THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

**In the name of His Highness Sheikh Mohammad Bin Rashid Al Maktoum,
Ruler of Dubai**

IN THE COURT OF FIRST INSTANCE

BETWEEN

LAMARIA

Claimant / Appellant

and

LANDRAD

Proposed Third Defendant / Respondent

JUDGMENT OF H.E. JUSTICE ALI Al MADHANI

UPON reviewing the judgment of H.E. Justice Maha Al Mheiri dated 19 April 2022 (the "Judgment")

AND UPON reviewing the order of Justice Lord Angus Glennie dated 8 June 2022 (the "Order")

AND UPON considering the Claimant's appeal (the "Appeal") and the Defendant's response to the Appeal

IT IS HEREBY ORDERED THAT:

1. The Appeal is allowed.

2. The Judgment is accordingly set aside.

3. There be no order as to costs.

Issued by:
Ayesha Bin Kalban
Acting Registrar
Date of Issue: 3 October 2022
At: 10am

SCHEDULE OF REASONS

1. H.E. Justice Maha Al Mheiri decided that the Court does not have jurisdiction to try the case against the Third Defendant and accordingly removed the Third Defendant from the proceedings. The Claimant appeals that decision, being the Judgment.

2. Permission to appeal the Judgment was granted by Justice Lord Angus Glennie. I will return to his decision, being the Order, below.

3. At the interim stage, jurisdiction does not need to be established with absolute certainty. Instead, the Court will generally ask whether the claimant has a "good arguable case" that the Court has jurisdiction via one or more of the jurisdictional "gateways" of Dubai Law No. 12 of 2004, being the Dubai Judicial Authority Law (the "JAL"). In *Nest Investment Holding Lebanon S.A.L. & Ors v Deloitte & Touche (M.E.)* [2018] DIFC CA 011, the Court of Appeal found that RDC r. 20.7 is a DIFC regulation for the purposes of the jurisdictional gateway at Article 5(A)(1)(e) of the JAL such that, where its criteria are met, jurisdiction arises in respect of a party even if there would otherwise be no jurisdiction over that party. RDC r. 20.7 is often referred to as the "necessary or proper party jurisdiction," though I think it would be more precise to call it the "desirable party jurisdiction." In other words, for the Court to exercise its jurisdiction over a party, it would be sufficient, for example, that a claimant has demonstrated a mere good arguable case that it is desirable to add a new party so that the Court can resolve all the matters in dispute in the proceedings on the basis of RDC r. 20.7(1) combined with Article 5(A)(1)(e) of the JAL.

4. Amongst Lord Glennie J's findings are these:

> "5. . The first [reason I have decided to grant the application for permission to appeal] concerns the offer of shares themselves dealt with in paragraph 2 of the Offer letter.
>
> 7. The Offer letter in which that is written was sent by the Second Defendant and offers the possibility at least of the shares in the Third Defendant as part of the remuneration package.
>
> 10. . it must be remembered that the Third Defendant is a 100% shareholder of the First and Second Defendants.
>
> 11. Mr. Bhatti, on behalf of the Third Defendant accepted the argument that whatever the Second Defendant said in the letter about shares in the Third Defendant, must have been said in the knowledge and authority of the Third Defendant.

13. . it is arguable that the Third Defendant is bound to the same extent as the Second Defendant. This Court would have jurisdiction on that basis.

14. The second [reason I have given permission to appeal is that] the Claimant makes the point that as the case proceeds the Second Defendant may say, as already has said, that it could not give shares in the Third Defendant, that was the Third Defendant not the Second Defendant to do, but if the Third Defendant is not a party, then that point cannot be resolved.

15. The Rules of Court and RDC 20.7(1) deal with this situation, that provides that the Court may order a person to be added as a new party if (1) it is desirable to add the new party so that the Court can resolve all the matters in dispute in the proceedings.

16. 16. That is this case, the Third Defendant was added as a party after the action commenced, and the addition of the Third Defendant can be justified on this basis.

17. *It is necessary and desirable that the Third Defendant be added to the proceedings so the Court can resolve all matters and dispute in the proceedings.* For those reasons, I am satisfied that there are realistic prospects of success on the jurisdiction of appeal. (emphasis added)"

5. I adopt Lord Glennie J's reasons for giving permission to appeal as reasons for allowing the Appeal. It will be noted that, in giving permission to appeal, which only requires, as material, that there be a real prospect of success of the appeal, the learned judge nevertheless felt able to say that "*it is* necessary and desirable that the Third Defendant be added to the proceedings." I agree and adopt this finding also. In other words, I think the Claimant has a better than good arguable case that the Court has jurisdiction over the Third Defendant.

6. As Lord Glennie J also observed in the Order, the question before the Court in the Appeal only relates to jurisdiction, which is separate from the merits of the claim: "The Court at present is not concerned with the merits of the claim, except in so far as the merits impact on the question of jurisdiction" (paragraph 2 of the Order); "Nothing I say affects the underlying merits of the claim, or to put in another way, nothing I say affects the prospects of the Claimant recovering in the respect of the share offer in the offer letter dated 19 August 2021" (paragraph 3 of the Order). These points will have been noted by the parties, but are worth emphasising.