THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF APPEAL

BETWEEN

AHMED MOHAMED EID Al YAHAD AL ZAABI

Claimant/Appellant

and

AL BUHAIRA NATIONAL INSURANCE COMPANY

Defendant/Respondent

ORDER WITH REASONS OF H.E. CHIEF JUSTICE WAYNE MARTIN

UPON the Judgment of H.E. Justice Roger Stewart dated 28 August 2025 (the "Judgment")

AND UPON the Claimant's Renewed Permission to Appeal Application dated 30 October 2025 seeking to appeal the Judgment (the "Renewed Permission Application")

AND UPON the Defendant's submissions in opposition dated 19 November 2025

AND UPON the Defendant's skeleton argument dated 11 December 2025

IT IS HEREBY ORDERED THAT:

1. The Renewed Application is dismissed.

2. The Claimant is ordered to pay the Defendant's costs of the Renewed Application to be assessed on the standard basis.

3. The Defendant is to file a statement of its costs in relation to the Renewed Application and any short submissions in support of its claim for costs within fourteen (14) days of the date of this Order.

4. Within fourteen (14) days of service of the Defendant's statement of costs the Claimant shall serve any submissions in opposition to the quantum of the costs claimed by the Defendant.

5. The quantum of the costs to be paid by the Claimant to the Defendant shall thereafter be assessed by H.E. Chief Justice Wayne Martin by the process of immediate assessment on the papers.

Issued by:
Delvin Sumo
Assistant Registrar
Date of issue: 6 January 2025
At: 11am

SCHEDULE OF REASON

Summary

1. The Claimant applies to the Court of Appeal for Permission to Appeal (the "**Renewed Application**") from the decision of the Judge at first instance (the "**Judge**") after trial in which the Judge dismissed his claim against the Defendant and ordered that he pay the Defendant's costs. The Renewed Application is made to the Court of Appeal as an earlier application for permission to appeal made to the Judge was dismissed. For the reasons which follow, the Claimant has failed to establish that any of his proposed grounds of appeal have any real prospect of success with the consequence that the Renewed Application must be dismissed.

Overview of the claim

2. The claim arises from the following facts, which were not controversial at trial.

3. In about January 2023, the Claimant purchased a vessel known as the Dazaz in Abu Dhabi as a bare hull. Over the next few months, the Claimant arranged for work to be done on the vessel, including the affixation of two 225 horsepower Mercury outboard engines to power the vessel. Various other works were carried out and equipment was purchased for use on the vessel.

4. The work appears to have been complete by 7 June 2023 when the Claimant submitted a proposal to the Defendant for insurance of the vessel as a "pleasure craft". On 8 June 2023, the Claimant provided a Condition and Value Survey Report from BAL Surveyors and Loss Adjustors to the Defendant (the "**BAL Report**").

5. On 9 June 2023, the Defendant accepted the Claimant's proposal and issued a policy and invoice (the "**Policy"**) relating to the insurance cover which was provided.

6. Over the following week, the vessel was inspected and licensed by various regulatory authorities, and on 15 June 2023 it was slipped into the water.

7. On 20 June 2023, the vessel was secured at a berth at Al Qawasim Corniche in Ras Al Khaimah. There was controversy at trial about the precise nature of the facility in which the vessel was berthed, and in particular as to whether it was a marina.

8. On 26 June 2023, a representative of the Claimant and cleaners boarded the vessel in order to clean the vessel and charge the battery. After completing the cleaning work all left the vessel, leaving the generators running in order to charge the battery.

9. Later that day an explosion occurred, setting fire to the vessel causing it to sink (the "**Casualty"**). The vessel has not been recovered from the seabed. The fire also caused damage to the vessel landing and a navigational buoy.

10. The Claimant was on holiday in Georgia on the day of the Casualty.

11. On 5 July 2023, the Claimant notified the Defendant of the loss of the vessel and of his intention to claim under the policy. A claim was made in due course but rejected for various reasons. After pursuing other potential avenues of redress, the Claimant commenced proceedings in this Court pursuant to a provision in the Policy conferring jurisdiction on the Court.

The Judge's findings

12. At this stage, it is sufficient to provide an overview of the Judge's principal findings. The Judge's reasons for findings challenged by the proposed grounds of appeal will be considered, to the extent necessary, in the context of a consideration of each ground.

13. The Judge identified the issues which required determination as follows.

Has the Claimant established that the claim falls within the primary insuring clause?

14. The Judge found that the Claimant had established that the Casualty resulted from an insured peril and fell within the insuring clause.

*Was the Claimant a "consumer" for the purposes of the Consumer Insurance (Disclosure and Representations) Act 2012 ("**CIDRA**") and the Insurance Act 2015 ("**IA**")?*

15. This question arose because the Policy is to be governed and construed in accordance with English law. The Judge found that the Claimant intended to use the vessel mainly for business purposes, and this was his fixed intention. Although it is possible that he might have used the vessel for some private use, its main use would have been for business purposes, with the consequence that he was not a consumer for the purposes of CIDRA or IA.

Did the Claimant breach the seaworthiness and conditions survey warranty?

16. The Policy contained warranties to the effect that:

(a) The vessel would be maintained in seaworthy condition through the Policy period; and

(b) A full condition and evaluation survey for the vessel would be conducted by ABL and/or Aries Marine at the owner's cost prior to attachment of cover and all recommendations to be complied with by time frame as stipulated by the surveyor.

17. The Judge noted that the Defendant did not suggest that these should be treated as separate warranties in their application to the facts of this case, given that the vessel had undertaken only one short voyage to the place where it was berthed prior to the occurrence of the Casualty. The warranty which required the provision of a condition survey prior to the inception of cover provided the relevant protection for the Defendant's rights in the circumstances of this case.

18. The Judge considered that the survey condition was both a warranty and a condition precedent, in that cover would not attach until the survey was obtained and provided to the Defendant.

19. The Judge concluded that the warranty/condition had not been satisfied because:

(a) The requirement was for a "full condition and evaluation survey" and no such survey was conducted - the report provided by BAL omitted any expression of view with respect to the seaworthiness of the vessel;

(b) The warranty required that the survey be conducted by either ABL and/or Aries Marine and neither conducted any survey prior to the Casualty; and

(c) The only report upon which the Claimant relied was the BAL Report which:

(i) was not a full condition and evaluation survey;

(ii) was not carried out by either ABL or Aries Marine; and

(iii) was not sent to the Defendant until long after the Casualty.

20. The Judge further concluded that the Claimant could not derive any assistance from either s 10 or s 11 of the IA because:

(a) The failure to satisfy the warranty/condition was not and could not now be remedied;

(b) The Defendant had not waived the requirement to satisfy the warranty/condition;

(c) The Claimant could not assert that the failure to satisfy the warranty/condition could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred;

(d) In fact, the likelihood is that a survey would have made recommendations which would have reduced the risk of the explosion; and

(e) The requirement for a condition survey would be regarded as defining the risk as a whole, rendering s 11 of the IA inapplicable given that the requirement for a survey went to the seaworthiness and safety of the vessel and thereby underpinned a central feature of the risk covered by the Policy.

21. For these various reasons, the Judge concluded that failure to satisfy the warranty/condition had the consequence that the vessel was never covered under the Policy.

Did the Claimant breach the private purposes warranties?

22. The schedule to the Policy included a warranty in terms that:

"Warranted craft will be used for private pleasure purposes only.

and incorporated clauses from the Institute Yacht Clauses ("IYC") in terms:

Warranted to be used solely for private pleasure purposes and not for hire charter or reward, unless especially agreed by the Underwriters."

23. Having found that the Claimant intended to use the vessel mainly for commercial purposes, the Judge concluded that the private purposes warranties had been breached. He also found it likely that the vessel was being prepared for commercial use at the time, because cleaners had cleaned the vessel and the batteries were being charged suggesting imminent use, although the Claimant was on holiday in Georgia. However, even if the vessel was not being prepared for commercial use and was simply awaiting such use, such waiting was incidental to the commercial use of the vessel.

24. The Judge further concluded that there was no question of the breach being remedied given that the Claimant intended to use the vessel for commercial purposes at all times up until the Casualty. The Judge further considered that the use of the vessel was a matter which defined the risk as a whole, thereby rendering s 11 of the IA inapplicable. In his view, the risks attending private use vessels and those attending vessels used for commercial purposes are materially different and greater for commercial use, because of a likely greater extent of use and greater wear and tear.

25. For these reasons, the Judge concluded that breach of the private use warranties meant that the Defendant was not liable for the loss claimed.

Did the Claimant comply with the left unattended warranty?

26. The Policy included a warranty in the following terms:

"Warranted Marina based, alternatively yacht must be securely moored at a safe assigned place and not exposed to open sea and not to be left unattended whilst not in use."

27. The Judge construed the warranty as only imposing the requirement that the vessel be not left unattended whilst not in use if it was not berthed in a marina. However, the Judge concluded that the vessel was not berthed in a marina, in the ordinary meaning of that word, which connotes a specially designed safe facility for small vessels with permanent facilities available to support those vessels so as to allow them to refuel and to be washed etc - that is, a home for the vessel when not in use. He considered that a marina was to be contrasted with a mere dock or berthing place which simply provides a method to secure the vessel and allows the crew to come ashore.

28. The Judge concluded that the place where the vessel was docked at the time of the Casualty was not a marina but rather a port area without any special facilities or protection for small vessels, although he accepted that it was a safe assigned place and did not leave the vessel exposed to the open sea. However, the warranty still required that the vessel not be left unattended. The Judge noted that the Casualty occurred when the engines were running, at a time when it would be expected that the vessel would be crewed.

29. The Judge concluded that if there had been somebody in attendance at the vessel, the risk of the explosion may well have been reduced, with the result that the breach of warranty absolved the Defendant from liability

Did the Claimant comply with the fire equipment warranties?

30. The schedule to the Policy contains the following warranties relating to fire fighting:

"Warranted portable fire extinguishers installed on board and in engine room and periodically serviced per the manufacturer's recommendations.

.

Warranted smoke/heat detectors installed in the engine room (engine space) tank spaces recommended by the manufacturers.

Warranted no liability shall attach to this insurance in respect to any claim caused or arising through fire or explosion unless the yacht equipped

in the engine room (or engine space) tank space and galley, with a firefighting system automatically operated or having controls at the steering position and maintained in efficient working order."

31. Further, clause 19 of the IYC clauses incorporated into the Policy provides:

"If the vessel is fitted with inboard machinery no liability shall attach to this insurance in respect of any claim caused by or arising through fire or explosion unless the Vessel is equipped in the engine room (or engine space) tank space and galley, with a fire extinguishing system automatically operated or having controls at the steering position and properly installed and maintained in efficient working order."

32. The Judge found that there was no evidence of an automatic fire extinguishing system in the engine room or the engine room space, causing him to conclude that there was a breach of warranty. He further concluded that the presence of such a system would have tended to reduce the risk of the loss which occurred, with the result that this breach also absolved the Defendant from liability for the loss claimed.

Did the Claimant make the alleged misrepresentations or breaches of the duty of fair disclosure?

33. The Judge decided that by reason of his conclusions with respect to the various breaches of warranty it was unnecessary to decide these issues. However, he went on to express brief conclusions, including a conclusion that the Claimant represented that the vessel was for private use when he knew it was for commercial use, which was a deliberate mis-statement, which also absolved the Defendant from liability for the loss claimed.

The Judge's conclusion

34. Having arrived at these individual conclusions, the Judge concluded that the Claimant had failed to establish his claim and the Defendant was entitled to a declaration that it was entitled to avoid and/or repudiate and/or cancel the insurance.

Permission to appeal - legal principles

35. RDC 44.117 provides:

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

(1) Wrong; or

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

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

37. RDC 44.19 provides:

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

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

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

38. RDC 44.19 provides that permission to appeal may only be given where the appeal would have a real prospect of success or there is some other compelling reason why the appeal should be heard.

39. In the context of an assessment of the prospects of success "real" means realistic rather than fanciful and involves the same test as is applied in applications for immediate judgment.[1]

40. A real prospect of success does not mean a probability of success, but more than mere arguability.[2]

41. "Some other compelling reason why the appeal should be heard" may include the public interest in clarifying the meaning and scope of relevant practice and provisions of DIFC and wider UAE law.[3]

42. It is established that "real" in the context of an assessment of the prospects of success means realistic rather than fanciful, applying the same test as is applied in an application for immediate judgment.[4]

43. It is also established that a real prospect of success does not mean a probability of success, but more than mere arguability.[5]

44. Accordingly, in order to obtain the grant of permission, a prospective appellant needs to establish more than the proposition that the proposed appeal is reasonably arguable - rather, it must be established that there is a real prospect of success.[6]

45. Particular principles apply to applications for permission to appeal against case management decisions and multi factorial assessments undertaken by a Judge at first instance, given the hurdles which must be overcome to obtain appellant intervention in such cases.[7] However, as this case does not involve either an application to appeal against a procedural or case management decision, or against a multi factorial assessment by the trial Judge, it is unnecessary to essay the relevant principles in these reasons.

46. When a renewed application made to the Court of Appeal is refused, it is appropriate for the Court to provide reasons which adequately explain the reasons why permission has been refused. The adequacy and extent of those reasons will be informed by the fact that the refusal of permission is final and conclusive and determines the issues the subject of the appeal.

47. On the other hand, when a renewed application for permission to appeal is granted, the reasons for the grant can and should be expressed more briefly, and any views expressed should be expressed and read as provisional, on the basis that a different view might well be formed following the consideration of the fuller argument which will be presented at the hearing of the appeal. Further, the reasons for granting permission in respect of grounds of appeal will be expressed economically, not only because the determination of the issue raised by the ground must await the hearing of the appeal but also to limit the prospect that a party might consider that a member of the Court of Appeal does not retain an open mind in relation to any of the issues in the appeal.

Appeals from decisions of fact - legal principles

48. It is well established in this and many other common law courts[8] that a Court of Appeal will give considerable deference to findings of fact made by the Trial Judge, given the advantages which that Judge enjoys in relation to findings of fact, having seen the witnesses and having been immersed in the detail of the case when compared to an Appellate Court which lacks those advantages and which is dependent upon transcript and documentary evidence. These principles were enunciated in *Lals Holdings Limited & Ors v Emirates Insurance Company (PSC) & Anor*[9] in the following terms:

> "108. In appeals involving questions of fact, there may be a degree of deference to the findings of the primary judge who will have been immersed in the detail of the evidence and argument to an extent that the Judges hearing the appeal may not be able to replicate. This is particularly so where there has been a lengthy hearing involving extensive evidence.
>
> 109. Beyond that, generally speaking, this Court will not lightly interfere with a primary judge's findings as to the credibility of witnesses or the weight which should be attributed to various pieces of evidence in reaching an inference. The mere fact that the Court of Appeal might have attached different weight to that attached to particular evidence by the primary judge, does not demonstrate error on the part of the primary judge. When the final decision of the primary judge is discretionary, it is not sufficient to persuade the Court that it should have a different view and substitute its view for that of the primary judge. Error must be demonstrated. This may also be said of evaluative findings of the judge which border on the discretionary in their character."

49. These considerations have led to the adoption of the principle that in order to succeed in a challenge to a Judge's finding of fact, the Appellant must demonstrate that the Judge was plainly wrong, or has arrived at a conclusion which is outside the bounds of the conclusions reasonably open on the evidence.[10] Particular considerations apply to findings based on the credibility or demeanour of witnesses, because of the advantage which a Trial Judge enjoys in that regard, but as issues of that kind do not arise in this application, it is unnecessary to refer to them.

The grounds of appeal

50. Neither the Grounds of Appeal nor the skeleton argument served in support of those grounds contains any succinct statement of each ground. Rather, both are expressed in the form of narrative argument directed to challenging particular findings of fact made by the Judge. Accordingly, the most that can be done in these reasons is to indicate the topic to which each ground is addressed.

Ground 1 - was the vessel intended for commercial use?

51. Ground 1 contends that the Judge's finding that the Claimant intended to use the vessel mainly for commercial purposes was "plainly wrong". It is contended that the Judge misunderstood items of evidence and failed to give weight to relevant evidence. It is further contended that there will be fresh evidence on appeal to support the Claimant's case that the vessel was intended for private use.

52. The skeleton identifies the following matters in support of these contentions:

> (a) The statements made by the Claimant in his witness statement to the effect that he intended to derive income from the use of the vessel were, most likely, an inaccurate translation of the Claimant's intended meaning, which was to the effect that he was referring to the improvement of his life in general, rather than to any income to be derived from the vessel;
>
> (b) The BAL Report described the vessel as a "pleasure boat" and the Judge was wrong to rely upon that report in support of his conclusion;
>
> (c) The Judge erred in relying on the steps taken by the Claimant to fit out the vessel, as they were equally consistent with private or commercial use;
>
> (d) The Judge failed to give proper weight to other evidence in the trial bundle to the effect that the vessel was intended for private use; and
>
> (e) New evidence that would be adduced on appeal would support this ground.

53. Each of these contentions will be addressed in turn.

(a) The Claimant's statements

54. Although the Judge referred to some of the statements made by the Claimant with specificity, he also referred to the evidence of the Claimant's statements at a level of generality, given his view that they consistently and unequivocally established that the Claimant intended to use the vessel for commercial purposes. For the reasons which follow, that view was amply justified and certainly open to him on the evidence.

55. In the Particulars of Claim served after the proceedings in this Court were commenced, the Claimant stated:

> "The Complainant purchased this yacht and completed all its machinery and equipment and prepared it well to be used in trips for others and profit from it so that he and his family co-exist, but he did not complete that until the fire broke out in the yacht."[11]

56. In his witness statement the Claimant stated:

"I did not receive any response from Al-Buhaira Insurance Company, as this was my source of livelihood and my monthly income for my living life, and after that I resorted to the DIFC Court.[12]

.

I request your honourable court to compensate me for the damages incurred due to the burning of the yacht, which was my primary source of livelihood.[13] .

I seek the following:

. compensation of AED18,000/month for the delay in compensating me, which has affected my livelihood for more than a year.

.

Please pay attention to my matter and clear it as soon as possible . as my personal circumstances are very difficult and I only have this yacht to help me in my living life."[14]

57. In the Claimant's response to the Defence, he stated:

"Additionally, the yacht was not used for either personal or commercial use, as it burned before it could sail or be used.

.

Since there was a valid and current operating and usage license for the yacht, this confirms the yacht's suitability for rental.[15]

.

Additionally, the yacht was neither used for personal leisure nor commercial purposes but it was fit for rental."[16]

58. A medical report prepared by Dr Sara Helmy relating to the Claimant on 26 June 2025 was also received in evidence.

59. In her report of the Claimant's presentation, Dr Helmy recorded:

"In 2023 he sold a number of his assets to start a new business to improve his financial situation. He bought a boat and in June, 2023, the boat caught on fire and burned.[17]

.

The patient reports that the financial loss of the boat was a big stressor and caused further social and occupational deterioration."[18]

60. As has been seen, the evidence given by the Claimant, and the statements he made in Court documents and to his doctor are entirely consistent and unequivocally to the effect that he intended to use the vessel for commercial purposes with the consequence that its loss caused him severe financial disadvantage. The proposition that some of the statements can be attributed to errors in translation and should be construed as referring only to his general life (that is emotional and leisure life) is entirely speculative and has no basis in the evidence that was before the Court. If the Claimant wanted to correct his evidence and make clear that he did not intend to use the vessel for commercial purposes he had every opportunity to do so, but did not. In those circumstances, the proposition that "the Judge ought to have found that these statements were inaccurate translations" is untenable.

(b) The BAL Repor

61. It is true that the BAL Report describes the vessel as a "pleasure boat", but that is a description of its character, rather than of the Claimant's intended use.

62. As the Judge noted, the BAL Report was essentially a report relating to the value of the vessel. The portion of the report upon which the Judge was entitled to rely was the following:

"Our investigation was restricted to the above unit and appraised of the subject vessel and does not attempt to arrive at any conclusion of values of the company as a total business entity."[19]

63. In other words, the valuer was making clear that he was only valuing the vessel itself, without regard to the vessel's income earning capacity. The Judge was entitled to infer that such a statement would only have been made if the valuer (who was engaged by the Claimant) was aware that it was the Claimant's intention to use it to derive income.

64. Accordingly, the Judge was entitled to rely upon the BAL Report to sustain his conclusion as to the Claimant's intended use of the vessel.

(c) The fitting out works

65. There is some force in the Claimant's assertion that the nature of the fitting out works were equivocal and could have been as consistent with private use as with commercial use. However, even if that proposition was accepted, it does not detract from the other evidence upon which the Judge was entitled to rely to sustain his conclusion.

(d) Other evidence in the trial bundle

66. The Claimant contends that there are two documents in the trial bundle which detract from the Judge's conclusion on this topic and which he appears to have not taken into account. The first is the proposal for insurance completed by the Claimant in which he filled the box adjacent to private use of the vessel with the word "yes" and left the box next to commercial use of the vessel vacant. However, at its highest, this document is only consistent with the Judge's conclusion that the Claimant deliberately misrepresented the intended use of the vessel to the Defendant.

67. The second document relied upon is the certificate of registration of the vessel which describes it as a "pleasure boat". However, as with other documents in which the same term is used, this is a description of the character of the vessel, rather than of its intended use. Obviously, a pleasure boat can be used for commercial purposes by hiring it out to those who wish to use it for their pleasure.

68. Neither of the documents upon which the Claimant relies detract in any way from the Judge's conclusion.

(e) The new evidence

69. The Claimant accepts that the reception of new evidence on appeal is subject to his satisfaction of the conditions enunciated in *Ladd v Marshall*[20] which requires him to establish that:

(a) The evidence could not have been obtained without reasonable diligence for use at the trial;

(b) The evidence would probably have an important influence on the result of the case, though it need not be decisive; and

(c) The evidence must be apparently credible, although not necessarily incontrovertible.

70. The new evidence upon which the Claimant wishes to rely is identified in a witness statement served with the Claimant's skeleton argument. That witness statement contains further evidence from the Claimant as to his intentions with respect to the use of the vessel. Clearly, evidence of that kind cannot be received on appeal. The Claimant gave evidence at the trial and an appeal does not provide the opportunity for him to qualify or improve upon that evidence - or indeed, as in this case, to completely contradict the evidence which he gave at trial.

71. The Claimant's witness statement exhibits three documents which it is contended satisfy the requirements in *Ladd*.

72. The first is a document apparently issued on behalf of the Ras Al Khaimah Fisherman's Association dated 21 October 2025. It is significant that this document post dates the judgment by some months. The document takes the form of a certificate in which it is asserted that the "Daraz", which is registered with the Association is the property of the Claimant. No reference is made to the fact that the vessel has been lying on the seabed for more than two years.

73. The document asserts:

"The Association confirms that the boat has not been used for any commercial purpose, leasing or any other activity, but has been exclusively designated for the owner's personal and recreation use only.

This certificate has been issued upon the owner's request and the Association bears no liability for its content or any use thereof."

74. The document begs more questions than it answers. Those questions include:

(a) What were the circumstances in which the document was created; and

(b) How would the signatory of the document have any knowledge of the Claimant's intended use of the vessel prior to the date of Casualty, more than two years ago.

75. The concluding paragraph to the effect that the certificate was issued upon the Claimant's request and without any liability for its content or any use thereof deprives the document of any evidentiary value. It follows that none of the criteria in *Ladd* are satisfied:

(a) If the author of the letter is in a position to give any credible evidence (which is extremely doubtful), there is no reason why he couldn't have been called to give evidence at trial;

(b) The evidence would have no impact on the result of the appeal; and

(c) The evidence is apparently incredible on its face.

76. The second document upon which reliance is placed is apparently provided by the UAE Fisherman's Association of Ras Al Khaimah. It is dated 16 September 2025, again after judgment had been entered.

77. It also takes the form of a certificate in which it is certified that:

"The yacht named "Dzar" . is designated for recreational use and is currently stationed in a safe and private berth designated for boats and yachts.

We also so confirm the presence of workers on site as well as operational surveillance cameras in the area.

This certification is issued by the Society regarding the incident that occurred on 26/06/2023 (date of the fire).

This certificate has been issued at the request of the concerned party, without any liability whatsoever on the Society, whether present or future."

78. The difficulties evident on the face of this document are even greater than those evident on the face of the preceding document.

79. First, the certification that the vessel is currently stationed in a safe and private berth is difficult to reconcile with the fact that it has been lying on the seabed for some years.

80. Second, the basis upon which the author could confirm the presence of workers on site on the date of the Casualty in June 2023 is not apparent.

81. Third, it is clear that the document has been issued at the request of the Claimant without any assumption of liability or responsibility on the part of the provider of the document.

82. For all the reasons given in relation to the preceding document, there is no basis upon which this document could be received on appeal or upon which it could have any impact upon the outcome of any appeal. It lacks credibility on its face.

83. The third document upon which reliance is placed is a certificate of inspection undertaken by the Coast Guard in June 2023. Clearly this document was in existence at the time of trial, and no adequate explanation has been provided for the failure to produce it in evidence at the trial.

84. In any event, the evidentiary significance of the document appears to be limited to its description of the vessel as a "pleasure boat". As noted several times already, that description is a description of a class of vessel rather than a statement of the Claimant's intended uses for the vessel. As the Claimant has stated many times that he intended to use the vessel for commercial purposes, the document is entirely incapable of sustaining any conclusion to contrary effect. As the new evidence would not be received by the Court of Appeal, it provides no support for this ground.

Summary - ground 1

85. There is no substance in any of the contentions advanced in support of Ground 1. The evidence entirely justified the Judge's conclusion that the Claimant had consistently stated that it was his intention to use the vessel for commercial purposes. There is no basis upon which an appellate court could conclude that such conclusion was plainly wrong. The ground has no prospect of success.

Effect on other grounds of appeal

86. The Judge found that each breach of warranty which he found to be established had the consequence that the Defendant was not liable under the Policy. It follows that in order to succeed on the appeal, the Claimant must successfully challenge and set aside the findings made by the Trial Judge in respect of each and every breach of warranty. As the Claimant has no prospect of achieving that outcome in respect of the warranty relating to the use of the vessel for private purposes, the appeal has no prospect of success and the merits of the other Grounds of Appeal are, in that sense, irrelevant to the outcome of the Renewed Application.

87. However, for the sake of completeness, each of the other proposed Grounds will be considered, albeit briefly.

Ground 2 - was the Claimant a consumer?

88. Ground 2 challenges the Judge's conclusion that the Claimant was not a consumer for the purposes of the legislation to which he referred. The challenge presumes the success of Ground 1 and addresses the consequences of the conclusion that the Claimant is a consumer.

89. However, as Ground 1 has no prospect of success, the assumption upon which Ground 2 depends falls away, and the ground has no prospect of success.

Grounds 3 and 4

90. Ground 3 are concerned with the condition survey warranty and the private purposes warranty. Ground 4, relating to the private purposes warranty, has already been considered in the context of Ground 1.

91. In relation to Ground 3, as with Ground 2, the argument in support of the ground in the skeleton presupposes the success of Ground 1. As the assumption upon which the ground is based cannot be made good, neither can the ground.

Ground 5 - left unattended warranty

92. Ground 5 relies upon the new evidence to which reference has already been made, notably the certificate dated 16 September 2025 to the effect that there were "workers on site". For the reasons already given, that evidence would not be received on appeal and is inherently incredible. Accordingly, the ground has no prospect of success.

Ground 6 - fire equipment

93. Ground 6 relies upon new evidence in the form of the certificate dated 13 June 2023 which is said to state that the vessel was fitted with "a fire extinguishing system". That is not correct. The certificate simply states that the vessel had a fire extinguisher, consistently with the facts found by the Judge. In any event, there is no basis upon which that document would be received as new evidence on an appeal. This ground entirely lacks substance.

Ground 7 - misrepresentation

94. Ground 7 challenges the Judge's conclusion that the Claimant knowingly misrepresented the use to which he intended to put the vessel to the Defendant, on the basis that the Judge should have found that the Claimant intended to use the vessel for purposes that were wholly or mainly unrelated to his business. As there is no prospect that an appellate court would make a finding to that effect, this ground has no prospect of succes.

Ground 8 - provision of an interpreter.

95. Ground 8 contends that the Judge erred by directing the Claimant to provide a translator (which the Claimant did). It is contended that pursuant to Article 7 of the Courts Law 2025,[21] it was the obligation of the DIFC Courts to provide an interpreter where necessary. It is contended that the Court carried this obligation because of the Claimant's lack of facility in the English language.

96. The manner in which the Claimant gave evidence at trial was described by the Judge in the following terms:

> "He failed to comply with the requirement, despite repeated reminders, to engage a certified translator so as to give evidence to best effect and gave evidence in a mixture of English and Arabic using the services of a friend of his."[22]

97. The Judge was referring to an order made at the Case Management Conference held on 28 February 2025 (before the 2025 Law came into force on 15 March 2025) in which it was directed that:

> "If a witness needs an interpreter at the trial, then the party who submits that witness's statement shall ensure that a suitably qualified interpreter is present at the trial."[23]

98. The Claimant appears to have made some attempt to comply with this direction by bringing to the hearing a person who acted as a translator for him, albeit apparently unqualified.

99. There is a question as to whether Article 7 of the 2025 Law imposes an obligation upon the Court to provide the interpreter, or merely authorizes the Court to allow an interpreter to be used "when necessary". It might be necessary to revert to the Arabic version of the Article to address that question, given the potential ambiguity of the word "assign" in this context.

100. It would be surprising if it was intended, through the use of that word in Article 7, to change the longstanding practice of the Court (in common with other civil courts), to the effect that if an interpreter is required by a party, or a witness called by a party, it is the obligation of the party to provide the interpreter. So, for example, in *Naqid v Najam* [24] the Court observed:

> "A party has no automatic right to an interpreter. However, the Court has discretion to permit a witness to give evidence through an interpreter. The Court will permit a witness to give evidence through an interpreter if it is necessary to ensure a fair hearing."

101. It may well be that Article 7 was intended to do nothing more than replicate that principle. Whatever be the true meaning of Article 7, there are a number of reasons why this ground has no prospect of success.

102. First, the Claimant did not ask the Court to provide an interpreter - he brought someone to Court who acted as an interpreter for him. It was his choice to use a person who was unqualified, when he had been expressly directed to provide a qualified interpreter, and he must take the consequences of that choice.

103. Second, it would be very difficult for an appellate court to ascertain the extent to which the Claimant was disadvantaged, if at all, by his use of the interpreter of his choice, as compared to a qualified interpreter provided by the Court.

104. Third, Article 7 only requires the Court to "assign" an interpreter "when necessary". Given the lack of evidence with respect to the Claimant's capacity in English, and the fact that he brought an interpreter of his choice to the hearing, it could not be said that the provision of an interpreter by the Court was "necessary".

105. Fourth, it seems most unlikely that the provision of a qualified interpreter for the Claimant's use at trial would have made any difference to the outcome. The evidence with respect to his intended use of the vessel was contained in witness statements, pleadings and other documentary evidence which predated the trial. Obviously, the provision of an interpreter at trial would have made no difference to that evidence, which, as noted, was consistent and established the Claimant's true intentions.

106. For these various reasons, Ground 8 has no prospect of success.

Conclusion

107. As none of the proposed Grounds of Appeal has any real prospect of success, and there is no other compelling reason why permission to appeal should be granted, the Renewed Application must be dismissed with costs.