Claim No: CFI 013/2019

IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE?COURTS

In the name of His Highness Sheikh Mohammed Bin Rashid Al Maktoum, Ruler of Dubai

IN THE COURT OF FIRST INSTANCE
BEFORE H.E JUSTICE ALI AL MADHANI

BETWEEN

HEXAGON HOLDINGS (CAYMAN) LIMITED

Claimant/Respondent

and

(1) DUBAI INTERNATIONAL FINANCIAL CENTRE AUTHORITY

(2) DUBAI INTERNATIONAL FINANCIAL CENTRE INVESTMENTS LLC

Defendants/Applicants

Hearing

: 17 June 2019

Hearing

: Mr Thomas Sprange QC assisted by Jawad Ali instructed by King & Spalding LLP for the Claimant
Mr Graham Lovett assisted by Shane Jury instructed by Gibson, Dunn & Crutcher LLP for the Defendants

Judgment

: 25 March 2020

JUDGMENT

UPON reviewing the Claimant's claim form and Particulars of Claim dated 6 March 2019 (CFI-013-2019)

AND UPON reviewing the Defendants' application dated 10 April 2019 for the Claimant's claim (the "**Claim**") and Particulars of Claim to be struck out and/or for immediate judgment in their favour (CFI-013-2019/1) (the "**Application**")

AND UPON hearing counsel for the Claimant and counsel for the Defendants at the hearing of the Defendants' application dated 10 April 2019 on 17 June 2019

AND UPON reviewing all the relevant documents on the Court's file

IT IS HEREBY ORDERED THAT:

1. The Defendants' Application is granted and the Claimant's Claim and Particulars of Claim dated 6 March 2019 are struck out and immediate judgment is granted in the Defendants' favour.

2. The Claimant is to bear the Defendants' costs of these proceedings.

Issued by:

Nour Hineidi

Deputy Registrar

Date of Issue: 25 March 2020

At: 10am

JUDGMENT

Introduction

1. There is before the Court in the matter of Hexagon Holdings (Cayman) Limited v Dubai International Financial Centre Authority and Dubai International Financial Centre Investments LLC (CFI-013-2019) an application by the Defendants for the Claimant's Claim and Particulars of Claim to be struck out on the basis that, they submit, neither discloses reasonable grounds for bringing the claim (the "**Strike-Out Application**") or, in the alternative, for immediate judgment in their favour on the basis that, they contend, the Claim has no real prospect of success and there is no other compelling reason why it should be disposed of at trial (the "**Immediate Judgment Application**" and together with the Strike-Out Application the "**Applications**").

2. The Claimant, Hexagon Holdings (Cayman) Limited (the "**Claimant**" or "**Hexagon**"), is a company incorporated in the Cayman Islands solely for the purpose of facilitating investment into a project which is the subject matter of this dispute (the "**Project**"). The shareholders of Hexagon are Ruby Limited as to 75% and the Gate Limited as to 25%.

3. The First Defendant, the Dubai International Financial Centre Authority ("**DIFCA**"), is the corporate body established by the Government of Dubai to oversee the strategic development, operational management and administration of the Dubai International Financial Centre (the "**DIFC**").

4. The Second Defendant, Dubai International Financial Centre Investments LLC ("**DIFCI**" and together with DIFCA the "**Defendants**"), is a subsidiary of DIFCA established on 27 November 2005 which owns the real estate assets formerly overseen and managed by DIFCA, including the property at the heart of this dispute (the "**Property**").

5. The value of the Claim is extremely large: the Claimant seeks AED 1,749,808,843.52 in damages in respect of alleged loss and damage which it alleges it suffered because of the Defendants. The relationship out of which the dispute has arisen is rather old: it dates back to the execution of an agreement on 5 May 2004 (the "**Amended Agreement**"). The Amended Agreement provided for an extremely important development: hundreds of millions of dollars of investment would see to the commercial development of a highly valuable piece of land within the DIFC. But despite all this, determination of the dispute will come down to a single, but no less important, question: did Hexagon, on 19 November 2018, validly terminate the Amended Agreement (the "**Purported Termination**")?

If the answer to this question is yes, then Hexagon may be successful, wholly or partly, in its Claim against the Defendants. Hexagon says the Purported Termination was indeed valid, and on two separate grounds. These two grounds, to be discussed below, form the bases of Hexagon's DIFC Courts Claim.

If the answer to this question is no, then Hexagon's Claim is doomed. The Defendants say the Purported Termination was invalid, and on eight separate grounds. These eight grounds, to be discussed below, form the bases of the Defendants' Strike-Out and Immediate Judgement Applications.

The Defendants' Applications were argued before me at a hearing on 17 June 2019 and this is my reasoned decision.

Background

9. The Defendants have not yet pleaded a defence to the Claim. They submit that the grounds for the Court striking out the Claim and the Particulars of Claim or for granting immediate judgment are established in the Claimant's own pleaded case; for the purpose of the Applications, the Defendants proceed on the basis that, firstly, they were in breach of the obligations in the Amended Agreement (the "**Clause 3 Obligations**") which are the subject of the Claim (the "**Clause 3 Breaches**") and that, secondly, they had renounced the Amended Agreement on 12 June 2012 (the "**Renunciation**"). Crucially, both the Clause 3 Breaches and the Renunciation - each being a ground upon which Hexagon purportedly terminated the Amended Agreement and upon which it now relies in these proceedings - occurred before the Purported Termination. It is necessary now, then, to turn to the Claimant's case and the background of the dispute as it has outlined them.

10. On 14 December 2003, Nexus Capital SA ("**Nexus**"), a stock corporation company headquartered in Switzerland, entered into a joint venture agreement (the "**Joint Venture Agreement**") with DIFCA in respect of a plan to develop the aforementioned Property into mixed-use real estate, with this plan being the Project.

11. The Joint Venture Agreement set out the way in which the parties would pursue the Project through a joint venture company (the "**Joint Venture Company**") and provided, amongst other things, the following. Firstly, and pursuant to clause 2.1, the Joint Venture Agreement provided for certain operative provisions in the agreement to be triggered upon Nexus identifying and DIFCA approving an investor willing and able to invest the Total Project Capital (the "**Investor**"), as defined in the Joint Venture Agreement, by way of liquid finance into the Joint Venture Company (the "**Condition Precedent**"). In return for providing the Total Project Capital, the Investor was to receive paid up shares in the Joint Venture Company.

12. Secondly, and pursuant to clause 3.1, as soon as reasonably practicable after the satisfaction of the Condition Precedent (the "**Effective Date**"), the following steps were supposed to be actioned. Firstly, DIFCA and Nexus were to execute, and Nexus to procure, that the Investor executes a Deed of Adherence pursuant to which the Investor was to, amongst other things, agree to be bound by the Joint Venture Agreement. Secondly, DIFCA and Nexus were required to take all steps and sign all documents, and Nexus was required to procure, that the Investor signs all documents required on its part, as necessary to incorporate the Joint Venture Company. Thirdly, DIFCA, Nexus and the Investor were required to execute a shareholders' agreement (the "**Shareholders' Agreement**") pursuant to which, amongst other things, the Investor and Nexus were to receive 85% and DIFCA 15% of the shares in the Joint Venture Company. Fourthly, DIFCA was required to execute, and DIFCA, Nexus and the Investor procure, that the Joint Venture Company execute a Sale and Purchase Agreement prepared by DIFCA in accordance with certain provisions of a schedule to the Joint Venture Agreement, and pursuant to which DIFCA would sell the Property to the Joint Venture Company. The purchase price of the Project Land was determined to be a minimum of AED 105,113,025 based upon a minimum total built up area of 1,051,130 square feet and was payable by the Joint Venture Company to DIFCA in the form of shares in the Joint Venture Company. Finally, and pursuant to clause 3.1.5 of the Joint Venture Agreement, DIFCA, Nexus and the Investor were to procure that as soon as possible after its incorporation, the Joint Venture Company would resolve to adopt the provisions of the Shareholders' Agreement and the plans, proposals and computations attached as certain schedules to the Joint Venture Agreement, as may have been appropriately amended prior to such adoption.

13. On 5 May 2004, after Hexagon was identified and approved as the Investor, DIFCA, Nexus and Hexagon entered into an amendment of the Joint Venture Agreement, being the Amended Agreement. In summary, the Amended Agreement provided, amongst other things, that, pursuant to clause 2.3, the parties agreed that the Condition Precedent at clause 2 of the Joint Venture Agreement had been satisfied, with the Effective Date therefore being 5 May 2004. Pursuant to clause 2.4, the obligation in clause 3.1.2 of the Joint Venture Agreement was to be amended so that, amongst other things, the parties would be required to proceed immediately to incorporate a limited liability company in either Dubai Internet City or the DIFC to serve as the Joint Venture Company. Pursuant to clause 2.5.1, clause 3.2 of the Joint Venture Agreement, which included its termination provision, was to be replaced with an obligation upon the parties to use "their best endeavours in good faith" to complete the steps and procedures set out in clause 3.1 of the Joint Venture Agreement as soon as "reasonably practicable." Pursuant to clause 2.5.2, paragraph 4 of Schedule C to the Joint Venture Agreement was replaced with an obligation on the Joint Venture Company to complete the Project within 4 years and 6 months following the execution of the Sale and Purchase Agreement.

14. Clause 3.1.3 of the Amended Agreement provided for the Shareholders' Agreement to be executed between Nexus, Hexagon and the Defendants in a form prepared by Nexus and approved by Hexagon and the Defendants. During 2008, the parties sought to negotiate a draft of the Shareholders' Agreement. However, at no time was the Shareholders' Agreement executed.

15. Hexagon submits to this Court that it spent substantial time, effort and money in progressing the joint venture, including undertaking market and feasibility studies, developing a design concept and appointing designers, project managers and construction consultants. The Claimant says, furthermore, that it had engaged extensively with the Defendants with respect to the Project, including with respect to the preparation of the Shareholders' Agreement, making presentations about the Project and pressing for the Project to progress.

16. Hexagon submits that over time the Defendants failed to comply with their obligations under the Joint Venture Agreement and the Amended Agreement, both of which required steps to be taken as soon as "reasonably practicable" and imposed a time limit on completion of the Project. In the circumstances, on 2 May 2012, the then project manager acting on behalf of Hexagon, Mr. Abdul Samie, requested on Hexagon's behalf a status update of the Project and required further steps to be taken to progress the Project. But in its response dated 12 June 2012, DIFCl, on behalf of DIFCA, asserted as follows:

We have studied the contents of your letter and its attachments. It is clear from the documents provided that we are under no obligation to continue any negotiation with you (or any other party) of any Shareholders' Agreement for the development of the Plot. Certainly the Joint Venture Agreement (and its amendment) which DIFCA signed with various parties on 14 December 2003 (and 5 May 2004) no longer binds us in this regard. Accordingly, we do not currently intend to progress any further negotiations with you for the sale and development of the Plot.

lf and when we decide to release the Plot to market for sale and development, we will, at the appropriate time, consider inviting you to tender for the purchase and development of the Plot along with other interested parties.