Claim No: CFI 081/2023

IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANC

BETWEEN

MICHAEL GEORGE FORBES

Claimant

and

ROBERT KIDD

Defendant

AMENDED ORDER WITH REASONS OF H.E. JUSTICE SIR JEREMY COOKE

UPON the Claimant's Application No. CFI-081-2023/3 dated 19 February 2025 seeking an Order compelling the Defendant to provide full and proper responses to the Request for Further Information dated 31 December 2024 (the "Application")

AND UPON the Defendant's Evidence in Answer dated 5 March 2025

AND UPON the Claimant's Evidence in Reply dated 12 March 2025

IT IS HEREBY ORDERED THAT:

1. The Defendant shall within 21 days of this Order provide:

a) A comprehensive breakdown of the £8,512,000 in professional fees which appears in the Defendant's financial summary at RTP 1, with supporting documents for each item referred to;

b) Full information about all fee recoveries from Levy & McRae, Jonathan Brown or others, as set out in the Request for Information dated 31 December 2024;

c) Details of, and supporting evidence for, all payments made including any copy invoices and refunds or reimbursements received;

d) An explanation of how any recovered amounts are accounted for in the financial summary in RTP 1;

e) A detailed breakdown of the £1,979,000 in loans referred to in RTP 1, including the identity of the lenders, the dates each loan was taken, the terms of each loan (including interest rate, collateral, repayment schedule) and confirmation of the amounts repaid from the settlement proceeds, supported by underlying documentation such as loan agreements, bank statements and receipts;

f) A copy of the Client Account Ledger from Levy & McRae relating to the £20 million settlement and the sums received and paid out therefrom; and

g) In the event that the Defendant cannot produce the said Client Account Ledger or any of the other supporting documents referred to herein or below, the Defendant shall, within 24 days, file a witness statement setting out the attempts made by him to obtain all such documents and the responses of those whom he approached, including any written refusal of any firm of solicitors previously engaged by the Defendant of any of the companies he controlled.

2. The Defendant shall pay the Claimant the costs of this Application to be the subject of assessment if not agreed, but not to be assessed or paid until the conclusion of this action.

Issued by:
Delvin Sumo
Assistant Registrar
Date of Issue: 24 March 2025
Date of re-Issue: 26 March 2025
At: 2pm

SCHEDULE OF REASONS

1. The Claimant ("Mr Forbes") applies for an order that the Defendant ("Mr Kidd") should within 7 days provide full and complete responses to his Part 19 Requests made on 31 December 2024 to which Mr Forbes responded on 31 January in a manner which Mr Kidd considered inadequate (the "Application"). The issues arise from Mr Forbes' Request to Produce documents under Rule 28.16 of the Rules of the DIFC Court (the "RDC") of 11 November 2024, where Mr Forbes sought:

"All documents showing an accounting and breakdown of the £20 million settlement received by Defendant in the Scottish claim against Burness Paull LLP, to include the Defendant's Client Account Ledger held with Levy & McRae".

2. In response, on 13 December 2024, Mr Kidd provided a document referred to as RTP 1 which set out a one-page financial summary, prepared for the purpose by Mr Kidd and/or his lawyers, purporting to show that, of the total of £20 million received in respect of the settlement of the Scottish claim, £12,436,000 expenses had been incurred, leaving only £7,564,000 as a net figure to which any 20% alleged entitlement of Mr Forbes could apply by way of a success fee. The summary went on to set out figures paid to SarCogent, Mr Forbes and Chris Smylie of £1.43 million, with the conclusion that any balance owing by way of success fee would be limited to the sum of £83,000. Mr Kidd, in setting out his reasons for objecting to produce the documents in question stated that he had already produced by way of Standard Production, the invoices raised to A & E Investments/Momentum International Services by Levy & McRae and stated that he was not in possession custody or control of the Client Account Ledger of Levy & McRae.

3. As a response to the request for "all documents showing an accounting and breakdown of the £20 million settlement", this was, self-evidently, manifestly deficient. No supporting documents were provided to back up this high-level summary.

4. Whilst it would have been open to Mr Forbes to apply to this Court under RDC 28.36 for an order for further disclosure, there is nothing objectionable about the form of application which was made under RDC 19, given the Court's power, at any time, to order a party to clarify any matter which is in dispute in the proceedings and to give additional information in relation to any such matter. There is a strict requirement of reasonable necessity and proportionality in seeking such information and the Rules require that, before making an application to the Court, the party seeking clarification or information should first serve on the party from whom it is sought a written request for that clarification or information, with which Mr Forbes complied on 31 December 2024. This led to Mr Kidd's response of 31 January 2025 which confirmed that RTP 1 was a summary document prepared on behalf of Mr Kidd in response to the Request to Produce and gave limited further information about the figures contained in it.

5. The Request for Information ("RFI") relating to RPT 1 ran to 22 pages seeking both details and supporting documents for the individual items set out in RTP 1. Many of those requests were answered, at least in part, but three specific areas were raised which have given rise to the application to this Court. In the Application, Mr Forbes seeks:

> a) In relation to Professional Fees (Item A), a comprehensive breakdown of the £8,512,000 in professional fees, including disclosure of any fee recoveries from Levy & McRae, Counsel Jonathan Brown or others, together with details and supporting evidence of any funds or reimbursements received and an explanation of how any recovered amounts are accounted for in RTP 1.
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> b) In relation to Loans (Item C), a detailed breakdown of the £1,979,000 and loans, including the identity of the lenders, the dates each loan was taken, the terms of each loan (interest rate, collateral, repayment schedule) and confirmation of amounts repaid from the settlement proceeds, supported by underlying documentation (e.g., bank statements, receipts).
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> c) In relation to the Client Account Ledger from Levy & McRae (Item 3.5), a copy of the Client Account Ledger relating to the £20 million settlement. If Mr Kidd does not possess it, he is to provide evidence of all reasonable steps taken to obtain it from Levy & McRae and produce any correspondence received.

6. For the purposes of this Application, two witness statements were adduced, the first being that of Mr Hussain, dated 18 February 2025 in support of the Application. The second was a witness statement of Mr Kidd himself dated 5 March 2025. I have borne these in mind with the reply served on the half of Mr Forbes by his counsel dated 12 March 2025. The essence of the stances taken by the parties appear from these documents, but also from the answers to the RFI to which I have already referred. Mr Forbes largely repeats in his witness statement that which appeared in his response to the RFI.

7. Under paragraph 2.2.1 of the RFI, referring to "Professional Fees" and the figure of £7.574 million which was said to relate to Levy & McRae, Counsel, Experts and related disbursements, the request asked for itemised invoices, the dates and amounts of payments made with proof of payment and information as to any recovery of legal fees from Levy and McRae and/or Jonathan Brown (junior counsel) following the complaints made by Mr Kidd to the Law Society/Faculty of Advocates and the subsequent court proceedings which appear to have ruled that success fees charged by them were unlawful. Information was sought as to the amounts recovered, the court orders, settlement agreements or correspondence evidencing recovery, as well as details of any recovery from Pacific LF Limited, a vehicle apparently used by a partner in Levy & McRae for the receipt of £1.89 million and the impact upon the breakdown set out in RTP 1. All these requests were, to my mind justified.

8. Mr Kidd's response was to say that copy invoices amounting to £5,302,190 had been provided already and that the balance related to the final fee notes in respect of Counsel, which were said never to have been received, although £2,272,840 was paid out of the settlement proceeds. He said that he was unaware of the dates of payment because they were made by Levy & McRae following lump sum payments made to the firm by companies under Mr Kidd's control or from the loans referred to in a later request and answer. In relation to the question whether there had been any recovery of legal fees from Levy & McRae and/or Jonathan Brown and for information relating to any such recovery, Mr Kidd's answer was to say: "the Defendant is not permitted to disclose this information as he is bound by certain confidentiality obligations".

9. This objection to production of the relevant documents and provision of the relevant information is unsustainable. Confidentiality is not, per se, a bar to disclosure and it is self-evident that if Mr Kidd recovered legal fees or success fees from Levy & McRae, Counsel Pacific LF Limited, this directly impacts upon the net figure to which any 20% success fee would apply. It is essential for the purposes of this litigation that disclosure should be made, as sought by Mr Forbes, and that the information requested should also be given. Confidentiality obligations are always overridden by a Court order compelling production or provision of information where such matters are material to the outcome of the dispute and this Court requires Mr Kidd to comply with the requests made under paragraph 2.2.1 in their entirety. It is not suggested that this information is unavailable to Mr Kidd

10. Under paragraph 2.2.2, information was sought in relation to the sum of £794,000, said to represent fees of McClay, Murray and Spens, with a request for itemised invoices and details of the dates and amounts of payment made, with proof of payment and confirmation of the payers. Mr Kidd said he was unable to locate any invoices or to confirm the date on which payments were made beyond saying that they were made in about 2013 and 2014. £729,481.71 was paid by companies controlled by Mr Kidd (primarily A & E Investments) directly, as set out in RRFI-2, whilst the remaining £65,161.95 was paid by Levy & McRae from the award of costs of £1 million in the Scottish proceedings. No further

information was given beyond this. Both Levy & McRae and McCrae, Murray & Spens were lawyers engaged by Mr Kidd and/or his companies and are answerable to them in relation to any documents held. If any documents are in their possession custody or control, they are also in the control of Mr Kidd. He must therefore require his former lawyers to produce all such information in their control and demonstrate to this Court that he has done so by way of a witness statement which is to be filed with this court within 24 days if the documents are not forthcoming. In the event that the lawyers state that they no longer have any such documents in their possession or archives, statements in writing from those lawyers must also be exhibited to that witness statement.

11. Under paragraph 2.2.3 the figure of £144,000 appears for "Other Professional Fees" for which information was sought in relation to the nature of services involved, the related invoices, dates and evidence of payment and the identity of the payer. In response to this, Mr Kidd referred to a statement appended as RRFI-3 but said that he was unable to locate any invoices and could not identify the dates upon which payments were made, whilst saying that they would have been made by either A & E Investments or Downhole Solutions, which were companies controlled by him. He said that the information he was able to give had been extracted from the bank statements of those two companies which means that the identity of the payees is known to him and that they could be approached for invoices and information as to the services provided. Once again, Mr Kidd should approach these entities for the documents and within 24 days file a witness statement setting out his actions and their response if materials are not forthcoming.

12. Under paragraph 2.4.1 of the RFI, details were sought in relation to "Loans Incurred to Finance Legal Case" of £1,979,000, seeking a detailed breakdown and description of the loans, the identity of the lenders, the dates of the loans and the terms of those loans, the amounts loaned and repaid and the identity of those who made and received payments.

13. Mr Kidd's answer to this request was to say that the loans were taken specifically to fund the Scottish proceedings but otherwise to repeat the same objection to disclosure and production on the basis of alleged confidentiality. This objection carries no more weight here than it did in relation to the requests under paragraph 2.2.1 and this Court orders the provision of the information sought and documents in support.

14. Under paragraph 3.5 of the RFI, Mr Forbes sought Mr Kidd's Client Account Ledger from Levy & McRae in order to see all the payments in and out. Mr Kidd says that this is not in his possession and that on numerous occasions he asked Levy & McRae to produce it but was told that *"they did not operate that way"* in relation to the Scottish proceedings. This response, on its face, it appears extraordinary. In his witness statement, Mr Kidd refers to this ledger as part of a time recording system showing details of the fee earners' hours worked and the amounts to be billed. Mr Forbes, in reply, says that it is a financial record, mandated by the Law Society of Scotland to track client funds' receipts and disbursements and that a failure to maintain such a record would risk disciplinary action including striking off. It must therefore exist. The financial transactions relating to the £20 million settlement and its disbursement should therefore appear in detail in that ledger. That appears to the Court to be correct.

15. Given the complaints already made to the Law Society about the fees charged and, it would appear, the success fee paid to Levy & McRae and Mr Brown, it would not be surprising if details of what appears in the Ledger had not already been disclosed to Mr Kidd. Whether or not that is the case, it appears to this Court that he would be entitled to see such records of his account and that of his companies with Levy & McRae and that a request of those solicitors, coupled, if necessary, with a threat of litigation in the event of refusal, should result in production of all the relevant figures. Again, this Court requires Mr Kidd to demand all relevant extracts of the client account Ledger in relation to receipt and disbursement of the £20 million settlement and to do so, reporting back within 24 days in the event of failure.

16. It is plain to the Court that the orders sought by Mr Forbes are justified in the circumstances outlined above. The trial on this matter is scheduled for four days beginning on 21 July 2025 and there is a need for these matters to be resolved speedily. This order is therefore to be the subject of compliance within 21 days for production of information and documents in Mr Kidd's possession and in the event of refusal of others to provide documents to him, the subject of a witness statement from him within 24 days.

17. This Application should not have been necessary and has been caused by Mr Kidd's refusal to provide documentation which gives rise to suspicion as to his motivation for so acting. The Court is of course, entitled to draw adverse inferences from failures to produce documents in the control of a party, should it appear right to do so. Whether or not it would be right to do so always depends on all the circumstances. Regardless of that, the Application has succeeded and Mr Forbes must be entitled to the costs of it. Those costs are not to be assessed or paid, however, until the litigation is concluded.