IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

LXT REAL ESATE BROKER LLC

Claimant/Applicant

and

SIR REAL ESTATE LLC

Defendant/Respondent

ORDER WITH REASONS OF JUSTICE ROBERT FRENCH

UPON the Part 8 Claim Form dated 20 July 2023 and amended on 26 July 2023

AND UPON the Claimant's Urgent Application No. CFI-050-2023/1 dated 20 July 2023 seeking injunctive relief (the "Application for Interim Relief")

AND UPON the Orders of Justice Robert French dated 25 July 2023 (as amended and reissued on 26 July 2023) and 28 July 2023

AND UPON a Consent Order dated 2 August 2023

AND UPON hearing from Counsel for the Claimant and Counsel for the Defendant, and the Defendant giving an undertaking to the Court in a hearing on 22 September 2023

AND UPON the Reasons for Judgment of Justice Robert French dated 27 September 2023

AND UPON reviewing the written submissions for costs dated 18 October 2023

AND UPON reviewing documents on the Court file

IT IS HEREBY ORDERED THAT:

1. The Claimant shall pay the Defendant's costs of the interim relief proceedings including the costs of the written costs submissions to be assessed by the Registrar on the standard basis.

2. The Claimant shall pay 50% of the sum of AED 686,376.67 set out in the Defendant's Schedule of Costs, namely AED 343,188.33 by no later than 14 days after the date of this order.

Issued by:
Hayley Norton
Assistant Registrar
Date of Issue: 30 November 2023
At: 10am

SCHEDULE OF REASONS

Introduction

1. On 27 September 2023 judgment was delivered in this matter dismissing the Claimant's application for interim injunctive relief and giving the parties liberty to apply on the question of costs.

2. Written submissions on the costs issue have now been delivered. As noted in the concluding paragraph of the Judgment, this was a case in which the claim for interim relief was brought as a standalone proceeding and not as an application in aide of a claim for final relief. I was inclined to the view that the claim having been brought in that way, the costs should follow the event. However, as that issue had not been debated, I gave leave to the Parties to make written submissions.

3. Pursuant to the leave granted on 27 September 2023, the Defendant filed a written submission seeking costs of the proceeding including costs of and occasioned by hearings on 24 July, 28 July, 1 August and 22 September 2023, to be assessed by the Registrar on an indemnity (and alternatively standard) basis and paid forthwith.

4. The Defendant seeks an interim payment in the sum of AED 480,463.67 not later than 14 days after the date of the Court's costs order. That amount represents 70% of the total sum of AED 686,376.67 set out in the Defendant's Schedule of Costs dated 21 September 2023.

5. The Defendant submitted that the costs should follow the event. There was no basis upon which the Court could make any other order. The

Defendant submitted that the costs should be assessed on an indemnity basis because of:

(a) the inherently speculative character of the application;

(b) evidence of an ulterior commercial purpose on the part of the Claimant in bringing the application;

(c) use of the application to make unjustified personal attacks on the Defendant;

(d) the Claimant's failure to follow the contractually agreed dispute resolution procedure before commencing litigation; and

(e) the Claimant's attempt to bring the application ex parte.

6. The Claimant sought an order that the costs be stood over to a final hearing on the basis that the determination of the Court on the application for interim relief was necessarily provisional. Alternatively, it sought costs to be assessed on the standard basis and an interim payment on account of 50% of the Defendant's costs within 21 days.

7. The Claimant said that the Defendant's actions following the delivery of judgment in this matter, had made any claim for final injunctive relief "a fait accompli" - presumably it meant "pointless". That is because the Defendant had proceeded with rebranding and had purported to terminate the Partnership Agreement. The Claimant is now contemplating an action for damages.

8. The Claimant says it had been willing to press ahead with a claim for final relief but this was resisted by the Defendant. The Claimant had also offered to issue proceedings in a reformulated version of its draft Part 7 Claim to reflect its new and legitimate claims in order to stand the costs of the application over to the substantive proceedings.

9. The Defendant was said to be in breach of the Partnership Agreement. The Claimant contended that the Defendant in its application for costs arising out of the interim relief application was attempting to stifle the legitimate claims that the Claimant has and to prevent it from having sufficient resources to pursue its action.

Consideration and Conclusion

10. In my opinion the Defendant should have the costs of the application for interim relief, which was presented as a discrete proceeding. The Claimant failed to establish the conditions for the grant of relief in that it failed to establish a serious case to be tried. As appears from the Claimant's submissions, the injunctive relief aspect of the dispute is now effectively at an end.

11. Although no serious case to be tried was established that of itself does not mean that indemnity costs should be awarded. Allegations of abusive collateral purposes on the part of the Claimant are not supported by sufficient evidence to enable the Court to determine them. In the circumstances, the following orders will be made:

(a) The Claimant shall pay the Defendant's costs of the interim relief proceedings including the costs of the written costs submissions to be assessed by the Registrar on the standard basis.

(b) The Claimant shall pay 50% of the sum of AED 686,376.67 set out in the Defendant's Schedule of Costs, namely AED 343,188.33 by no later than 14 days after the date of this order.