Claim No. CFI 079/2021

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

(1) TRANSASIA PRIVATE CAPITAL LIMITED
(2) TA PRIVATE CAPITAL SECURITY AGENT LTD

Claimants/Respondents

and

(1) MADOS TRADING COMPANY LLC
(2) MADOS GLOBAL FZE
(3) MR. SRIDHAR MELARKODE VAIDYANATHAN
(4) MS. MINU SRIDHAR
(5) MR. RAJESH KAMATH

Defendants/Applicants

ORDER WITH REASONS OF CHIEF JUSTICE ZAKI AZMI

UPON the Order with Reasons of Justice Michael Black dated 20 December 2022 (the "Order")

ND UPON Athe Defendants' Appeal Notice dated 10 January 2023 seeking permission to appeal the Order (the "First Permission Application")

AND UPON the Order with Reasons of Justice Michael Black dated 1 February 2023 refusing the First Permission Application

AND UPON the Defendants' renewed Appeal Notice dated 21 February 2023 seeking renewed permission to appeal against the Order (the "Second Permission Application")

AND UPON the Claimants' Reply Witness Statement filed in response to the Second Permission Application dated 13 March 2023

AND UPON reviewing all relevant documents and submissions on the Court file

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

IT IS HEREBY ORDERED THAT:

1. The Second Permission Application is refused.

2. The Defendants shall pay the Claimants' costs of and occasioned by the Second Permission Application on the standard basis, to be assessed by the Registrar if not agreed.

Issued by:
Delvin Sumo
Assistant Registrar
Date of Issue: 17 March 2023
Time: 3:30pm

SCHEDULE OF REASONS

1. This is an application for a second permission to appeal against the decision of the Judge at the Court of First Instance (the "Second Permission Application"). The learned judge had refused a similar application before him.

2. The Respondents to this Second Permission Application, who are the Claimants at the Court of First Instance, sought and successfully obtained against the Applicants/ Defendants two orders. The learned judge refused the application to postpone the hearing of the case and he also granted immediate judgment against all the Defendants.

3. It is well established that in order to succeed in an application for permission to appeal, the applicant must show that he has a real prospect of success at the appeal or there are compelling reasons for which permission should be granted. For authorities to support this, I refer to RDC 44.19 and comments in Rupert Reed and Tom Montagu-Smith's DIFC Courts Practice.

4. The learned judge had gone into great detail in his lengthy grounds of judgment on the facts adduced before him, the arguments raised by both parties as well as his reasoning for arriving at the conclusions which he did.

5. The facts briefly are that the first and second Applicants/Defendants entered into a facility agreement to borrow the amount of USD 11,000,000 from the first Respondent/Claimant. The second Respondent/Claimant was the security agent. The Third, Fourth and Fifth Applicants/Defendants were the guarantors. The loan was documented by a facility agreement. The Applicants/Defendants defaulted on the loan. On 26 September 2021,

the Respondents/Claimants issued the claim for repayment of the loan and other monies due under the facility agreement. Service of the claim was acknowledged by the Applicants/ Defendants. On 1 March 2022, after application for Immediate judgement was filed the parties entered into a Payment Deed, where Applicants/Defendants acknowledged their debt. The Respondents/Claimants in fact relied on the Payment Deed for their claims.

6. The learned judge in his grounds of judgment, in refusing the request for the postponement of the hearing, cited RDC 26.91. He also quoted the judgement of Steel J in Corinth Pipe-works SA v Barclays Bank PLC at paragraph 43 of his judgment. The learned judge quoted Al Rihab v Emirates NBD Bank [2020] DIFC CA 006 (05/04/21) where the court warned against indulging in "a transparent attempt to prevent or delay immediate judgement application". The judge is right in holding that, although the matter is regarding postponement of a hearing of a case, the test behind the courts mind is whether the applicant will have a realistic prospect of success of his defence should his request for postponement be granted. At paragraph 45 of his grounds, he also rightly concluded that the application for adjournment merges with that for the immediate judgement.

7. Now we look at the application for application for appeal against the immediate judgement granted - is there a real prospect of success if the appeal is heard? At paragraph 58 of his grounds, the learned judge decided that the Defendants have admitted to the loan and their failure to repay the same. He quoted what the Applicants/Defendants said i.e., "the defendant is not claiming that monies were not lent, or interest rate and tenor was not agreed.". He also quoted paragraph 1.4 of the Payment Deed dated 1 March 2022 where the borrowers and the guarantors acknowledged as well as agreed to the aggregate outstanding principle owing to the lender is in the sum of USD 11,000,000 together with interest and other fees. Further, Mr. Kamath, (who I see as the spokesperson acting de facto counsel for all the five Defendants), admitted that in good intentions the Defendants wanted to settle the debt and efforts were made to settle the debt. These are strong words of admission of the debt. All other issues regarding the facility agreement vis a vis the framework agreement are to my mind irrelevant...more of a red herring. The debt has been admitted and in fact agreed to be repaid. The Payment Deed dated 1 March 2022 also provided for the Defendants to make payment of the amount of USD 300,000 but the amount was not forthcoming either. On those facts, to my mind, the Respondents/Claimants have proven their case against the Applicants/Defendants.

8. I therefore do not see any prospect, much less a real prospect, of success at the appeal even if the permission is granted. There are also no other compelling reasons for why this Second Permission Application should be granted, and neither was any suggestion made that there were any compelling reasons to do so.

9. I therefore dismiss this Second Permission Application and award costs to the Respondents/Claimants, the amount of which will be assessed by the Registrar, unless agreed to by the parties.