IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURT

IN THE COURT OF FIRST INSTANCE

BETWEEN

NALANI

Claimant

and

NETTY

Defendant

ORDER WITH REASONS OF H.E. JUSTICE SHAMLAN AL SAWALEHI

UPON the Claimant's Arbitration Claim dated 19 December 2024 (the "Arbitration Claim") for an order recognising and enforcing the partial award 20 September 2023 (the "Partial Award") issued by a tribunal (the "Tribunal") in an arbitration under the 2020 LCIA Rules

AND UPON the Recognition and Enforcement Award for the Partial Award by H.E. Justice Shamlan Al Sawalehi dated 24 December 2024 (the "Enforcement Order")

AND UPON the Defendant's Application No. ARB-027-2025/1 dated 29 January 2025 pursuant to Rule 23.77 of the Rules of the DIFC Courts (the "Application") (the "RDC")

AND UPON reviewing the material filed in support of the Arbitration Claim

IT IS HEREBY ORDERED THAT:

1. The Application is rejected.

2. Costs shall be awarded to the Claimant, to be assessed on a summary basis.

3. The Claimant shall submit its statement of costs within three days of issue of this Order.

Issued by:
Delvin Sumo
Assistant Registrar
Date of issue: 26 February 2025
At: 9am

SCHEDULE OF REASONS

1. This Application No. ARB-027-2024/1 dated 29 January 2025 is brought by the Defendant to seek an order from the Court for the following directions (the "Application"):

a) The statutory timeline for the Defendant to file an application to set aside the Enforcement Order under Rule 43.70 of the Rules of the DIFC Courts ("RDC") shall be suspended pending the determination of the Defendant's application challenging the jurisdiction of the Court and seeking to strike out the Claim pursuant to RDC 4.2(6) and (14) (the "Jurisdictional Challenge & Strike Out Application").

b) In the alternative, the statutory timeline for the Defendant to file the Set Aside Application shall be extended to 6 February 2025, aligning with the deadline for filing the Jurisdictional Challenge & Strike Out Application, in terms of RDC 4.2 (1) read with Article 20 (2) of the Court Law.

2. The Defendant intends to challenge the DIFC Courts jurisdiction over the Claim pursuant to RDC 12.4 and to strike out the Claim under RDC 4.16 (the "Intended Application"). Pending the result of the Intended Application, the Defendant seeks that the Court apply a stay of all proceedings in the Claim, including the Defendant's right to apply to set aside the Enforcement Order under RDC 43.70, as the Claimant's Enforcement Order attempts to enforce a peremptory order by an arbitral tribunal under the illusion of an arbitral award, invoking RDC 43.61 to 43.75. However, the Defendant submits that these provisions cannot apply when the underlying decision being enforced is not an arbitral award.

3. The Defendant also submits that it need not apply for a Set Aside order against the Enforcement Order until the determination of the Intended Application because:

a) If the Intended Application is successful, the Set Aside Application is unnecessary.

b) If the Intended Application is unsuccessful, the Defendant's Acknowledgement of Service dated 23 January 2025 contesting the Jurisdiction ceases to have effect, and any further acknowledgement of service filed accepts the Court's jurisdiction, though the Defendant wishes to reserve its right to file the Set Aside Application under RDC 43.70.

4. Further, the Defendant submits that this request is in line with the overriding objective and the Court's case management powers under RDC 4.2(6) and (14).

5. In the alternative, the Defendant seeks an extension of the statutory timeline for the Set Aside Application to 6 February 2024 (of which has passed by the date of issue of this Order, and has subsequently been filed ahead of permission), so that the timeline aligns with the Intended Application under RDC 4.2(1) and Article 20(2) of the Court Law. The extension is sought on the following grounds:

a) Additional time is necessary to properly prepare the Defendant's case as the legal representation had only been instructed on the day this application was filed.

b) Timeline alignment will not cause prejudice to the Claimant, but the converse will be procedurally unnecessary and inefficient in the Defendant's case.

c) While the DIFC Courts may have jurisdiction over an arbitration claim pertaining to interim measures under RDC 43.48 to 43.50, Article 24 of the Arbitration Law cannot be invoked since the underlying arbitration is not seated in the DIFC. In any event, the Claimant has not invoked these provisions. Should the Claimant have invoked this provision, in terms of RDC 43.31, the Defendant would be entitled to file and serve his written evidence within 21 days after the date by which it was required to acknowledge service.

d) The Court should not refuse reasonable extensions of time that do not disrupt proceedings, and a refusal to extend time would in practice mean the end of the claim is a factor to be weighed in the balance.

e) The Claimant has not filed the Certificate of Service of the Claim Form pursuant to RDC 43.12 and there is no evidence before the Court as to the date when the Acknowledgement of Service and application under RDC 43.70 is due. In any event, the Court may extend or shorten the time for compliance with any Rule even if an application for extension is made after the time for compliance has expired.

6. Finally, the Defendant submits that the procedure for applications under RDC 23.77 ought to apply as the directions sought as for the efficient management of the proceedings.

7. By way of witness statement of Rita Catherine Jaballah, the Claimant rejects the Application largely on the basis that it lacks credibility and seeks a retrospective order.

8. The Enforcement Order was deemed served on the Defendant on 9 January 2025, from which the Defendant had 14 days to make a set aside application. The Defendant failed to do so. This current Application seeks a retrospective extension of time for possible future applications. The Claimant's position is that this Application should not be granted for the following reasons:

a) The retrospective extensions are not supported by credible evidence, a formal witness statement or draft order;

b) The only route available to contest the DIFC Court's jurisdiction and make a strike out application under the RDC was to do so within 14 days of the Enforcement Order being served, which it failed to do;

c) No explanation is given as to why it failed to meet the deadline;

d) No explanation is given as to why it did not instruct lawyers within a timely manner;

e) The instruction of lawyers on the date of the deadline displays a casual disregard for the Court's authority and procedures, which is not a valid reason to grant an extension;

f) The letter form was inappropriate as evidenced by the Registry's direction that the Defendant file a formal Part 23 Application Notice;

g) The grounds submitted to allege substantive grounds for possible applications are without merit, not least because the Partial Award is an arbitral award; and

h) The Court's policy to recognise and enforce arbitral awards, and so any attempts to resist this must be made strictly in line with the RDC; failure should therefore be met with rejection.

9. On 4 February 2025, the Defendant filed a response to the Claimant's witness statement with another witness statement by Natasha Kavalakkat, rejecting the Claimant's evidence in answer to the Application.

10. The rejection is on the following basis:

a) The Claimant's witness statement is unsealed without explanation.

b) The witness statement is not substantiated.

c) The allegation that the Part 23 application is late is misleading, as it was filed a day after the Registry's direction.

d) The allegation that the Defendant failed to make a set aside application by 23 January 2025 detracts from the purpose of this application and the Defendant's primary position of amending the timeline.

e) The allegation that the request is for a retrospective extension of time not supported by credible evidence or a formal witness statement is incorrect, as any extension of time is only sought in the alternative of the stay. In any case, the alternative relief sought does not cause the Claimant to suffer any prejudice.

f) The draft order for the Application was filed with the Registry; there is no obligation to serve this on the Claimant.

g) The "open route" submitted by the Claimant is manifestly incorrect; Articles 42 and 43 of the DIFC Arbitration Law permit recourse against an order purporting to recognise and enforce an arbitral award.

h) It is not unusual for time to be taken to instruct legal representatives, and the Defendant should not be punished for doing so.

i) The letter format of the Application was deemed appropriate, and when directed to make a Part 23 Application Notice it was done so.

j) The Defendant opposes to engage in discussion regarding the merit of the Intended Application but insists that the Court does not need to be aware of whether the document sought to be enforced is an arbitral award or not but nonetheless is not an arbitral award. The Partial Award does not grant the peremptory order or the anti-suit injunction but only set out the reasons for granting the peremptory order. The term "comply" in the Enforcement Order is the Claimant seeking to enforce the peremptory order; the interim measures were issued through directions and converted into a peremptory order pursuant to Article 25.1(iii) of the LCIA Rules 2024 and Section 41(5) of the Arbitration Act 1996.

k) The Defendant has a genuine jurisdictional challenge and is not merely attempting to frustrate enforcement.

l) Finally, the Claimant should not be awarded costs (summarily assessed at AED 30,000) as the Claimant failed to provide any costs breakdown, and the amount is excessive and disproportionate for a short witness statement.

11. On review, I concur with the Claimant. The Defendant has failed to pinpoint any compelling reason to accept the stay application, nor has it proven that retrospective extensions of time in the alternative are applicable or appropriate on the circumstances.

12. The Defendant had ample opportunity to instruct legal representation and considering that the Letter Application (although in the incorrect format) was filed the same day as instruction it stands to reasonably suggest that the fast turnover of work could have occurred before the 29 January 2025 deadline.

13. The Defendant lists multiple rules and statute to support its Application, without expanding further on how those rules actually apply. Merely stating so does not construct a compelling Application for an extension of time to for an application that could have been submitted within the allocated timeframe had the Defendant acted swiftly. The rules are clear, and I have not been provided any reason as to why the Court ought to use its case management powers to accommodate an alternative deadline, irrespective of whether there is prejudice to the Claimant in these circumstances.

14. I am not satisfied that the Defendant has met the relevant thresholds set out in the Rules.

15. On the matter of costs, costs shall be awarded to the benefit of the Claimant and shall be summarily assessed. Within 3 working days of the issue of this Order, the Claimant shall submit it statement of costs for the Application.