THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

(1) EMIRATES NBD BANK PJSC
(2) AL KHALIJI FRANCE SA
(3) HSBC BANK MIDDLE EAST LIMITED
(4) UNITED ARAB BANK PJSC
(5) UNITED BANK LIMITED
(6) NATIONAL BANK OF FUJAIRAH PJSC
(7) COMMERCIAL BANK OF DUBAI PJSC
(8) NOOR BANK PJSC
(9) DUBAI ISLAMIC BANK PJSC

Claimants

and

(1) ADVANCED FACILITIES MANAGEMENT LLC
(2) NASER BUTTI OMAIR YOUSEF ALMHEIRI
(3) ADVANCED INTERNATIOANL EMPLOYMENT SERVICE LLC
(4) ADVANCED LAUNDRY LLC
(5) ADVANCED ENVIRONMENTAL SERVICES LLC
(6) AL ETIHAD INTERNATIONAL TYPING & TRANSACTION FOLLOWING CENTRE LLC
(7) ADVANCED NATIONAL CONTRACTING LLC
(8) CRUISE EXPRESS RENT A CAR LLC
(9) BIN BUTTI INTERNATIONAL HOLDINGS LLC

Defendants

ORDER WITH REASONS OF JUSTICE SIR JEREMY COOKE

UPON the Claimants' claim dated 25 August 2020

AND UPON the Defendants filing and serving a defence and counterclaim on 9 March 2021

AND UPON the Claimants' application for immediate judgment on the claim and the counterclaim, save for the claim under the Personal Guarantee dated 30 December 2018 (the "Personal Guarantee Claim")

AND UPON hearing counsel for the Claimants and Counsel for the Defendants at a hearing on 20 April 2022 and 21 April 2022

AND UPON the Amended Order with Reasons of Justice Sir Jeremy Cooke dated 10 May 2022

AND UPON the Court concluding that the Defendants' defences and counterclaims have no real prospect of success (save as regards the Personal Guarantee Claim) and that there is no other good reason why they should continue to trial.

IT IS HEREBY ORDERED THAT:

Immediate judgment on the money claims

1. Immediate Judgment is entered for the Claimants on the claim in the sums set out in paragraph 2.

2. The Defendants shall by **4pm on 1 July 2022** pay the following sums:

(a) AED 295,057,468.47 to Emirates NBD Bank PJSC being the principal sum due to the said bank under the Facility Agreements dated 27 December 2018 (the "Facility") including contractual interest to the date of this Order;

(b) AED 82,616,091.17 to Al Khaliji France SA, being the principal sum due to the said bank under the Facility including contractual interest to the date of this Order;

(c) AED 35,406,896.22 to HSBC Bank Middle East Limited, being the principal sum due to the said bank under the Facility including contractual interest to the date of this Order;

(d) AED 153,429,883.60 to United Arab Bank PJSC being the principal sum due to the said bank under the Facility including contractual interest to the date of this Order;

(e) AED 50,985,930.55 to United Bank Limited being the principal sum due to the said bank under the Facility including contractual interest

to the date of this Order;

(f) AED 532,047,627.14 to National Bank of Fujairah PJSC being the principal sum due to the said bank under the Facility including contractual interest to the date of this Order;

(g) AED 294,403,211.95 to Commercial Bank of Dubai PJSC being the principal sum due to the said bank under the Facility including profit and late payment amounts to the date of this Order; and

(h) AED 586,460,581.57 to Dubai Islamic Bank (as transferee of Noor Bank PJSC's rights) being the principal sum due to the said bank under the Facility including profit and late payment amounts to the date of this Order.

3. Pursuant to Article 39 of the Court Law (DIFC Law No. 10 of 2004) and DIFC Practice Direction No. 4 of 2017, simple interest shall run on the sums due under paragraph 2 from the date of this Order until payment at the rate of 9% per annum.

4. For the avoidance of doubt, the Defendants' are jointly and severally liable to pay the sums at paragraphs 2 and 3.

Immediate judgment on the specific performance claim

5. Immediate Judgment is entered for the Claimants on the claim to specific performance of the First Defendant's obligations under clause 20.35.9 of the Common Terms Agreement dated 27 December 2018.

6. The First Defendant shall as soon as reasonably practicable and in any event **by 22 July 2022**:

(a) execute a DIP Short Form Mortgage in the form served by the First Claimant on 20 May 2022;

(b) register with the Dubai Land Department the executed DIP Short Form Mortgage;

(c) complete all other perfection requirements in connection therewith including procuring the issuance of a title deed by the Dubai Lands Department in respect of the DIP Short Form Mortgage;

(d) provide to Emirates NBD PJSC (1) a legal opinion from a firm acceptable to Emirates NBD PJSC as to the enforceability of the DIP Short Form Mortgage; and (2) a legal opinion from a firm acceptable to Emirates NBD PJSC as to the capacity and authority of the parties to the DIP Short Form Mortgage to enter into such document; and

(e) comply with all other reasonable conditions imposed by the First Claimant (as Global Agent and Security Agent in relation to sub-paragraphs (a) to (d) above.

7. For the purpose of paragraph 6(c), "perfection requirements" means any requirements necessary or desirable to ensure that the DIP Short Form Mortgage is perfected in Dubai including but not limited to the making of any registrations, notarisations, share register notations, filings, notifications, acknowledgements or fee payment, transfer of possession of any share certificates or other documents of title.

Immediate judgment on the counterclaims

8. Immediate judgment is entered in favour of the Claimants on the Defendants' counterclaims. The said

Stay of further proceedings

9. The Personal Guarantee Claim is stayed until further order of the Court.

Costs

10. The Defendants shall pay the Claimants' costs of the claims and counterclaims and of the application to be assessed if not agreed.

11. The Defendants shall by **4pm on 1 July 2022** pay the Claimants AED 1,440,725 on account of the costs referred to at paragraph 10 above.

Execution

12. This Order is final and executory in the execution courts.

Issued by:
Ayesha Bin Kalban
Deputy Registrar
Date of issue: 9 June 2022
At:2pm

SCHEDULE OF REASONS

1. Objection is taken to the figures in paragraph 2(h) of the draft judgment awarding sums to Dubai Islamic Bank (the "Bank"), because it is said that the sum AED 22.8 million received by the Bank has not taken into account. On the evidence of Jonathan Brooks, that sum was received by the Bank and set off against other indebtedness to the Bank and not against sums due under the Facilities which are the subject of this Action. The sum was applied to debts owed by the First Defendant under working capital facilities made available by the Bank in 2012. The Defendants say that it was not permissible to apply the sum in that way, under the terms of the OBN Energy Mortgage over the land in HFZ and refer to a two-page mortgage of the land granted to Noor Bank (the predecessor in title to the Bank). It is said that the Bridge Loan Master Murabaha Agreement only lists indebtedness under facility offer letters dated 16 May 2017 and 23 November 2015 from Noor Bank, and therefore any

Facilities dating from 2012 cannot be a facility granted by Noor Bank. The Facility in question must therefore be one granted by the Bank itself and not granted by Noor Bank and debts under that Facility are not within the scope of the mortgage pursuant to which the HFZ land was sold.

2. In answer, the Claimants say that it is too late for the Defendants to take any such point which should, if it had any validity, have been taken with evidence in the course of the proceedings for immediate judgment and cannot now be taken, without evidence, in the course of determining the form of the order consequent on the judgment given by the Court. No defence was pleaded in the terms now argued by the Defendants in respect of a known sale of the HFZ land under a process administered by the Sharjah Court pursuant to an action brought by a third party and no evidence has been adduced, whether before or after the Court's judgment on the immediate judgment application, save for the production, with the Defendants' submissions, of the two-page mortgage which was not previously in evidence. The Mortgage must be governed by UAE law but contains no provisions as to how any money recovered under it is to be applied, providing that property mortgaged may be sold "if the companies fail to repay its outstanding fully on the due dates".

3. On the evidence produced to the Court, however, the Bank did not enforce the mortgage directly because it was another creditor which proceeded to execute judgment on indebtedness due to it and remitted the surplus to the Bank which it then applied to other indebtedness, leaving the sums due under the Facility in issue in this action outstanding.

4. In these circumstances, on the evidence available to the Court both before and after the issue of the Court's decision on immediate judgment, the sums due to the Bank are as set out in the draft order prepared by the Claimants as a consequence of the decisions already made by the Court.

5. The Defendants object to the inclusion of a provision for statutory interest to run on the judgment sums, relying on the governing law provisions in the CTA and the Master Murabaha Agreement which state that English law governs but that, to the extent that English law would impose by statute any obligation to pay interest, the parties unconditionally waive any such right. There is no basis for substituting "DIFC law" for "English law" in the provisions and the accrual of interest on judgments is a matter of DIFC Law under Article 39 of the Courts Law which provides that such judgments "*shall carry simple interest from the date the judgment is entered at the rate of 9%or such other rate as the judge may prescribe*." Whilst there is a discretion in the judge as to rate, the award of interest is mandatory. The causes of action in English law merge with the Judgment and interest must therefore run under the statute on the judgment sums from the date of judgment. There is no good reason to depart from the statutory rate of 9%.

6. I can see no basis for any objection to the form of order of specific performance which mirrors the wording of the CTA. If there is any dispute or doubt as to what is actually required in complying with "all other reasonable conditions", the dispute can be referred to and determined by the Court on the basis of the factual situation to which it is said the provision applies..

7. As to costs, the Defendants submissions as to the unreasonable conduct of the Claimants are to be rejected. It is the Defendants who put forward a 50-page pleading and sought to complicate the position with untenable defences which meant that the Claimants had to deal with them. The Defendants are responsible for driving up costs and their own costs are substantial. A comparison of the costs incurred by the Defendants on the application demonstrate the reasonableness of the costs incurred by the Claimants in the action as a whole. There is no basis for any reduction in the costs claimed on that account for all the reasons put forward by the Claimants in their reply on consequential orders. I have considered the points raised by the Defendants in relation to the costs incurred by the Plaintiffs and the contrary submissions made by the Claimants and am unable to accept that the Defendants' objections have any real force.

8. The figures are significant, and the hearing exceeded one day so that I consider that a summary assessment is not appropriate, and the matter should be the subject of detailed assessment. Both because I am confident that the Claimants will recover not less than 75% of the costs claimed on a detailed assessment and because of the principles set forth in *Vegie Bar v ENBS* [2020] CA 001 at [26], I make an order for interim payment of costs in the sum of AED 1,440,725 There is evidence before the Court that the Defendants will not be in a position to pay the judgment sums plus costs and that an assessment might well prove to be a waste of further time and expense.

9. It is not uncommon for a judgment in the DIFC Court to state that it is final and executory in order to spell out to any enforcing court that the DIFC Court does regard the Order as being final and capable of execution. Such wording is appropriate in the present case.

10. It is agreed that there should be a stay of the claim on the personal guarantee given by the Second Defendant in his personal capacity, but he is of course liable for the indebtedness of NBB Group Establishment on its guarantee in the CTA.