Claim No: CFI 095/2023

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

AHMED SEDDIQ MOHAMED SAMEA ALMUTAWA

Claimant

and

MOHAMED SEDDIQ MOHAMED SAMEA ALMUTAWA

Defendant

ORDER WITH REASONS OF JUDICIAL OFFICER MAITHA ALSHEHHI

UPON the claim having been filed on 20 December 2023

AND UPON the Default Judgment of Judicial Officer Maitha Alshehhi dated 6 February 2024 (the "Default Judgment")

AND UPON reviewing the Defendant's Application No. CFI-095-2023/1 dated 28 March 2024 seeking an order to set aside the Default Judgment (the "Set Aside Application") and the witness statement of Mohamed Seddiq Al Mutawa dated 21 March 2024 filed in support of the Set Aside Application

AND UPON the Claimant's evidence in answer to the Set Aside Application dated 23 April 2024 (the "Claimant's Reply")

AND UPON reviewing the Claimant's Application No. CFI-095-2023/2 dated 30 April 2024 seeking a retrospective extension of time to accept the Claimant's Reply (the "Extension of Time Application")

AND UPON reading the witness statement of Asha Bejoy dated 29 April 2024 filed in support of the Extension of Time Application

AND UPON the Registry's directions dated 30 April 2024

AND UPON reviewing the Defendant's evidence in reply to the Set Aside Application and the Extension of Time Application dated 3 May 2024

AND UPON reviewing the Claimant's evidence in reply to the Extension of Time Application dated 6 May 2024

AND UPON reviewing all relevant material added onto the Court file

AND PURSUANT to Parts 13, 14 and 23 of the Rules of the DIFC Courts ("RDC")

IT IS HEREBY ORDERED THAT:

1. The Set Aside Application is granted.

2. The Default Judgment is set aside.

3. The Defendant is permitted to file a Statement of Defence and any counterclaim within 28 days from the date of this Order.

4. The Extension of Time Application is rejected.

5. Costs shall be costs in the case.

Issued by:
Delvin Sumo
Assistant Registrar
Date of issue: 10 May 2024
At: 9am

SCHEDULE OF REASONS

1. On 31 January 2024, the Claimant filed a request for default judgment on the basis that the Defendant failed to file an acknowledgement of service or defend the claim.

2. On 6 February 2024, the default judgment was issued in favour of the Claimant and ordered the Defendant to pay AED 16,030,000 plus

interest (the "Default Judgment")

3. On 12 March 2024, the Court issued an order in ENF-054-2024 determining that the Default Judgment is final and executory.

4. On 22 March 2024, the Defendant's legal representative notified the Registry of its intention to file an application to set aside the Default Judgment and attached supporting documents despite not having access to the online portal.

5. On 25 March 2024, the Defendant filed an acknowledgment of service.

6. On 28 March 2024, the Defendant's Set Aside Application was formally lodged on the portal.

7. Before determining the Set Aside Application, I shall discuss the Claimant's Extension of Time Application to file its reply to the Set Aside Application.

8. The Claimant takes the view that Part 14 of the RDC does not specify a timeline for a filing a reply which in this case was "unnecessary" unless the Court directed them to do so.

9. In an email sent to the Registry on 25 April 2024, the Claimant's legal representative submits that she tried to contact the Registry on numerous occasions in respect of filing a reply to the Set Aside Application, however, received no response from the Registry. I set out below an extract from the email:

> "Regarding communication with the Registry:
>
> Despite efforts to communicate with the Registry on the following dates (a) 1 April 2024 (2:53 PM, and 2:53 PM), (b) 5 April 2024 (9:20 AM), (c)15 April 2024 (3:01 PM, 3:03 PM, 3:03 PM, and 3:08 PM), and finally (d) on 16 April 2024 (3:31 PM), with the Registry, the Claimant/Respondent received no directions regarding the timing for filing a reply to the application notice filed by the Defendant/Applicant.
>
> Till the filing of the reply on 24 April 2024, no directions have also been received by the Claimant/Respondent from the Court regarding the filing of the reply;
>
> Therefore, the Claimant/Respondent proceeded to file its reply as a precautionary measure."

10. On 30 April 2024, the Registry responded to the Claimant's legal representative stating that they did not receive any correspondence from the Claimant on the dates mentioned in the email. The Claimant then confirmed to the Registry that it proceeded to file its application for a retrospective extension of time without offering any explanation or submitting any proof of emails which have been allegedly not answered by the Registry.

11. In its reply dated 6 May 2024, the Claimant stated that the communication with the Registry was by way of telephone and not via email and therefore no emails can be provided in this regard. The Claimant also argued the suitability of the application being filed as ordinary versus heavy.

12. In the Defendant's reply to the Extension of Time Application, he submits that no valid reason was given for the delay and that the timelines mentioned in Part 23 are applicable in this case given that the Set Aside Application was filed using an application notice P23 form.

13. Further to the above, I agree with the Defendant's argument that the timelines mentioned in RDC 23.41 would apply as the Set Aside Application was filed as an ordinary application which stipulates that a reply must be filed within 14 days, i.e 15 April 2024, and the application was only filed on 30 April 2024.

14. Given that the application was straightforward, and the Claimant was notified from 22 March 2024, the Court does not need to intervene and issue directions for extended/abridged timelines in accordance with RDC 23.42 absent a formal request from the Claimant to do so within the allotted timeline. Also, there is no reason to request that the application be determined as a heavy application

15. In light of the above, I find that the Extension of Time Application must be rejected.

16. It follows that the Claimant's Reply dated 23 April 2024 shall not be accepted and admitted.

17. As to the Defendant's Set Aside Application, RDC 14.1 reads as follows:

> "The Court must set aside a judgment entered under Part 13 if judgment was wrongly entered because:
>
> (1) in the case of a judgment in default of an acknowledgment of service, any of the conditions in Rules 13.4 and 13.6 was not satisfied;
>
> (2) in the case of a judgment in default of a defence, any of the conditions in Rules 13.5 and 13.6 was not satisfied; or
>
> (3) the whole of the claim was satisfied before judgment was entered."

18. It is clear that the requirements above are not met, therefore, RDC 14.1 does not apply in this instance.

19. Rather, this is a case in which the Court may set aside or vary the Default Judgment pursuant to RDC 14.2 in the event the Defendant has a real prospect of successfully defending the claim or there is other good reason why the Default Judgment should be set aside or varied or other good reason why the Defendant should be allowed to defend the claim.

20. The Claim pertains to the Defendant's alleged breach of the purchase and sale agreement dated 25 November 2018 (the "SPA").

21. In his witness statement, the Defendant submits that he has a real prospect of defending the Claim on the grounds of challenging the evaluation

conducted by Deloitte as it did not reflect the actual value of the company and losses incurred allegedly by the Claimant.

22. The Defendant further submits that the Default Judgment was not served in accordance with Part 9 of the RDC as no Arabic translation accompanied it and the Default Judgment was served to an address that was not mentioned in the SPA. Therefore, the Default Judgment must be set aside.

23. RDC 14.3 requires consideration of when the application to set aside the Default Judgment was made:

> "in considering whether to set aside or vary a judgment entered under Part 13, the matters to which the Court must have regard include whether the person seeking to set aside the judgment made an application to do so promptly."

24. When seeking to determine whether the Defendant has demonstrated `a real prospect of success', I will need to consider whether the Defendant has demonstrated a `realistic' rather than a `fanciful' prospect of success, as confirmed by H.E Shamlan Al Sawalehi in the matter of *Al Tamimi v Jorum Ltd & Anor* [2016] DIFC CFI 028.

25. Upon reviewing the Set Aside Application, I find that the Defendant has raised concerns regarding the validity of the reports issued by Deloitte and such contention might be supported by evidence to be filed by the Defendant. Additionally, I find that the Defendant must be given an opportunity to advance his defence as it is evident that this dispute requires detailed consideration from both parties which can only be achievable by a trial judge following a full hearing.

26. Accordingly, in the interest of justice, I hereby order that the Set Aside Application shall be granted.

27. It follows that the Default Judgment be set aside pursuant to RDC 14.2(b).

28. The Defendant is permitted to file a Statement of Defence within 28 days of service of this Order.

29. Costs shall be costs in the case.