IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF APPEAL

BEFORE H.E. CHIEF JUSTICE WAYNE MARTIN, H.E. JUSTICE ROBERT FRENCH, AND H.E. JUSTICE SIR PETER GROSS

BETWEEN

(1) ORAN (2) OAKEN

Defendants/Appellants

and

OVED

Claimant/Respondent

REASONS FOR THE ORDER OF THE COURT OF APPEAL DATED 20 OCTOBER 2025

SCHEDULE OF REASONS

Summary

1. The Appellants, the Estate of the Late Mr Oran and Mr Oaken (the "Appellants") appeal from a decision of the Judge at First Instance (the "Judge") made on 6 February 2025, for reasons published on 19 February 2025, extending the operation of an anti-suit injunction ("ASI") which had been granted after an ex parte hearing on 20 January 2025 on the application of the Claimant, Oved ("Oved") and from the decision of the Judge made on 23 June 2025 dismissing the Appellants' application for a declaration that the Court lacked jurisdiction.

2. At the conclusion of the hearing of the appeals on 16 October 2025 the Court made orders allowing both appeals, discharging the ASI and upholding the Appellants' objection to jurisdiction for reasons to be published in due course. The reasons for those orders follow.

The substantive dispute

3. No substantive findings of fact have been made in the course of these proceedings, and none of the issues in the appeals turn upon any contested issues of fact. It follows that the purpose of the following short description of the substantive dispute between the parties is not to identify any findings of fact which are material to the issues in these appeals, but rather to set the factual context for the procedural issues which lie at the heart of the appeals.

4. Oved is a company which was incorporated in the UK on 1 November 2022 with no known assets in Dubai or the DIFC. The evidence suggests that Oved has limited assets in the UK. It seems that Oved engages in the provision of emergency air ambulance services.

5. The late Mr Oran instructed Mr Oaken who was a pilot, to engage air ambulance services to transport Mr Oran's wife from Switzerland, where she was receiving chemotherapy treatment, to South Korea. Mr Oaken engaged Oved to provide such services as agent for the late Mr Oran and substantial fees were paid to Oved. The Appellants claim that those fees must be refunded, and that claim is the underlying dispute between the parties.

6. The contract between Oved and the Appellants does not specify the governing law. It is said to contain a dispute resolution clause which provides that if a dispute between the parties is not resolved by agreement:

> "Either Party may by written notice to the other require that the dispute be referred to arbitration under the DIFC London Court of International Arbitration (DIFC-LCIA) Rules, which Rules are deemed to be incorporated by reference into this clause. .. The seat, or legal place, of arbitration shall be Dubai, United Arab Emirates. All proceedings in any such arbitration shall be conducted in English."

7. The agreement was entered into after Dubai Decree No. 34 of 2021 ("Decree 34") effectively abolished the DIFC-LCIA as an arbitral institution. The proper construction and effect of the dispute resolution clause, having regard to the terms of Decree 34 and the question of who should determine that issue are contentious issues in the various proceedings which have been instituted and to which reference will be made.[1]

The procedural history

8. The Appellants commenced proceedings against Oved in the English High Court on 18 January 2024. On 6 February 2024 Oved filed an Acknowledgement of Service in those proceedings and indicated that it intended to dispute the jurisdiction of the English High Court. On 20 February 2024 Oved applied for an order staying the proceedings in favour of arbitration pursuant to s 9 of the Arbitration Act 1996 (UK) (the "s.9 Application"). The Court indicated that the s.9 Application would be listed for hearing between March and June 2024, and unavailable dates were provided to the Court.

9. However, before the s.9 Application was listed, on 18 April 2024 Mr Oran passed away. The English proceedings stalled and on 14 May 2024 the English Court made an order by consent vacating the s.9 Application, to be relisted on application by any party.

10. In November 2024, having received confirmed instructions from the Estate of the Late Mr Oran, the Appellants resumed the prosecution of the English proceedings.

11. On 13 December 2024, without warning, Oved filed a Request for Arbitration in the Dubai International Arbitration Centre ("DIAC") seeking a declaration to the effect that there was a binding arbitration agreement between the Appellants and Oved. No other relief was sought.

12. The Appellants were first notified of the request for arbitration on 24 December 2024, by DIAC. DIAC asserted that there was no prima facie basis for a claim against the late Mr Oran and gave Mr Oaken until 24 January 2025 within which to file an Answer to the Request.

13. On 15 January 2025 the Appellants applied in the English court for an injunction restraining Oved from prosecuting the arbitration proceedings. The hearing of the Application for the Anti-Arbitration Injunction ("AAI") was listed for 21 January 2025.

14. The day before that hearing was to occur, Oved commenced proceedings in this Court seeking an anti-suit injunction ("ASI") restraining the Appellants from prosecuting the English proceedings and applied for an interim injunction to that effect without notice to the Appellants.

15. After hearing the Application, the Judge granted an interim injunction until further order or the return date, restraining the Appellants from prosecuting their Application for the AAI.

16. The proceedings and interim injunction were served on the Appellants who, on 4 February 2025, applied to discharge the interim injunction. That Application was heard on the return date of 6 February 2025.

17. After hearing argument the Judge dismissed the Application to discharge the interim injunction and ordered the continuation of the injunction which he had granted on 20 January 2025, for reasons to be published in due course.

18. The Judge's reasons were published on 19 February 2025. Passages in those reasons raised a doubt as to the ambit of the order which had been made, and in particular, whether the order restrained the Appellants from merely prosecuting their Application for an AAI, or whether it restrained the Appellants from prosecuting the English proceedings in any form or manner. Following the exchange of correspondence between the parties and the Registry on that topic, the Judge instructed the Court Registry to advise that Oved's view of the ambit of the Court order was correct, Oved having asserted that the order restrained the prosecution of the English proceedings in any form or manner. As a consequence of that correspondence, the s.9 Application, which was to be heard in a matter of days, was adjourned and the English proceedings were stayed until further order.

19. In the meantime, on 19 February 2025 the Appellants applied for a declaration that this Court has no jurisdiction to entertain the claim.

20. On 12 March 2025 the Appellants gave notice of appeal from the order of the Judge continuing the ASI. On 20 March 2025, the Appellants applied for orders staying the proceedings until their appeal had been determined.

21. The Judge dealt with the Appellants' Applications for:

(a) Permission to appeal;

(b) A stay of proceedings pending appeal; and

(c) A declaration that the Court lacked jurisdiction,

on the papers and on 23 June 2025 published reasons for dismissing all Applications.[2]

22. On 1 July 2025 the Appellants made a Renewed Application for Permission to Appeal from the grant of the ASI which was granted on 30 July 2025.

23. On 12 August 2025 the Appellants applied for an extension of time within which to appeal and for permission to appeal from the decision dismissing their application for a declaration that the Court lacked jurisdiction. Those Applications were granted on 10 September 2025. The grounds of appeal from the Judge's decision to dismiss the Appellants' objection to jurisdiction are identical, in substance, to some of the grounds of appeal from the Judge's decision to continue the ASI. It is therefore unnecessary to give separate consideration to the appeal from the Judge's order dismissing the Appellants' challenge to jurisdiction.

The Judge's orders and reasons

24. Oved applied for orders restraining the Appellants from taking any step to "initiate, prosecute, continue or take any steps in proceedings before any court or tribunal in the United Kingdom or any other jurisdiction, except before an arbitral tribunal duly constituted under the arbitration clause .".

25. However, after hearing argument at the ex parte hearing on 20 January 2025, the Judge granted an injunction restraining the Appellants from taking any step to "initiate, prosecute, continue or take any steps in proceeding with the Anti Arbitration Injunction Application except before the arbitral tribunal duly constituted in the Arbitration".

26. Following the *inter partes* hearing on 6 February 2025 the Judge made orders dismissing the Appellants' Application to Discharge the Injunction earlier granted, and continued the operation of the injunction previously granted - that is, in the terms in which the order was made on 25 January 2025.

27. There is a dispute between the parties as to the extent to which the Appellants were on notice that Oved was pressing for a broad ASI in the terms sought in the original Application at the hearing on 6 February 2025 which it is unnecessary to resolve.

28. On 19 February 2025 the Judge published reasons for the orders which he had made on 6 February 2025.

29. In those reasons the Judge recorded that after the issue of the ASI on 20 January 2025, on 23 January 2025 the English Court issued an order expediting the hearing of the s.9 Application and listing it for hearing on 26 and 27 February 2025.

30. The Judge further noted that on 3 February 2025 Mr Oaken filed his Answer to the request for arbitration filed by Oved with DIAC on 13 December 2024.

31. Almost all of the Judge's reasons are concerned with summarizing the competing contentions of the parties. The Judge's reasons for his conclusions are confined to seven paragraphs at the end of his reasons.

32. On the subject of jurisdiction, the Judge observed:

> "83. I accept that the source of this Court's supportive jurisdiction to grant the ASI stems from Article 32 of the Court Law, as this is a general interim relief not necessarily restricted to arbitration cases, and it follows the precedent set by the Court of Appeal. I also accept that there has been a good amount of contextual evidence shown to skew the favour of the DIFC being the seat of the arbitration, but not satisfied enough that the high probability threshold has been met. Further investigation will be needed, but nonetheless the Article 32 jurisdiction is an independent power irrespective of the seat, and I am sufficiently convinced that these are exceptional circumstances to exercise this power. This stems from the fact that the seat has not yet been established, nor has either court (the DIFC or the English High Court) determined the seat, but granting the ASI protects the contractual obligations of the parties."[3]

33. On the subject of whether there was a valid arbitration agreement, the Judge held:

> "84. I am also satisfied that a valid arbitration agreement exists between the parties. DIAC accepted jurisdiction on a prima-facie basis and registered the arbitration initiated by the Claimant, and so I see no reason why the DIFC Court would act contrary to this decision; nonetheless, the move from DIFC-LCIA to DIAC would not render DIFC-LCIA agreement invalid, but merely linguistically outdated. I am not entirely convinced by the grammatical interpretation of Article 6 of Decree 34, given that the article is a direct translation of the Arabic draft and so the intricate grammatical rules of English literature may not always apply as per the intention of the translation, but this has not affected my decision on the matter. Following from this, I accept that Mr Oran is equally bound by the Arbitration Agreement as a principal pursuant to Articles 130 and 131 of the DIFC Contract Law."[4]

34. On the question of whether the arbitration agreement formed part of a consumer contract, the Judge held:

> "85. I am not satisfied that it is a consumer contract. The Defendants have done little other than insist that it is the reasonable course of understanding that the Defendants are consumers. The DIFC Arbitration Law is clear on who amounts to a consumer, and as Mr Oran is a pilot who entered into the Repatriation Agreement within the course of his trade, he cannot be regarded as a consumer irrespective of whether it is reasonable to assume that he has hired other planes previously. This matter does not invalidate the enforcement of the Arbitration Agreement."[5]

35. In response to the Appellants' submission that considerations of comity precluded the issue of the ASI the Judge held:

> "86. On the comity principle, in my view this is insufficient to justify or assume the English High Court's unwavering jurisdiction to determine the Section 9 Application particularly since the Section 9 Application hearing has not happened yet, nor does comity apply where the intention of granting an anti-suit injunction is to hold parties to their contractual obligations. Given that, in my view, this Court has jurisdiction to issue the ASI, I see no reasonable reason not to grant it since the ASI offers similar protection akin to a stay as sought by the Defendant."[6]

36. In response to the Appellants' submission that Oved should lodge security to support its undertaking as to damages, the Judge ruled:

> "87. On the matter of the cross undertaking of damages, given that this order favours the Claimant, this is a non-issue for the application."[7]

37. The Judge's reasons concluded with the following paragraph:

> "88. On 20 January 2025, I was satisfied that the conditions to grant an interim injunction were met; I am satisfied here again for the anti-suit injunction to be granted, restraining the Defendants from initiating or continuing proceedings before any court or tribunal in the United Kingdom, or any other alternative jurisdiction outside the DIFC."[8]

38. The last paragraph of the Judge's reasons was consistent with the terms of the original Application made by Oved, but inconsistent with the order made on 20 January 2025 and which was continued by the Orders issued on 6 February 2025. That obvious inconsistency attracted the attention of the lawyers for the parties who corresponded with the Judge through the Court. Predictably enough, Oved contended that the order should be construed in accordance with the last paragraph of the Judge's reasons, whereas the Appellants contended that the order should be construed in accordance with its terms. The Judge directed the Court to inform the parties that the position of Oved was to be preferred. However, no amendment was made to the order which remained an order limited to constraining the Appellants' Application for the AAI.

39. The difference between the reasons given by the Judge on the one hand, and the terms of his orders on the other, had a profound effect upon the English proceedings. The Judge's reasons, if given effect, restrained the Appellants from prosecuting the English proceedings in any way, whereas the orders made by the Judge merely restrained the Appellants from prosecuting their Application for an AAI.

40. When the Judge's views as to the proper construction to be given to his orders was communicated to the English Court, the hearing of the s.9 Application, which was to take place within a matter of days, was vacated.

41. The English proceedings were stayed at least until the appeals were allowed by this Court on 16 October 2025. The Court has no knowledge

of what has transpired in those proceedings since then.

Grounds of appeal

42. For reasons which will appear, it is unnecessary to determine all grounds of appeal. It is also more appropriate to consider the grounds in a logical rather than a numerical order.

Ground 7 - jurisdiction

43. Ground 7 contends that the Court erred in granting the ASI when the arbitration agreement and the underlying dispute had no connection with the DIFC.

44. On the subject of jurisdiction the first question which the Judge was required to address was whether the arbitration was seated in the DIFC. It was and remains common ground that if the answer to that question was in the affirmative, the DIFC Arbitration Law (2008) conferred jurisdiction upon the Court to issue the ASI.

45. In approaching that question the Judge directed himself that he needed to be satisfied to a high degree of probability that the arbitration was seated in the DIFC before he could grant an ASI, relying upon previous authority in this and other courts.

46. In *Ledger v Leeor*[9] H.E. Justice Michael Black considered an ex parte application for an ASI based on an arbitration agreement. There was a dispute between the parties as to whether the arbitration agreement provided for the arbitration to be seated in the DIFC or in onshore Dubai. Justice Black followed the decision of H.E. Justice Sir Jeremy Cooke in *Hayri International LLC v Hazim Telecom Private Ltd*[10] which in turn relied upon the English decision in *Transfield Shipping Inc v Chiping Ping Xinfa Huayu Alumina Co Ltd*[11] for the proposition that the Court had to be satisfied to a high degree of probability that the arbitration was seated within the jurisdiction of the Court before issuing an ASI. As Justice Black was not satisfied to the requisite degree of probability, the ASI Application was dismissed.

47. Although there was an appeal from that decision, because the appeal was also heard ex parte, the Court of Appeal declined to make any substantive rulings in the absence of contested argument, although it did observe that Justice Black had "applied the correct test to the grant of interim interlocutory relief".[12]

48. As neither party contends that the judge was wrong to follow this line of authority, this is not the occasion upon which to consider its correctness.

49. There have been many cases in this Court involving the proper construction of arbitration agreements or jurisdiction clauses which refer to "Dubai" dealing with the question of whether, on the proper construction of the particular clause, "Dubai" should be construed as "DIFC". It is unnecessary to consider those cases, or the argument based upon the terms of Decree 34 with respect to the meaning to be given to the word "Dubai" in an arbitration agreement. Those cases refer to various indicia which can be taken into account, including the language of the agreement, the governing law of the agreement, the language customarily used by the parties and so on. The Court has no doubt that the Judge was very alive to these cases and the principles which emerge from them, as he has been involved in a number of them. For present purposes it is sufficient to observe that after taking these considerations into account, the Judge concluded that he was not satisfied to the requisite degree of probability that the arbitration agreement required the arbitration to be seated in the DIFC. The Notice of Contention from Oved challenging that conclusion will be considered in due course.

50. However, having concluded that the arbitration was not seated in the DIFC, it followed that the DIFC Arbitration Law was not a source of jurisdiction. The question which the Judge then had to address was whether there was any other available source of jurisdiction.

51. The Judge answered that question in the affirmative, relying upon Article 32 of the DIFC Court Law 2004.[13] It is to be noted that the DIFC Court Law 2025 had not come into effect at the time of the Judge's decision.

52. Article 32 is contained in Part 7 of the Law, which is a general part comprising two chapters - the first being Practice and Procedure, and the second being Evidence. Article 32 is found in the first chapter and is headed "Powers". It provides relevantly:

> "The DIFC Court has the power to make orders and give directions as to the conduct of any proceedings before the DIFC Court that it considers appropriate, including:
>
> .
>
> (b) injunctions, including requiring an act to be done;
>
> (c) interim or interlocutory orders ."

53. Although the Judge made no reference to it, Oved also places reliance upon Article 22 of the Court Law, which is contained in Part 5 of the Law, which is concerned with the jurisdiction of the Court. That Article provides, relevantly, that:

> "The Court of First Instance may order an injunction restraining a person from engaging in conduct or requiring a person to do an act or thing or other order the court considers appropriate."

54. It is clear from his reasons that the Judge considered that Article 32 was a source of jurisdiction, not merely power, and that it was freestanding, in the sense that there was plenary power to grant an interim injunction in any case brought before the Court irrespective of whether there was any other source of jurisdiction.

55. The breadth of the jurisdiction which would be conferred upon the Court if this conclusion is correct is, essentially, unlimited. It would mean

that provided injunctive relief is sought, the Court has jurisdiction to determine disputes between any parties anywhere in the world in respect of disputes arising anywhere in the world without any need for any connection with the DIFC whatever.

56. The Judge cited no authority for this exceptional conclusion other than reference to "precedent set by the Court of Appeal".

57. It might be inferred that the Judge was referring to the decision in *Carmon v Cuenda*.[14] If that inference is correct, the decision in Carmon does not support the Judge's decision with respect to jurisdiction.

58. The decision in Carmon is one of a series of decisions in this Court dealing with the jurisdiction to issue Worldwide Freezing Orders ("WFOs"). The Court has power to make such orders pursuant to provisions such as Articles 22 and 32 of the Court Law and the Rules of Court. However, the Court's jurisdiction to make such orders derives from the jurisdiction to enforce arbitral awards and court judgments made inside or outside the DIFC.

59. In *Lateef v Leila*[15] H.E. Justice Wayne Martin relied upon the decision of the Privy Council in *Broad Idea v Convoy Collateral Ltd*[16] in which the majority observed that, contrary to a view previously expressed in *Siskina (Cargo Owners) v Distos Compania Naviera SA*,[17] it was no longer correct to regard the power to grant injunctive relief as being limited to a power ancillary to substantive proceedings before the Court. Rather, the Judicial Committee affirmed the dissenting judgment of Lord Nicholls in *Mercedes Benz AG v Leiduck*[18] in which his Lordship enunciated the doctrinal basis of the freezing injunction as being a power to be exercised in order to protect the power of prospective enforcement of a money judgment (or award) prior to that judgment (or award) being obtained.

60. In Broad Idea the proposition enunciated by Lord Nicholls was characterized as the "enforcement principle". That principle was succinctly expressed by Lord Leggatt:

> "The first and primary principle is that the purpose of a freezing order is to stop the injunctive defendant dissipating or disposing of property which could be the subject of enforcement if the claimant goes on to win the case it has brought."

61. H.E. Justice Wayne Martin considered the application of the enforcement principle in this Court in the following passage:

> "125. There are no qualifications or constraints, express or to be implied from any provision in the legislation relating to the jurisdiction of the court, upon the breadth or exercise of the court's powers to grant injunctive relief. Of course, those powers must be exercised within the jurisdiction of the court, but it is common ground and beyond doubt that the Court has jurisdiction to enforce foreign judgments. Broad Idea authoritatively establishes that the grant of freezing orders pursuant to the enforcement principle is an incident of that jurisdiction.
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> 126. The same conclusion is evident from the RDC. The Court is given a specific power to grant a freezing order and RDC 25.24 expressly recognises the power of the Court to grant an interim remedy in relation to proceedings which are taking place, or which might take place at some time in the future, outside the DIFC.
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> 127. So, when regard is had to the relevant legislative provisions and the RDC, there is every reason to conclude that the DIFC Courts have ample jurisdiction to exercise their unqualified injunctive powers in accordance with the enforcement principle which underpins the grant of freezing orders as an incident of the Court's jurisdiction to enforce judgments, whether domestic or foreign, and whether the judgment has been granted or is prospective. That jurisdiction does not depend upon the existence of a cause of action which can be maintained against the defendants in the DIFC Courts, or upon the existence of assets within the DIFC which might be available in execution of the relevant judgment."[19]

62. It is clear from this passage that the power of the Court to grant injunctive relief can only be exercised in respect of cases falling within the jurisdiction of the Court. In the case of freezing injunctions, the relevant jurisdiction is the Court's jurisdiction to enforce prospective awards or judgments, foreign or domestic, and the injunctive power can be exercised to protect the exercise of that jurisdiction by preventing the dissipation of assets before the jurisdiction can be invoked.

63. In the case of anti-suit injunctions based upon arbitration agreements, unless the case otherwise falls within a head of jurisdiction specifically identified in the Court Law (because, for example, one of the parties is a DIFC establishment), the only source of jurisdiction is the DIFC Arbitration Law. However, the supervisory jurisdiction conferred upon the Court to protect arbitrations by the Arbitration Law by, for example, issuing anti-suit injunctions, is limited to arbitrations seated in the DIFC.

64. After an unfortunate misstep in *Sandra Holding Ltd v Al Saleh*[20] the source of the Court's jurisdiction with respect to freezing orders was again considered in *Carmon v Cuenda*.[21] In that case the Court noted that Article 24 of the Court Law conferred jurisdiction on the Court to "ratify any judgment, order or award of any recognized foreign court" and considered that the power of the Court to restrain the dissipation of assets was an incident of the jurisdiction which could be used to prevent its pre-emption. The Court was supported in this conclusion by reliance upon various authorities, including Broad Idea and the judgment of Lord Nicholls in Mercedes Benz.

65. The Court was clear to distinguish between jurisdiction and powers. For example, after referring to Article 24 of the Court Law and Articles 7(4)-(6) of the Judicial Authority Law, the Court observed:

> "As appears from the Laws and Rules reviewed, the Court has jurisdiction to recognise and enforce foreign judgments. Whether it can make a freezing order in relation to pending proceedings which may give rise to a judgment which could be ratified by the Court, involves two issues. The first is whether the Court's jurisdiction in relation to the ratification of foreign judgments is enlivened by an application for a freezing order in pending proceedings in a foreign court. The second is whether it has power in aid of such jurisdiction to issue a freezing order. While it might be said that the two questions are two sides of the one coin, it is important to maintain the conceptual distinction between jurisdiction and power.
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> The conceptual distinction is not always reflected with precision in statutory language. A statute may provide - the Court has jurisdiction with

respect to X, and then - the Court has the power to do Y in the exercise of its jurisdiction with respect to X. As already observed, a statutory provision which confers a power to grant a remedy not linked to an express grant of jurisdiction may itself be taken to confer the jurisdiction by necessary implication. That is so where the power does not relate to any other grant of jurisdiction under the relevant statute. As appears later in these Reasons, the requisite jurisdiction in this case may be implied as a matter of construction of the grant of jurisdiction to enforce foreign judgments. An alternative pathway could be found in the power to grant interim remedies in aid of jurisdiction expressly granted."[22]

66. This Court revisited these issues more recently in *Trafigura Pte Ltd v Gupta*[23] in which the question at issue was whether the Court Law 2025 had made a difference to the extent of the Court's jurisdiction to grant freezing orders. In that context the Court held:

"127. The jurisdiction of the DIFC Courts to enforce judgments of foreign courts derives from Article 31(4) of the 2025 Court Law. That jurisdiction is not in dispute. What is in issue and characterized as a question of jurisdiction, is whether the Court may issue a freezing order against a defendant in foreign proceedings which may yield a judgment, decision or orders enforceable in the UAE.

128. A freezing order of the kind sought by the Appellants does not require a separate head of jurisdiction if sought in aid of an enforcement jurisdiction which may be enlivened by the award of judgment in a foreign court whose judgments are recognised and enforced in the DIFC.

129. This Court observed in Carmon at [156]:

"The expansive powers of the DIFC CFI to award interim remedies include cases in which the remedy is sought in relation to proceedings which ". will take place outside the DIFC" - see RDC 25.24(1). That consideration coupled with the express jurisdiction and associated powers to enforce foreign judgments, suggests that the Court has the jurisdiction and powers to ensure that that express jurisdiction is effective."

130. After reviewing relevant case law the Court in Carmon observed of the CFI at [202] that:

"It has power to grant interim remedies under Pt 25 of the RDC, including freezing orders which extend to freezing orders restraining a party from dealing with any assets whether located within the jurisdiction or not - RDC 25.1(6). Further, the Court may grant such a remedy whether or not there has been a claim for a final remedy of that kind - RDC 25.3. Those powers are available to prevent the Court's jurisdiction being thwarted. That includes its jurisdiction to recognise and enforce foreign judgments. That jurisdiction may be thwarted if a party to a foreign proceeding seeks to dissipate its assets in advance of an apprehended judgment which might be susceptible to recognition and enforcement in the DIFC."

131. Nothing in the 2025 Court Law affects the correctness of that proposition."[24]

67. Consistently with the passages from Lateef and Carmon cited above, the Court reaffirmed that the source of the Court's jurisdiction to issue freezing orders to prevent dissipation of assets that might be available in the execution of a judgment or award granted in pending proceedings derives from the Court's jurisdiction to enforce such awards or judgments, augmented under the 2025 Law, by the additional jurisdiction conferred by Article 15(4).

68. The approach taken in all of these cases would have been entirely unnecessary if, as the Judge in effect held, the conferral of a power to grant injunctive relief confers jurisdiction upon the Court to grant such relief in any and all cases. These decisions are only consistent with the view that provisions such as Articles 22 and 32 confer power upon the Court to grant injunctive relief in respect of cases falling within the jurisdiction of the Court. They are not sources of jurisdiction in themselves.

69. Oved relies upon two decisions at first instance in this Court for the proposition that even if an arbitration is not seated in the DIFC, in unusual and exceptional circumstances the Court has jurisdiction to grant an ASI to protect an arbitration agreement. However, as will be seen, neither case stands for such a proposition.

70. In *Brookfield Multiplex Constructions LLC v DIFC Investments LLC and Dubai International Financial Centre Authority*[25] proceedings were commenced against two DIFC establishments seeking declaratory relief to the effect that there was a binding arbitration agreement between the parties and a further declaration that, subject to the arbitration agreement, the DIFC Courts had exclusive jurisdiction over the dispute between it and the defendants, and that the onshore Courts of Dubai had no such jurisdiction. The claimant also sought an ASI restraining the defendants from pursuing proceedings begun in the onshore Courts of Dubai.

71. It is obvious from this description of the proceedings that no question of jurisdiction arose. As both defendants were DIFC establishments, the jurisdiction of the Court did not depend upon the supervisory jurisdiction conferred by the DIFC Arbitration Law in relation to DIFC seated arbitrations. This explains why it was not necessary for the Judge to determine the seat of the arbitration.[26]

72. After referring to the fact that one of the defendants was a DIFC body and the other was a DIFC entity, H.E. Justice Sir Jeremy Cooke observed:

"33. In consequence, there can be no doubt that this Court has jurisdiction in respect of the parties and the subject matter of their dispute, subject to the arbitration agreement contained in the construction contract. The Court has therefore jurisdiction to make the declarations and injunction sought, should it consider it just and convenient to do so. The decisions in Dhir v Waterfront Property Investment Ltd [CFI 011/2009] and Corinth Pipeworks v Barclays Bank [CA 002/2011] put beyond argument the proposition that this Court has jurisdiction in any civil or commercial claim to which a DIFC Body or Entity is a party. Given the contents of the construction contract, the Court is also given jurisdiction by Article 5(A)(1)(b) and (c). The Protocol of 7/12/09 signed between the DIFC Courts and Dubai Courts is wholly consistent with this."[27]

73. It follows that observations made in the reasons are not to be construed as observations going to the existence of jurisdiction, but rather as observations going to the exercise of jurisdiction.

74. In that context, His Excellency referred to English decisions which draw a distinction between a supportive jurisdiction on the one hand, and a supervisory jurisdiction on the other. In those decisions it has been observed that where the seat of the arbitration is outside England, although "the Court was in a position to grant an anti-suit injunction, it would need a very good reason to do so". Implicit in that observation is the assumption that the English Court has jurisdiction because, for example, the defendant has been served within the jurisdiction or leave has been granted to serve the defendant out of the jurisdiction. The Judge was not addressing the question of jurisdiction, but rather, its exercise, and indicating that considerable restraint would be shown if the arbitration was not seated within the jurisdiction of the Court.

75. The passage immediately following the reference to the English cases must be construed in the same light. There His Excellency observed:

> "I do not therefore accept that, even if the seat of the arbitration is non-DIFC Dubai, the Court has no jurisdiction to grant an anti-suit injunction but it would be an unusual and exceptional case where the Court did so, particularly bearing in mind the appropriate respect that the Courts of the two different systems in the Emirates of Dubai must have for each other."[28]

76. Although the word "jurisdiction" is used, it is used in a negative sense - that is to say, in the sense that the Court is not deprived of jurisdiction merely because the arbitration is seated in onshore Dubai. Clearly His Excellency was not asserting the positive proposition that the DIFC Court has jurisdiction to grant an ASI irrespective of the seat of the arbitration. That is because there was no question with respect to the jurisdiction of the Court to grant the relief sought in the case before him.

77. The fact that His Excellency was considering only the question of whether jurisdiction which the Court would have otherwise have could be ousted by the parties choosing to seat their arbitration outside the DIFC is made clear by the following passage in the judgment:

> "40. Although the DIFC Courts are given exclusive jurisdiction over DIFC Bodies and Entities both generally and in relation to transactions of the character of the construction contract between the parties so that it has jurisdiction, in its own eyes, to enforce the arbitration agreement in that contract, regardless of the seat of the arbitration and the implied choice of the parties of the courts of the seat as the supervisory courts, the DIFC Courts would not in practice do so, save in exceptional circumstances. Its jurisdiction cannot be ousted by the parties' choice of the seat and supervisory jurisdiction, but comity would militate against the exercise of that jurisdiction when the courts of the seat can not only supervise the arbitration but are in a position to grant any injunction necessary and to ensure that the arbitration agreement is not breached by pursuit of remedies in that court.
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> 41. If the seat of the Arbitration is DIFC however, the position is different, because the primary responsibility for the enforcement of the arbitration agreement would lie on the courts of the seat, if relief was sought. This Court would then be concerned, first, to protect its own exclusive jurisdiction under the Judicial Authority Law and, secondly, as the Court of the seat, to protect the agreement of the parties to refer their disputes to the determination of arbitrators, if there was some infringement of the parties right to arbitrate their disputes."[29]

78. In *Narciso v Nash*[30] the relevant arbitration agreement expressly provided that the seat of the arbitration was the DIFC. An ASI was granted by the Court pursuant to the jurisdiction conferred upon it by the DIFC Arbitration Law. The defendant contended that because the applicable law of the underlying contract was the law of the UAE, the Court was deprived of jurisdiction under the DIFC Arbitration Law. Justice Michael Black rejected that proposition drawing upon English authority for the proposition that the governing law of the agreement did not affect the jurisdiction of the Court. His Excellency concluded:

> "The dispositive point is that the parties have chosen the DIFC as the seat of their arbitration which carries with it the implicit choice of the DIFC Courts as the supervisory courts. The defendant's challenge to the Court's jurisdiction on the basis that the arbitration agreement is governed by UAE Law fails whether or not that Law or DIFC Law governs the arbitration agreement. I therefore find that the Court has jurisdiction over the claimant's claim."[31]

79. In the course of arriving at this conclusion, His Excellency referred to the passages from *Brookfield* which have been set out above and observed:

> "Thus, as far as jurisdiction is concerned, Justice Sir Jeremy Cooke held that the DIFC Courts had jurisdiction to grant anti-suit injunctions both where the DIFC was, and was not, the seat of the arbitration. If the DIFC is not the seat of the arbitration the DIFC Court would only grant an anti-suit injunction in an unusual and exceptional case."

80. This observation must be construed in the same way as the observations of the Judge in *Brookfield* - namely, as an observation to the effect that the DIFC Courts are not deprived of jurisdiction which they otherwise have merely because the arbitration is not seated in the DIFC. However, in such cases, the DIFC Court would only exercise jurisdiction otherwise conferred in an unusual and exceptional case.

81. Oved also relied upon observations made in the recent decision of the UK Supreme Court in *UniCredit Bank GmbH v RusChamAlliance LLC*.[32] However, upon analysis it is clear that the decision supports the principle adopted in Brookfield. In that case the jurisdiction of the English Courts to issue the relevant ASI in support of the arbitration agreements depended upon whether the arbitration agreements were governed by English law and if so, whether England and Wales was the proper place in which to bring the anti-suit proceedings. Unlike the jurisdiction of the DIFC Courts, the jurisdiction of the English Courts turns upon service, and where parties outside the jurisdiction are concerned, upon the grant of permission to serve proceedings out of the jurisdiction.

82. One of the grounds upon which permission to serve out of the jurisdiction can be granted is that proceedings are being brought pursuant to an agreement governed by English law. As the Court concluded that the arbitration agreement was governed by English law, that requirement was satisfied.

83. The Court concluded that the second requirement, namely that England and Wales as an appropriate place in which to bring proceedings was satisfied because of the evidence to the effect that the Courts of the seat (France) would not issue an ASI.

84. So, as in *Brookfield*, the Court held that jurisdiction to grant an ASI which the court had irrespective of the seat of the arbitration was not

ousted because the arbitration was seated outside the jurisdiction.

85. Oved also relies upon Articles 10 and 13 of the Law Relating to the Application of DIFC Laws (the "Application Law")[33] which provide:

> "10. If the parties do not specify the governing law of a contract, the contract shall be governed by the law of the DIFC.
>
> .
>
> 13. (1) A submission to the courts of a jurisdiction in a contract shall be effective.
>
> (2) A submission to arbitration in a contract shall be effective."

86. There are many flaws in this submission. First, the Application Law is not a law which confers jurisdiction on the Court - rather, it is a law which assumes jurisdiction. Article 3 of the Application Law provides:

> "This Law applies in the jurisdiction of the Dubai International Financial Centre."

87. Second, neither of the Articles relied upon make any reference to the DIFC Courts, nor do they purport to confer jurisdiction upon any Court. By their terms, each is concerned with the manner in which jurisdiction is to be exercised, rather than with the conferral of jurisdiction.

88. Third, taking the Articles in turn, Oved contends that Article 10 should be construed in such a way that any contract written by any parties anywhere in the world which does not expressly specify the governing law of the contract is to be governed by the law of the DIFC. Obviously that construction of the Article cannot be right. Its operation is constrained by Article 3 to contracts within the jurisdiction of the DIFC. It is unnecessary to determine the precise ambit and effect of that constraint in this case, and sufficient to observe that a provision which only operates in respect of contracts falling within the jurisdiction of the DIFC cannot have the consequence that a contract not otherwise falling within the jurisdiction of the DIFC (such as the Repatriation Agreement in this case) is somehow brought within that jurisdiction.

89. Further and in any event, the fact that the governing law of a contract is DIFC Law did not, of itself, confer jurisdiction upon the DIFC Courts under the relevant provisions of the DIFC Court Law 2004 and the Judicial Authority Law 2004, although some claims arising from contracts governed by DIFC Law would come within the jurisdiction of the DIFC Courts because one or other of the gateways to jurisdiction was satisfied. However, the fact that the governing law of the contract is the law of the DIFC was not, and is not now, a gateway to jurisdiction.

90. Turning to Article 13, it does no more than provide that provisions in contracts conferring jurisdiction upon a Court and arbitration agreements are to be given effect. Any practical effect of the Article, insofar as it relates to arbitration agreements, was removed by the promulgation of the DIFC Arbitration Law 2008, which contains much more detailed provisions with respect to the enforcement of arbitration agreements.

Jurisdiction - conclusion

91. Having found that he was not satisfied to the requisite degree that the arbitration was seated in the DIFC, in the circumstances of this case the only conclusion open to the Judge was that there was no other source of jurisdiction available to the Court.

92. That conclusion would be sufficient to dispose of both appeals, were it not for a Notice of Contention served by Oved to the effect that the Judge should have found that the arbitration was seated in the DIFC. It is appropriate to deal first with ground 11, which is concerned with the exercise of the discretion relating to the issue of an ASI (on the assumption that the Court has jurisdiction), and then to consider the Notice of Contention in the context of ground 6, which raises the question of whether the arbitration agreement was contained within a consumer contract.

Ground 11

93. Ground 11 contends that the Court erred in the exercise of its discretion, if it had any discretion, by granting an ASI. Although the Judge seems to have treated the issue as being limited to an issue of judicial comity, the argument presented to him, and the particulars given in support of the ground of appeal, go beyond the issue of comity and include considerations such as the advanced stage of the proceedings in the English Courts, and the fact that the dispute involved a claim against a company incorporated in England.

94. On 6 February 2025, when the Judge came to consider whether or not the ASI should be continued, the s.9 Application had been listed for hearing by the English High Court over two days later that month. The Judge was informed that the hearing would involve a number of issues relating to the arbitration agreement, including issues as to whether the arbitration agreement, which forms part of printed standard terms and conditions, formed part of the contract for the provision of air ambulance services (the "Incorporation Point") and evidence, both factual and expert, was to be led in relation to the issues arising on the s.9 Application.

95. Further, Oved had commenced an arbitration and Mr Oaken was obliged to serve a Response in those proceedings.

96. Accordingly, on the information available to the Court, in a matter of weeks, the English Court would either conduct a detailed inquiry into the existence and validity of the arbitration agreement and determine that issue as between the parties or, it would grant the s.9 Application in deference to any arbitrator appointed in the arbitration proceedings in accordance with the principle of kompetenz-kompetenz.

97. If the English Court took the latter course it would, in effect, be upholding the arbitration agreement and allowing the arbitrator to determine its validity, and no ASI would be appropriate.

98. Accordingly, the question which the Judge was required to determine was whether the Appellants should be restrained from pursuing proceedings in the English Court which involved a detailed enquiry into the existence and validity of the arbitration agreement in the context of the s.9 Application. That question did not give rise to considerations of judicial comity but rather to considerations relating to the identification of the more appropriate forum, and considerations of practicality and efficiency.

99. Considerations relating to the identification of the more appropriate forum will not necessarily be identical to the principles pertaining to forum non conveniens in accordance with conflict of law principles, but will involve considerations of a similar nature.

100. Turning to those considerations, there was no doubt that the English Court had jurisdiction to determine the substantive dispute and all ancillary issues, such as issues relating to the arbitration agreement, as Oved is incorporated in England. By contrast, the DIFC Courts have no jurisdiction to determine the substantive dispute and, on the Judge's findings, no jurisdiction to supervise the arbitration conducted under the arbitration agreement. On the Judge's view, the Court's jurisdiction was limited to the grant of injunctive relief. This was an unsound basis for restraining the Appellants from utilising the undoubted jurisdiction of the English Courts.

101. Further, in this case there was no question of any limitation upon the powers of the English Courts to give full effect to the arbitration agreement of the kind that were material in *UniCredit*.

102. The Court is of course mindful of the constraints which apply to appellate review of the exercise of judicial discretion. However, when all relevant considerations are taken into account, the only conclusion reasonably open was that the English Court was the clearly more appropriate forum in which to determine the issues pertaining to the existence and enforceability of the arbitration agreement, and to determine whether those issues should be left to the arbitrator.

103. Turning now to considerations of practicality and efficiency, the English Court was to undertake a detailed inquiry into the existence and enforceability of the arbitration agreement within weeks, and the parties were serving evidence, both factual and expert, in relation to that hearing at the time the ASI was granted. It was clearly more efficient and practical to allow the s.9 Application to proceed and be determined (or the issue referred to an arbitrator) rather than take the course of deciding that there was a valid and enforceable arbitration agreement on the basis of the limited evidence available to the Judge. Again, from the perspective of practicality and efficiency, the only conclusion reasonably open was that the preferable course was to allow the parties to continue with the English proceedings.

104. Put another way, at the time the Application for continuation of the injunction came before the Judge, there were two fora in which the existence and enforceability of the arbitration agreement could be determined, namely:

(a) by the English Court, which had undoubted jurisdiction and which was well advanced in the determination of the factual and legal issues; or

(b) by an arbitrator appointed pursuant to the arbitration agreement.

105. Either of those fora was clearly more appropriate than the DIFC Courts. The only course reasonably open to the Judge was to exercise his discretion against the grant of the ASI. It follows, having regard to the criteria for appellate court intervention in the area of discretionary judgments, that the Judge's decision was unsustainable.

The Notice of Contention

106. As noted, Oved contends that the Judge's decisions with respect to the grant of the ASI and with respect to jurisdiction should be upheld because the Judge should have determined that there was a valid arbitration agreement which provided that the seat of the arbitration would be the DIFC.

107. The first reason that contention must be rejected is that, as has been seen, the Judge was informed that there was a live issue between the parties as to whether the arbitration agreement had in fact been incorporated into the agreement relating to the provision of air ambulance services. That issue was to be determined as part of the s.9 Application (unless the English Court deferred to the arbitrator). The parties were exchanging factual and expert evidence in relation to the existence and enforceability of the arbitration agreement in the English proceedings, which evidence was not available to the Judge. The Judge should not have purported to determine the issue of the existence of the arbitration agreement on the basis of the limited evidence before him. It would be equally inappropriate for this Court to pre-empt any decision that might be made by either the English Court or the arbitrator in relation to the existence, effect and enforceability of the alleged arbitration agreement in response to the Notice of Contention.

108. However, even if it is assumed that the Court acceded to Oved's contention and accepted that there is indeed an arbitration agreement providing for an arbitration seated in the DIFC, it would then have to determine whether the arbitration agreement is enforceable under the DIFC Arbitration Law, which involves the issue raised by ground 6.

Ground 6

109. Ground 6 asserts that the Court erred in holding that the agreement was not contained within a consumer contract and therefore fell outside the scope of Article 12(2) of the DIFC Arbitration Law. That Article provides:

"An Arbitration Agreement referring future disputes between the parties arising out of or in connection with:

(a) a contract of employment within the meaning of the Employment Law 2005; or

(b) a contract for the supply of goods or services, other than residential property, to a consumer made by a supplier who is a natural or legal person acting for purposes relating to his trade, business or profession, whether publicly owned or privately owned, cannot be enforced against the employee or consumer in respect of any such dispute except:

(i) with his written consent given after the dispute in question has arisen; or

(ii) where he has submitted to arbitration proceedings commended under the Arbitration Agreement, whether in respect of that dispute or any other dispute; or

(iii) where the DIFC Court has made an order disapplying this Article on the grounds that the DIFC Court is satisfied that it is not detrimental to the interests of the employee or consumer for the dispute in question to be referred to arbitration in pursuance of the Arbitration Agreement instead of being determined by proceedings before a Court.

For the purposes of this Article, "consumer" means "any natural or legal person who is acting for purposes which are outside his trade, business or profession."

110. As noted, the Judge concluded that he was not satisfied that the arbitration agreement formed part of a consumer contract because:

> "Mr Oran is a pilot who entered into the Repatriation Agreement within the course of his trade, he cannot be regarded as a consumer irrespective of whether it is reasonable to assume that he has hired other planes previously."[34]

111. Clearly the Judge inadvertently used the wrong name, and the passage should be read as a reference to Mr Oaken, rather than as a reference to Mr Oran. However, more significantly, the fact that Mr Oaken was a pilot is, with respect, irrelevant to the question of whether the Repatriation Agreement was a consumer contract because there is no suggestion in the evidence that Mr Oaken was going to fly the aircraft. Rather, the only inference reasonably open on the evidence is to the effect that Mr Oaken acted as Mr Oran's agent for the purposes of entering into the Repatriation Agreement pursuant to which Oved would supply a pilot and aircraft in order to transfer Mrs Oran from Switzerland to South Korea. In those circumstances, the fact that Mr Oaken is a pilot is irrelevant to the proper characterization of the contract.

112. As a pilot, for the purposes of Article 12 of the Arbitration Law, Mr Oaken's "trade business or profession" involved piloting aircraft which he is licensed to fly. Acting as an intermediary for the engagement of an air ambulance service to be provided by an aircraft flown by another pilot was therefore acting for a purpose which was outside his trade, business or profession.

113. In the course of argument, Oved contended that the Repatriation Agreement was not a consumer contract because the service was to be provided to Mrs Oran, who was not a party to the contract. That contention is not supported by the words of the Article or any reasonable interpretation given to the Article.

114. First, as noted, the term "consumer" is defined by the Article to mean any person acting for purposes outside their trade, business or profession. Although Article 12 requires that the contract be for the supply of goods or services to a person acting outside their trade, business or profession, it does not require that the services be used or consumed by that person.

115. There is nothing in the words of the Article which would suggest that it was intended to differentiate between consumers who acquire goods and services for their own use, as compared to consumers who acquire goods and services which are intended to be used or consumed by others. It would, with respect, be quite perverse to attribute to the Article an intention to apply the Article to a person who purchases a book for his or her own use, but deny its operation and effect to a person who purchases a book as a gift to another, or to a parent who contracts for the provision of services to a child. The Article is directed toward the quality of the transaction rather than the end use of the goods or services provided pursuant to the transaction.

116. Accordingly, the fact that the services were acquired by Mr Oaken as agent for Mr Oran for the purpose of flying Mrs Oran from Switzerland to South Korea does not detract from the proper characterisation of the contract as a consumer contract for the purposes of Article 12.

117. In the course of argument Oved also contended that Article 12 should not be applied because there is every reason to think that the DIFC Court would make an order disapplying the Article on the grounds that it was satisfied that it was not detrimental to the interests of the consumer for the dispute in question to be referred to arbitration.

118. There are two answers to this contention. First, the DIFC Court has not made any such order, and unless and until it does, the arbitration agreement contained within the consumer contract cannot be enforced against Mr Oran or Mr Oaken.

119. Second, there is no reason to suppose that the DIFC Court would make such an order. The arbitration agreement provides for the appointment of a sole arbitrator nominated by Oved. An agreement in those terms is clearly detrimental to the consumer. Although, as it happens, in the course of the current arbitration Oved has not insisted upon performance of that term and has allowed DIAC to appoint the arbitrator, the question for the DIFC Court would be whether the enforcement of the arbitration agreement was not detrimental to the consumer and that question would be determined by reference to the terms of the agreement, rather than by reference to a particular stance or concession made by Oved.

120. For these reasons the Judge was wrong to conclude that the arbitration agreement did not arise in connection with a consumer contract and would therefore be enforceable notwithstanding Article 12 of the DIFC Arbitration Law.

121. It follows that even if the Court acceded to Oved's contention that the Judge should have found that there was an arbitration agreement providing for arbitration seated in the DIFC, the appeal would nevertheless be dismissed because the Court would not be satisfied that the arbitration agreement is enforceable, according to the law of the DIFC.

Ground 9

122. Ground 9 contends that the Court erred in holding that a valid arbitration agreement exists. This ground must be upheld for the reasons given in relation to ground 11, the Notice of Contention, and ground 6.

123. The preceding conclusions are sufficient to explain why the appeals were allowed. However, as some of the remaining grounds raise issues of general application, and in the interests of completeness, the remaining grounds will be considered briefly.

Grounds 1, 4 and 5

124. Ground 1 contends that the Judge erred by asserting, in correspondence, that his reasons were binding rather than his orders.

125. This ground must be upheld. The difference between the orders pronounced by the Judge and the reasons which he gave for those orders did not involve matters of interpretation. The orders pronounced were clearly and unequivocally limited to the pursuit of the AAI, whereas the reasons extended the injunctive relief to all proceedings of any kind, anywhere. There is no basis upon which the words of the orders could be construed as having that effect. The difference between the terms of the orders pronounced by the Judge and his reasons had a profound impact upon the course of the English proceedings.

126. It is of the utmost importance that injunctive orders issued by a Court are clear on their face. Failure to comply with those orders can have significant consequences for parties enjoined, and for third parties who act in concert with parties enjoined. The question of whether or not such orders have been breached must be determined by reference to their terms rather than by reference to extraneous matters. It is not appropriate to expect the parties, or potentially affected third parties or, in this case, the English Courts, to have to refer to communications between the parties and the Court in order to ascertain the proper meaning and effect of orders pronounced by the Court.

127. In this case when the discordance between the terms of the Judge's reasons and the terms of his orders were drawn to his attention, if he wished to bring the orders into line with his reasons, it was incumbent upon him to amend his orders pursuant to the power conferred by RDC 36.45, which provides:

> "The Court has an inherent power to vary its own orders to make the meaning an intention of the Court clear."

128. Before exercising that power, it would have been appropriate for the Judge to consider whether the Appellants were on notice that Oved sought an injunction in broader terms than that initially granted. If there was any doubt in relation to that matter, it would have been appropriate for the Judge to give notice to the parties of his intention to amend the order and to provide them with the opportunity to provide submissions on the question.

129. The question of whether the Appellants were in fact on notice that Oved sought a broader injunction than that which had been granted is the subject of grounds 4 and 5. However, no useful purpose would be served by determining those grounds, given the outcome of the appeals.

Ground 3

130. Ground 3 contends that the Judge erred by not considering and requiring Oved to fortify its undertaking as to damages by the provision of security. As noted, the Judge rejected the Appellants' submissions in this regard because "given that this order favours the Claimant, this is a non issue for the application".

131. This reasoning is, with respect, difficult to comprehend. The Claimant was Oved and the injunction was granted in its favour in return for an undertaking as to damages should it be established that the injunction should not have been granted (as it has) and the Appellants (Defendants) have suffered loss (as they may well have, given the disruption to the English proceedings).

132. The grant of an undertaking as to damages is the almost invariable price of the grant of an interim injunction. It is necessary for a Court to determine where the balance of convenience lies when considering the grant of interim injunctive relief. It is therefore necessary for the Court to determine the extent of the harm likely to be suffered by the parties if injunctive relief is, or is not, granted. The ability of the enjoined party to obtain compensation for loss or damage suffered by reason of the injunction is a necessary component of any such considerations. It follows that the creditworthiness of the party providing the undertaking as to damages is also a necessary component of any such considerations.

133. In this case on the evidence before the Judge:

(a) Oved was incorporated in England; and

(b) There was no evidence that Oved had any assets within Dubai or the UAE; and

(c) There was no evidence of the capacity of Oved to satisfy any obligations imposed by reason of the undertaking as to damages which it proffered in support of the application for injunctive relief.

134. In these circumstances the only course reasonably open to the Judge was to either require further evidence with respect to the capacity of Oved to satisfy any orders made pursuant to the undertaking as to damages, or alternatively to require Oved to provide an appropriate amount of security in respect of the undertaking as to damages by way of payment into Court or other appropriate form of security.

135. Accordingly, ground 3 must also be upheld.

Issued by:
Hayley Norton
Assistant Registrar
Date of issue: 28 October 2025
At: 2pm