Claim No. CFI 107/2021

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

(1) ALEXANDER REUTER
(2) CARLO PIANESE
(3) ANDRE BLEDJIAN

Claimants/Applicants

and

(1) WELLNESS UNITED INC
(2) JACOB LOGOTHETIS
(3) ANGELA TUROVSKAYA

Defendants/Respondents

Claim No. CFI 108/2021

(1) ALEXANDER REUTER
(2) ANDRE BLEDJIAN

Claimants/Applicants

and

(1) WELLNESS UNITED INC
(2) JACOB LOGOTHETIS
(3) ANGELA TUROVSKAYA

Defendants/Respondents

ORDER WITH REASONS OF H.E. JUSTICE MAHA AL MHEIRI

UPON the Claimants' Application No. CFI-107-2021/4 and CFI-108-2021/4 dated 10 February 2023 seeking permission to amend their Particulars of Claim (the "Applications")

AND UPON hearing Counsel for the Claimants and Counsel for the Defendants at the hearing listed before me on 2 March 2023 (the "Hearing")

AND UPON reviewing the relevant submissions in the case file

IT IS HEREBY ORDERED THAT:

1. The Applications are granted.

2. The Claimants shall file the Amended Particulars of Claim by no later than **4pm on 31 March 2023.**

3. The Defendants shall file their Defence to the Claimants' Amended Particulars of Claim by no later than **4pm on 24 April 2023.**

4. The Claimants shall bear the costs of the amended Defence and the Applications.

Issued by:
Delvin Sumo
Assistant Registrar
Date of issue: 24 March 2023
At: 12pm

SCHEDULE OF REASONS

1. By way of background, the Claimants allege that there have been two loan agreements to the First Defendant, of which the Second and Third Defendants were guarantors. No sums have been repaid and the Claimants claim damages and/or the unpaid debt accordingly. The Defendants allege that the loan agreements and guarantees are null and void.

2. The Claimants filed a claim under case number CFI-107-2021 ("107") and CFI-108-2021 ("108") which were issued on 13 December 2021. Over a year later, the Claimants seek permission from the Court to amend their Particulars of Claim in 107 and 108 (the "POCs") pursuant to Rule 18.2(2) of the Rules of the DIFC Courts (the "RDC").

3. The proposed amendments were to introduce an alternative claim in restitution against the First Defendant. In general, it is the 107 Claimants' position that the Defendants' defence is without merit and the arguments advanced are misconceived as a matter of law. It is submitted that this is a claim where an application for immediate judgment and/or strike out is appropriate.

4. I heard Counsel for the Claimants and Counsel for the Defendants at the Hearing.

The Claimants' Submissions

5. Due to the similarities and the overlapping factual matrix in 107 and 108, the Claimants seek permission from the Court to amend their respective POCs in both claims, the proposed amendments in both claims are similar in nature and dealt with together.

6. There are four proposed amendments to be made to the Claim 107 and 108 POCs. These are:

(a) A mathematical correction (only in claim 107);

(b) A correction to the date of a legislation cited in the POC;

(c) The introduction of an alternative claim in restitution for unjust enrichment; and

(d) An update to the prayer for relief to reflect the alternative claim in restitution

Amendments to correct errors in the Statements of Case (A and B)

7. The amendments not relating to the introduction of an alternative claim in restitution should be permitted in circumstances where they simply correct mistakes in the POCs. These amendments do not introduce a new claim or factual allegations, but merely correct genuine and innocent mistakes. These amendments have no bearing on the underlying issues. The proposed amendments are procedural in nature, ensuring that the POCs are correct and accurate. The Statements of Defence do not specifically address or respond to the mistakes included in the current POCs and, therefore, there is no basis to suggest that these amendments will cause the Defendants any prejudice.

Amendments relating to the alternative claim in restitution (C and D)

8. The Claimants had no cause to believe that the Defendants would challenge the validity and enforceability of the Convertible Loan Agreement ("CLA") and the 108 Loan Agreement. Prior to the service of the Statements of Defence, the Claimants had no cause to believe that the Defendants would seek to evade their contractual obligations by claiming that CLA and the 108 Loan Agreement were invalid and unenforceable as a matter of UAE law. In particular, the Claimants had no cause to believe that they needed to pursue a claim based in restitution at the time proceedings were issued.

9. It was only upon service of the Statements of Defence on 14 December 2022 and 26 December 2022, 1 year after Claim 107 and Claim 108 had been issued, that the Defendants raised allegations about the invalidity and unenforceability of CLA and the 108 Loan Agreement. Upon becoming aware of the Defendants' new position, the Claimants took steps to propose the amendments to the POCs and file an application for permission to amend the POCs to introduce the claims in restitution.

10. The proposed amendments to introduce the alternative claims in restitution have been properly pleaded. The proposed amendments in both POCs are "appropriately particularised" and there should be no "cause for concern" due to the "absence of particulars" for any plea.

11. The Claimants' claim that the proposed restitution claim has a real prospect of success.

The Defendants' Submissions

12. The Defendants submits that the Court should not grant permission for the proposed amendments in 107 and 108 because the Claimants have failed to reference to which law the claim in restitution is founded upon.

13. The Defendants further submit that their position is clear from its defences, the Loan Agreements and Guarantees are unenforceable and/or void as a matter of UAE law. The claims are fundamentally defective as a result of the illegality which they found the claims on.

14. The Claimants argue that they bring the Applications at this late stage only because the Defendants have never previously alleged that the Loan Agreements were void. The Claimants' position is untenable.

15. The Defendants further argue that by allowing the Applications, it would duplicate the costs and efforts of the parties in the litigation thus far. At this point in time, all pleadings have already been filed. The parties have had ample opportunity to consider the case it wishes to bring, and the case that is against it. The consequence of that is the parties have also incurred all costs relating to the pleadings including, of course, advice from its legal representatives as to the merits of the case against it and what causes of action or defences it ought to bring.

16. The Claimants' substantive amendment would raise an entirely new cause of action, which will require the Defendants to duplicate its costs in order to seek legal advice as to the merits of the Amended Particulars of Claim and amend its defence.

17. The change proposed by the Claimants would render the Defendants' previous efforts in its pleadings to be irrelevant; all procedural steps taken so far would have to be revisited and repeated. It would not be in the interests of justice to require the Defendants to duplicate its efforts and costs.

18. The Defendants find that the Claimants' case as pleaded bears no resemblance to the factual matrix which is revealed by the extensive documentary and witness evidence that has been filed and provided to the Claimants.

Findings

19. The test for whether the Court ought to grant permission to amend under RDC 18.2(2) requires that the amendment be properly pleaded and have a real prospect of success.

20. I am persuaded by the Claimants' arguments at the Hearing and find that the proposed amendments to the Particulars of Claim, as set out in the Claimants' Applications, have been properly pleaded and have a real prospect of success.

21. In the exercise of the Court's overriding objective, the Court has a discretion to giving the parties equal footing in pleading their Claim before the Court. On an application to amend a Statement of Case means to balance fairness with efficiency, and that the Court must do justice but at the same time, it must be efficient to ensure cases are disposed of on time. The court must strike a balance between injustice to the applicant if the amendment is refused, and injustice to the opposing party if the amendment is permitted. The principle of fairness is also at the heart of any consideration by the Court when considering what injustices may arise from an application to amend a Statement of Case.

22. The Claims are still in the preliminary stages and the CMC has not yet been fixed. The Defendants are not faced with any procedural prejudice as the trial date has not yet been fixed and the amended pleadings can be filed prior to any other litigation phases occurring. As such, there is no risk of the trial or any other procedural milestone needing to be postponed or delayed.

23. It is noted that the Applications have been made early on in these proceedings, prior to any CMC being heard. Therefore, I am inclined to permit the amendment of the Particulars of Claim for the reasons being that the amendments are straight forward and have a real prospect of success and the Defendants shall not be prejudiced procedurally as a result.

Costs

24. Although the Court does grant the Applications, the claim for unjust enrichment could have been pleaded in the first Particulars of Claim. By not doing so, the Applications have resulted wasted costs and efforts.

25. RDC r.18.27 states that a party seeking to amend is responsible for the costs of and arising from the amendment:

> "A party applying for an amendment will usually be responsible for the costs of and arising from the amendment, but the Court will have regard to any failure of a party to consent to an amendment in accordance with Rule 18.12."

26. Although the Court finds that the Claimants' Applications are granted for the reasons above, the Defendants should not bear the cost of the amended defence and the cost of the Applications.