IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

(1) AMERICAN INTERNATIONAL GROUP UK LIMITED
(AS TRANSFEREE OF AIG EUROPE LIMITED)
(2) MARKEL SYNDICATE MANAGEMENT LIMITED
(3) TALBOT UNDERWRITING LIMITED
(4) BERKSHIRE HATHAWAY INTERNATIONAL INSURANCE LTD
(5) LIBERTY MUTUAL INSURANCE EUROPE SE
(6) ANV CORPORATE NAME LIMITED
(7) ARCH INSURANCE (UK) LIMITED

Claimants/Appellants

and

QATAR INSURANCE CO. (BRANCH OF A FOREIGN COMPANY)

Defendant/Respondent

ORDER WITH REASONS OF CHIEF JUSTICE ZAKI AZMI

UPON the Judgment of Justice Lord Angus Glennie dated 26 February 2024 (the "Judgment")

AND UPON the Order with Reasons of Justice Lord Angus Glennie dated 17 April 2024 refusing the Claimant's Appeal Notice dated 18 March 2024 and the Claimants' Application No. CFI-003-2022/8 dated 20 March 2024 (the "First Permission Application")

AND UPON the Claimants' renewed Appeal Notice dated 9 May 2024 seeking permission to appeal the Judgment (the "Second Permission Application") and seeking a stay of the execution of the Judgment pending final determination of the appeal (the "Application for a Stay of Execution")

AND UPON reviewing all relevant material added on to the Court file

AND PURSUANT TO Part 44 of the Rules of the DIFC Courts ("RDC")

IT IS HEREBY ORDERED THAT:

1. The Second Permission Application is granted.

2. The Application for a Stay of Execution of the Judgment is granted.

3. Costs shall be costs in the case i.e. the costs of this Second Permission Application will follow the conclusion of the appeal.

Issued by:
Delvin Sumo
Assistant Registrar
Date of Issue: 21 June 2024
At: 11am

SCHEDULE OF REASONS

1. This is an application for permission to appeal against the order of the learned Judge, Justice Lord Angus Glennie, dated 26 February 2024 (the "Judgment") dismissing the Claimants' claim and allowing the Defendant's counterclaim (the "Second Permission Application").

2. According to the Judgement of the learned Judge, the issue in this case is only relating to the interpretation of the US-Iran sanctions law and whether the Claimants are by virtue of that sanction, prohibited from making payment to the Defendant the claims made by the Defendant under the various policies of reinsurances issued by the Claimants. As the Judge said, it is in fact a declaration of non-liability. The Respondent counterclaimed for the amounts that were due to them under the policies issued by the Claimants.

3. I am neither going into the details of the facts of the case nor the wordings of provisions relating to the sanctions against Iranians. They all can be found in the grounds of Judgment. The Judge had gone very detail into the facts and also discussed at length the arguments put by both sides. The question before me is to determine that if leave is granted, the Appellants would have a real prospect of success at the appeal. The second reason for permission to be given is if there is some other compelling reasons why permission to appeal should be given. Again, I am not going into the details of Rule 44.19 of the Rules of the DIFC Courts which set out what I had just said because there are already numerous authorities explaining what these two grounds are all about.

4. The claims under the insurance policies were as result of loss by the bank caused by fraud committed by its employees working hand in hand with a company Alpine whose shareholders include Iranians. The insurance companies were not affected by their American sanctions since the bank had been compensated by the Respondent. The Respondent originally refused to pay the amount of loss claimed by the bank but had to do so when the court ordered it to do so. Now the Respondent is seeking indemnity from the Claimants which had reinsured the policies issued by the Respondent.

5. According to the Claimants, they cannot pay the amounts due to Respondent because the original losses were incurred by US-owned company and that the ultimate beneficiary of the proceeds under the policy, is the company which is owned by three individuals who are Iranian nationals. Both parties called their respective experts to give evidence supporting their cases.

6. At paragraphs 27 and 28 of the grounds of Judgment, the Judge discussed the effect of the relevant words appearing in the clause, which the Judge had cited at length. He had no authority to support the interpretation of that clause and had to rely on the judgement of *Teare J in Mamancochet Mining Limited v. AEGIS Managing Agency Limited and others* [2018] EWHC 2643. He accepted the reasons given by Teare J and also concluded that he saw no reason not to accept that as the law of the DIFC. In his opinion, the law of the DIFC on this subject is similar to that of the Law of England. At paragraph 30, he said he was not concerned with the question of whether the Claimants would in fact be sanctioned for making payments which may be prohibited, or whether they were wrongly threatened with actions to be brought against them.

7. The two experts could not arrive at an opinion which is clearly one way or the other. The Judge discussed at length the expertise of each of the expert witnesses.

8. At paragraph 40 of his Judgment, the Judge admitted that one of the problems faced by him was the absence of judicial interpretation of the sanction legislation in the form of court judgments. Most of the sanctions were settled by compromise. And the parties accused of breaching the sanction paid the compensations or penalties required by the authority and these were made extra judicially. In the joint report, the experts agreed on some issues, but also disagreed on some of the issues. These appear in paragraphs 45 and 46 of the Judgment. At paragraph 56, the Judge concluded that since the Respondent's payment is to the bank, then whatever payment that the Claimants would be required to pay will also be made to the bank. This was, however, not agreed to by one of the experts. At paragraph 57, the learned Judge also put a possible counter argument to what was said in paragraph 56.

9. The judge also went at length to discuss how the fraud could have been committed by the fraudsters as employees of the bank working hand-in-hand with the company Alpine. At paragraph 62, the Judge concluded that if that were the right analysis there would be a link of sorts between the loss and Alpine, and it would be Alpine who suffered the original loss before the loss was made good by the bank, although that would not change his earlier views that payment was in fact for the benefit of the bank and no one else. At paragraph 63, he put in another analysis of the situation. However, he concluded that Alpine is not the final beneficiary. The Judge again went at very great length to discuss all the submissions put by the parties as to how the sanctions should be interpreted. At paragraph 83, the Judge discussed again the impugned clause and decided that it did not apply to the bank or to the Claimants in this case.

10. I have also read through the submissions of the Claimants as well as the Respondent.

11. I conclude that these issues brought before this DIFC Court is not a straightforward issue and although the laws applicable to this DIFC on this matter may be the laws of England as decided by the Judge but I am of the opinion that the permission to appeal should be granted on the ground there are other compelling reasons why the appeal should be heard and I say so because even reading through the grounds of Judgment by the judge, there are many issues that I think the Court of Appeal should decide. As I had spelt out above, the Judge in arriving at his conclusion also raised number of issues which he seemed to have hesitated whether they in his opinion were correct or not. Clarifying the law and interpretation of an important statute or written law, is an example of what amounts to compelling reason (see *Investment Group Private Ltd v Standard Chartered Bank* [2014] CFI 026).

12. For those reasons I give permission to appeal.

13. The request for Stay of Execution is granted. I agree with the reasonings given by the Claimants in their submission that there would not be any irredeemable damage. Should they fail in their appeal, the interest awarded by the Judge will be payable to the Respondent from the date of his Judgment.

14. On the question of costs, I order that costs will be costs in the case i.e. the costs of this Second Permission Application will follow the conclusion of the appeal.