IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF APPEAL

BETWEEN

AS WORLD GROUP HOLDING LIMITED

Claimant/Respondent

and

SAJID BARKAT AL BARKAT

Defendant/Appellant

ORDER WITH REASONS OF CHIEF JUSTICE ZAKI AZMI

UPON the Judgment of H.E. Deputy Chief Justice Ali Al Madhani dated 11 May 2023 (the "Judgment")

AND UPON the Defendant's Appeal Notice dated 1 June 2023 seeking permission to appeal the Judgment (the "First PTA")

AND UPON the Order of H.E. Deputy Chief Justice Ali Al Madhani dismissing the First PTA dated 5 July 2023 (the "Order")

AND UPON the Defendant's second Appeal Notice dated 25 July 2023 seeking renewed permission to appeal of the Judgment (the "Second PTA")

AND UPON the Claimant's reply to the Second PTA dated 14 August 2023

AND UPON reviewing the case file

IT IS HEREBY ORDERED THAT:

1. The Second PTA is dismissed.

2. The Defendant shall pay the Claimant's costs of the proceedings on the standard basis, to be assessed by the Registrar, if not agreed.

Issued by:
Delvin Sumo
Assistant Registrar
Date of Issue: 4 September 2023
At: 9am

SCHEDULE OF REASONS

1. The Applicant had sought a first application for permission to appeal before the Trial Judge, H.E. Deputy Chief Justice Ali Al Madhani (the "Judge"), which was refused. The Judge had written a very comprehensive judgment giving reasons why he refused permission to appeal. The Applicant now seeks a second permission to appeal.

2. This dispute involves the Claimant who is an employer of the Defendant. The Claimant sought to recover damages from the Defendant who is the Applicant at this stage for breaches of his fiduciary and contractual duties owed by him to his employers. The amount claimed was AED 4,139,278. The amount claim was based on the figures which are laid out in detail in paragraph 6 of the Schedule of Reasons in the Order.

3. I find that for each of those claims, the learned Judge had meticulously discussed and considered the grounds for the claims as well as the defence that were put in by the Defendant. The learned Judge had gone through item by item of the claim and more so all the points of defence that were raised by the Defendants.

4. This case, as you can see from the grounds of Judgment, is almost based on question of fact. For the purpose of delivering my decision regarding the Second PTA, I do not need to go into detail. The learned Judge's decision ran up to 35 pages.

5. Again, when the learned Judge decided to dismiss the First PTA, he again went into fine detail about why he rejected the First PTA.

6. It is a well-established principal that when a case is based on facts, the Court of Appeal is very reluctant to infer with the finding of fact by the Trial Judge. I do not need to site many authorities on this well-established principal except perhaps to refer to one case *Al Khorafi & others v Bank Sarasin-Alpen (ME) Ltd [215] DIFC CA-003.* The Court of Appeal cited the case of *Assicurazioni Generali v Arab Insurance [2003] 1WLR577.* There are other authorities cited by the Respondent in this application for permission to appeal in the submission which I do not need to repeat them here. The Al Khorafi case was also cited by the Respondent in their Skeleton submissions.

7. From the recent submission for this Second PTA put in by the Applicant, the Applicant alleges that the learned Judge had failed to consider certain grounds, which are not that important to me as to disturb the overall findings of facts by the learned Judge. It is again also well established

that the learned Judge hearing a case is not expected to consider every fine detail of facts raised during the trial.

8. The only point of flaw that perhaps needs to be mentioned, was the allegation that the learned Judge had failed to apply the proper standard of proof. Reading from his Judgement, I am satisfied that the Judge had applied the proper standard in arriving to his decision.

9. The law is that permission to appeal should not be given unless the court is satisfied that there will be a real prospect of success, should the permission to appeal be granted. In this case, I find that there is no real prospect of success. I also do not find any compelling reasons as to why permission to appeal should be given.

10. I therefore dismiss this Second PTA with costs to be assessed by the Registrar, unless agreed by the parries.