services. Even if I were able it would have been a fairly modest sum compared to his full-time salary.

THE INDEMNITY CLAIM

96. Mr Nancy states that on 16 December 2023, new proceedings arising out of the bankruptcy of Neil were initiated against him. The Defendant refused to pay to resolve these proceedings. He seeks indemnity of AED 4,000 for the expenses incurred to resolve the proceedings.

97. In addition, the Claimant's contact details have still not been removed from the FTA's database. The Claimant continues to receive text messages regularly, seeking the payment of overdue taxes for one of Neil's subsidiaries, which have been steadily increasing. As of April 2025, the sum of the overdue taxes is AED 17,000. As at the time of closing submissions the sum of the overdue taxes is AED 19,000. It is unclear whether the FTA will make the Claimant personally liable for these unpaid taxes.

98. Further, around 31 March 2024, Neil UAE was dissolved and deregistered. The matter is being managed by the court appointed trustee and a court appointed officer who share information from time to time. The pending tasks still include the sale of the leased warehouse and return of the cheques issued to the landlords. The Defendant acknowledges that since bankruptcy laws and their implementation are new in the region there is limited integration of court, prosecution and police systems which sometimes results in case registrations ignoring the bankruptcy procedures. The cases then have to be removed through active engagement of lawyers and the bankruptcy court.

99. Mr Nancy therefore seeks indemnity (by way of declaration) against these additional (potential) losses as well in reliance on the case *of First Names (Jersey) Limited & Anr. v IFG Group PLC*, [2017] EWHC 3014 (Comm) in which the English Commercial Court (albeit as a matter of Jersey law) held that it was an absurd proposition that a company which contracted to supply its employees to act as directors of a client company did not have an obligation to indemnify those employees in relation to the work undertaken in good faith. There would be neither difficulty nor complexity in identifying the terms of the necessary implied indemnity: simply, an employee required to serve as director of a client company and acting in good faith would be indemnified against costs, losses and liabilities incurred in the course of that directorship.

100. Mr Nancy submits that the same analysis applies where a PEH seconds its employees to the management of a portfolio company. I think the concession (if it be such) at paragraph ?60 above was wrongly made. It seems to me an indemnity implied in the contract of employment that terminated in August 2022 could survive post-termination. In my view it is equally obvious that the employer and employee have no control over when a third party might bring a claim against the employee and therefore it would be in their reasonable contemplation that the third party might bring a claim after the employee has left the employer's employ.

101. Against First Names the Defendant raises the case of *Vadim Don Benyatov v Credit Suisse (Securities) Europe Ltd* [2023] EWCA Civ

140. It suggests that at [129]-[130] the case is authority for the proposition that, in English law, there is no general principle that if a person acts on the instruction of another they are entitled to be indemnified against all losses, of any kind suffered as a result of doing so. This is a gross oversimplification. In Benyatov the claimant was not claiming (as does Mr Nancy) indemnity against claims (including costs) by third parties but against his own loss of earnings said to have been caused as a consequence of his employment. The Court of Appeal agreed with the judge below that there is not a single case in which an indemnity implied into an agency or employment contract has permitted the agent or employee to recover lost income. Rather, in every reported case where an indemnity was ordered it was for payments that the agent or employee had made, or was liable to make, to a third party.

102. Having covered all of Mr Nancy's legal fees relating to the Neil proceedings, the Defendant refused to cover just one legal bill. Apparently, the Defendant's contract with the lawyer it had hired to assist the Claimant had expired. She had not been paid for two months and Mr Nancy offered to pay her himself if the Defendant would not pay her. The real reason why the Defendant will not cover this bill seems to be that on its face it bears the words *"Note: A legitimate legal fee will be covered by the professional contract with Nova."* The Defendant submits that the services were unnecessary as the travel ban had been lifted.

103. It seems odd to me that Mr Nancy should be seeking the help of, and agreeing to pay, the lawyer if there were no need. It was suggested to Mr Nancy that he wanted to travel urgently for personal reasons. I cannot understand why this is relevant - the question is whether a travel ban consequent on the Neil bankruptcy was preventing him from travelling whether urgently or not. There is no explanation of the note to the invoice and it is possible (if not likely) that English may not have been the first language of the author. It is therefore not known what the word "legitimate" was intended to convey. All in all, I seen no reason why Mr Nancy should not be indemnified against the invoice.

104. As to the claims for declarations in respect of any tax liability or liabilities arising out of the bankruptcy of Neil, the Defendant contends that the Claimant has not pleaded a claim for such relief. It is too late to amend, and no application has been made. It is also said that such a claim is premature. There is no evidence before the court that Mr Nancy will incur such losses. Nor is there any evidence that NOX will not continue to provide him with legal services, at no cost, as it has done throughout with the exception of the disputed invoice.

105. It is correct that there is no pleaded claim for a declaration, and I shall make none. That is not however the end of the matter. This judgment clearly represents a res judicata between the parties. Should any tax liability or liabilities arising out of the bankruptcy of Neil be imposed on Mr Nancy I have held that there exists a remaining liability on the part of the Defendant to indemnify Mr Nancy against the costs and claims made against him by third parties arising out his former employment with the Defendant.

DISPOSAL

106. There shall be judgment for the Claimant in the sum of AED 4,000. All other claims are dismissed.

107. There will be an immediate assessment of costs. The parties shall serve and exchange submissions on interest and costs within 7 days of the date of this judgment and responses 7 days thereafter.