**THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS**

**IN THE COURT OF FIRST INSTANCE**

BETWEEN

**MAD ATELIER INTERNATIONAL B.V.**

Claimant

and

**(1) AXEL MANES**
**(2) CATHERINE ZHILLA**

Defendants

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**JUDGMENT OF JUSTICE SIR JEREMY COOKE**

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Hearing : **6 February 2023**

Judgment : Mr. Tom Montagu-Smith KC instructed by Norton Rose Fulbright (Middle East) LLP for the Claimant
The Defendants were not present

Judgment : **10 February 2023**

**UPON** the Claimant's claim in CFI-021-2022 seeking a Freezing Order against the Defendants ("Claim No. CFI-021-2022")

**AND UPON** the Claimant's claim CFI-030-2022 for the recognition and enforcement of a judgment of the Courts of England and Wales and for a declaration ("Claim No. CFI-030-2022")

**AND UPON** the Order of H.E. Justice Maha Al Mheiri dated 22 June 2022 consolidating Claim Nos. CFI-021-2022 and CFI-030-2022, with CFI-030-2022 being the active case moving forward

**AND UPON** my Order dated 14 October 2022 granting the Claimant Immediate Judgment in Claim No. CFI-030-2022

**AND UPON** the Court having reserved to the trial Judge the costs of the Claim No. CFI-021-2022 by Orders of Justice Lord Angus Glennie dated 18 and 25 March 2022

**AND UPON** having made the further Orders in respect of costs listed in the Schedule attached to this Order (referred to as "Cost Order 2" to "Costs Order 9") ("Schedule A")

**AND UPON** hearing the Claimant's counsel at the Trial listed before me on 6 February 2023 ("Trial")

**IT IS DECLARED THAT:**

1. Mr Axel Manes is the beneficial owner of Five Dining Corporation Limited, DIFC registered company number 3517, and has been its beneficial owner since its incorporation on 10 October 2019.

**IT IS HEREBY ORDERED THAT:**

2. The Defendants shall pay the Claimant's costs of Claim No. CFI-021-2022 on the indemnity basis, such costs to be the subject of detailed assessment if not agreed.

3. The Defendants shall pay the Claimant's costs of Claim No. CFI-030-2022 on the indemnity basis, such costs to be the subject of detailed assessment if not agreed.

4. The Defendants shall make the following interim payment on account of costs by no later than **4pm on 20 February 2023:**

(a) The Defendants shall pay USD 494,000 on account of the costs referred to in paragraphs 2 and 3 of this Order.

(b) The Defendants shall pay USD 99,000 on account of the costs for which they are jointly and severally liable under Costs Order 7.

(c) The First Defendant shall pay USD 216,000 on account of the costs for which he is individually liable under Costs Orders 5 and 8. and

(d) The Second Defendant shall pay USD 7,000 on account of the costs for which she is individually liable under Costs Order 4.

Issued by:
**Hayley Norton**
Assistant Registrar
Date of issue: 10 February 2023
At: 8am

**SCHEDULE OF REASONS**

**Introduction**

1. There is a considerable history to these proceedings which are linked to proceedings which have taken place in France, the UK and onshore Dubai and are currently taking place in Belgium.

2. The hearing which took place on 6 February 2023 was fixed by the Court on 14 October 2022, following a hearing in which I gave immediate judgment for the Claimant against the first Defendant ("Mr Manes") and recognised a judgment dated 9 December 2021 of Sir Michael Burton and an order dated 13 January 2022 of the Courts of England and Wales (the "English Judgment"). The judgment of the DIFC Court was for the sums of EUR 12,525,448 (or the Sterling equivalent), GBP 2,600,000, with interest which was quantified up to 7 October 2022 and was to run at 5% on the Euro figure and 8% on the Sterling figure. Sir Michael Burton's judgment was given following a three-week trial in London in which Mr Manes was found to have defrauded the Claimant. In the immediate judgment of this court, I recognised and enforced that judgment, making it a judgment of the DIFC Court.

3. The purpose behind the Claimant seeking a judgment here in the DIFC is to enforce it against assets which are said to be owned by Mr Manes in this jurisdiction, in particular shares in a DIFC company, Five Dining Corporation ("Five Dining") which owns a successful restaurant in the DIFC which is said to have been run by Mr Manes who is a celebrated restauranteur and chef. The Michelin stars award to the restaurant is attributable to him. These shares are said by the Claimant always to have been owned by Mr Manes despite attempts by him to distance himself from them in order to avoid execution of any judgment on them. It was his case that, until recently, they were owned by his then wife, the Second Defendant ("Ms Zhilla"), from whom he is now divorced and her two children, to the tune of 34%, 33% and 33% respectively. Although he now accepts that he owns the shares in question, his case is that these were the subject of an agreement for sale to him by Ms Zhilla on an unspecified date, but of which he informed the Court in his fifth witness statement dated 9 November 2022.

4. The trial of the issue of ownership of these shares had been set for 6 February 2023 with directions given for the determination of that issue with disclosure to be provided by Mr Manes and Ms Zhilla of a series of documents relevant to their ownership, to which I shall return later in this judgment. The parties were, in accordance with the directions, to exchange witness statements but neither Defendant has complied with the orders for disclosure nor served any further witness evidence in relation to that issue for the purposes of the hearing, despite the service by Mr Manes of seven prior witness statements and the service by Ms Zhilla of two witness statements and an affidavit in these proceedings.

5. On 29 December 2022, Mr Manes informed the Court that he no longer intended to participate in the proceedings or attend the trial fixed for 6 February 2023, which he reconfirmed in a letter to the Court dated 4 January 2023. He had previously been represented and had vigorously contested the applications made by the Claimant up to that point as is revealed by the number of witness statements served by him, which contain surprisingly little of any relevance to the issue of the ownership of the shares. On 5 January 2023, Ms Zhilla wrote to the Court and the parties to say that she did not intend to participate in the proceedings or attend the trial either. By a letter received by the Court today, 6 February 2023, Ms Zhilla's solicitors stated that they were no longer instructed for her and have since applied to come off the record.

6. There are three significant other matters which should be mentioned at this stage arising from the welter of applications which have previously been made in these proceedings, mostly by the Defendants, which have resulted in three pending applications before the DIFC Court of Appeal, for permission to appeal from the decisions of the Court of First Instance on this matter which have been adverse to them.

6.1. The first such matter is that on 22 December 2022 the Court appointed a Receiver and Manager over the shares in Five Dining in order to safeguard the shares themselves and the assets of the company in which those shares were held. Both the Claimant and Mr Manes had sought such a receivership but on different terms, the object of both essentially being to secure a sale of the Restaurant to a buyer for a sum of the order of EUR 6.5 million or more. As appears hereafter, Mr Manes resisted the notion of appointment of a manager of the business, insisting that management by him was critical to a successful sale. The inconsistency of that submission with the case which had previously been made and was, at that stage, still being made and that point appears below.

6.2. The second is that, on 4 January 2023, there was a transfer of the shares to the Receiver by Ms Zhilla and the two children, so that the Receiver undoubtedly has legal title to the shares and can sell them.

6.3. The third is that it is now agreed by Mr Manes and Ms Zhilla that Mr Manes is the beneficial owner of the shares which are the subject of the Receivership.

7. It might be asked why, in the circumstances, it is necessary for there to be a trial at all. The Claimant says that there are at least three reasons for this.

7.1. First, the basis upon which it is now said by the two Defendants that the shares currently belong beneficially to Mr Manes is because of the alleged agreement made between the two of them that the shares should be sold to him by Ms Zhilla and her children for the sum of USD 150,000 which she maintains is owed to her on the basis that she had prior ownership of the shares and that this sum should be paid to her from the proceeds of the receivership. Although this might be thought a small sum in the overall context of this dispute, the Claimant sees no reason why that should be conceded.

7.2. Secondly, the question of legal and beneficial ownership of the shares had, until the actual transfer of the shares to the receiver and the alleged agreement of sale to Mr Manes, been a source of continuing dispute in this Court, engendering a considerable body of costs, liability

for which falls to be determined. In deciding that issues, it is necessary to decide the underlying issues in the action.

7.3. Third, it is necessary or at least helpful for the Court to resolve the disputed history, in order to avoid further complications. In particular, it is said that the findings may be significant in relation to somewhat similar proceedings taking place in Belgium concerning the ownership of shares in M.A. Developpement SRL (the "Belgian Company"), the company which indirectly owns a restaurant in Paris under the same brand and which is or was indisputably run by Mr Manes.

8. In consequence, the Claimant seeks a declaration that Mr Manes is the beneficial owner of Five Dining and has been the beneficial owner since its incorporation on 10 October 2019. This is a live dispute and as there is utility in such a declaration, should it be made, the court has proceeded to examine the evidence in order to determine the issues which arise.

9. Five Dining is a DIFC company incorporated on 10 October 2019. At inception, Mr Manes was the sole registered shareholder and sole director of the company.

9.1. On 24 August 2020, the shares in Five Dining were transferred to a company incorporated in the Jebel Ali Free Zone, Five Aces Ltd ("Five Aces"). There is no accessible register to inspect in order to ascertain details of ownership of the shares in that company and no access has been given to relevant documents by the Defendants, but Ms Zhilla has said that she is the owner of that company.

9.2. On or about 17 January 2022, according to the Defendants, 34% of the shares were transferred to Ms Zhilla and the balance to her two children in equal shares, although she has, inconsistently in her Defence, also referred to her shareholding as 33%.

9.3. On 4 January 2023, the shares were transferred to the Receiver.

10. The Claimant says that there is significance in the timing of these events when compared to the course of proceedings in England and the DIFC. Thus:

10.1. English proceedings were issued by the Claimants against Mr Manes on 12 April 2019 and on 7 June 2019 he issued a strike out application on the basis of proceedings which had taken place in France.

10.2. In October 2019, Five Dining was incorporated with Mr Manes as sole director and shareholder.

10.3. In November 2019, as appears hereafter, loans were obtained from Societe Generale Cyprus, with Mr Manes providing a guarantee and a cash deposit as security.

10.4. On 28 April 2020, Bryan J dismissed Mr Manes' strike out application.

10.5. On 20 May 2020, Mr Manes transferred 100% of the shares in the Belgian Company to Ms Zhilla.

10.6. On 29 July 2020, the Claimant served Amended Particulars of Claim in the English proceedings to include allegations of fraud against Mr Manes and a claim for damages in deceit.

10.7. On 24 August 2020, Mr Manes transferred the shares in Five Dining to Five Aces.

10.8. On 4 September 2020 and 29 September 2020, the loans to 5 Dining were restructured with an increase in Mr Manes' personal guarantee and the execution of various other documents including an express statement to the lending bank by Mr Manes that he was the ultimate beneficial owner of Five Dining and would remain so.

10.9. Between 11 October and 2 November 2021, the trial took place in the English proceedings.

10.10. On 25 November 2021, Ms Zhilla filed a divorce application in the Personal Status Court ("the Family Court") in onshore Dubai.

10.11. On 9 December 2021, Sir Michael Burton gave judgment against Mr Manes in the English proceedings.

10.12. On 3 January 2022, Ms Zhilla transferred 100% of the shares in the Belgian company to Mr Manes.

10.13. On 7 January 2022, the Claimant made an application in the English proceedings for a Worldwide Freezing Order and on 13 January 2022, when judgment was actually entered against him in the English proceedings, Mr Manes gave undertakings to the court by his leading counsel that he would not deal with any of his assets pending a further hearing of the application on 24 January 2022.

10.14. On 17 January 2022 a Divorce Settlement Agreement was concluded between Mr Manes and Ms Zhilla, and a Divorce Certificate was obtained from the Family Court in onshore Dubai. On the same date, Five Aces transferred the shares in Five Dining to Ms Zhilla and her two children, ostensibly as part of the Divorce Settlement.

10.15. On 18 January, in breach of the undertaking given to the English Court, Mr Manes transferred 100% of the shares in the Belgian Company to Ms Zhilla.

10.16. On 21 January 2022, Mr Manes resigned as director of Five Dining and Ms Zhilla became a director of it.

10.17. On 24 January 2022, Sir Michael Burton issued a worldwide freezing order against Mr Manes, requiring him (inter-alia) to provide disclosure of his assets.

10.18. On 25 January 2022 the Claimant obtained an order of *saisie conservatoire* over the assets of Mr Manes in Belgium.

10.19. On 1 February 2022, the DIFC Register was updated to reflect the transfer of the shares from Five Aces to Ms Zhilla and the

children, and her appointment as a director.

10.20. On 7 March 2022, Ms Zhillah filed an enforcement application in the DIFC Courts in respect of the transfer of shares to her and the children.

10.21. On 18 March 2022, the Claimant obtained a freezing order in the DIFC Courts against Mr Manes.

10.22. On 29 March 2022, Ms Zhilla commenced proceedings in onshore Dubai seeking an order to prevent the enforcement of the English Judgment and declarations that she and her children owned the shares in Five Dining and that the Claimant and Mr Manes had no rights over them.

11. From this history of events, it can be seen that the transfer of the shares in Five Dining to Five Aces followed shortly after the amendment of the Claimant in the English proceedings to include allegations of fraud and deceit. It can also be seen that the divorce proceedings and the transfer of the shares, as well as the transfer of the shares in the Belgian Company, in January 2022, took place following the entry of judgment in the English proceedings on 13 January 2022 (after hand down of the reasoned judgment on 9 December 2021) and shortly before the application for a Worldwide Freezing Order was heard by the English Court.

12. In this connection, a number of features of the parties' relationship bear on the issues that this Court has to determine following the judgment of Sir Michael Burton on 9 December 2021.

12.1. The first is the divorce proceedings which took place between the Defendants, resulting in a Divorce Certificate issued by the onshore Dubai Court on 17 January 2022 with a financial settlement of that date approved by the court which led to the transfer of the shares on the same date from Five Aces to Ms Zhilla and the children. The terms of that agreement are important because they refer, as part of the Divorce Settlement, to Mr Manes transferring the shares in the Belgian Company to Ms Zhilla and to her procuring the transfer of shares in Five Dining to the two children, as if she was the owner of Five Aces.

12.2. The second is the alteration of the DIFC Register to reflect that transfer of shares in Five Dining on 1 February 2022, following an application by Ms Zhilla to the DIFC Registrar.

12.3. The third is the obtaining by the Claimant of an ex parte freezing injunction on 18 March 2022 from this Court.

12.4. The fourth is the proceedings commenced by Ms Zhilla on 29 March 2022 in onshore Dubai seeking to prevent the enforcement of the English judgment and seeking declarations as to the ownership of the shares, based on the Divorce Settlement. The onshore Dubai Court declined to entertain this claim, stating that it was a matter for the DIFC Court.

12.5. The fifth is the service, on 10 May 2022, of Particulars of Claim by the Claimant in the DIFC with an application for immediate judgment to enforce the English Court judgment which led to the court granting such judgment on 14 October 2022 and giving directions for the determination of the issue of ownership of the shares in Five Dining.

12.6. The last feature to which attention needs to be drawn is the fact that on 28 October 2022, each of the Defendants served Defences in which they both maintained that the shares in Five Dining were owned by Ms Zhilla and her children.

The Defendants' contentions

13. Each of the Defendants was represented at the time of submitting witness statement and defences. Those representing them appeared before the court and made statements and submissions as to the respective positions of their clients until notifying the court that they would not participate further.

14. In Mr Manes' Defence:

14.1. At paragraph 5 (b), it was alleged that the transfer of the Five Dining shares by him to Five Aces on 24 August 2020 was a transfer of the legal title only, in circumstances where Ms Zhilla was already the ultimate beneficial owner of those shares and of Five Aces.

14.2. At paragraph 7, it was alleged that, prior to the order of the on-Shore Dubai Family Court requiring the transfer of the ownership of the shares, its execution by the DIFC Court and the registration of the transfer to Ms Zhilla and her children in January 2022, she was the sole beneficial owner of those shares.

15. It has thus been Mr Manes' case that, from the date of incorporation of Five Dining, although he was the registered legal owner of the shares until 24 August 2020, Mr Zhilla was always the ultimate beneficial owner of those shares and remained such until the date when she agreed to sell them back to him sometime before 9 November 2022. At that point, as a matter of law, because of the alleged contract of sale, if it existed, the agreement to sell to him meant that he then became the beneficial owner of the shares.

16. In her defence, Ms Zhilla, without descending into any detail, pleaded at paragraph 9 that "the Second Defendant is the legal and beneficial owner of the 33% in Five Dining and the 100% owner in Five Aces".

17. At paragraph 6 of his Defence, Mr Manes also alleged that the beneficial ownership of the shares had been finally determined by the onshore Dubai Family Court in the divorce proceedings which approved the settlement between him and Ms Zhilla, whereby the shares were transferred from Five Aces to her and her two children. I need not dwell on this point because, in the context of giving immediate judgment, I referred to the decision of the onshore Dubai Court in which it held that the question of ownership of the shares was a matter for the DIFC Court and went on to say this:

"Whilst the decision of the on-shore Dubai Court may constitute a judgment in rem in respect of the status of the First Defendant and Second Defendant as divorced persons, it is not a judgment in rem in respect of the distribution of property between them. It is merely an in personam

judgment between the two of them which is not conclusive against the world in respect of the ownership of the assets referred to in the agreement sanctioned by the Court".

18. Putting that point to one side therefore, it is common ground between the Claimant and Mr Manes that the transfer of 24 August 2020 of the Five Dining shares to Five Aces only involved the transfer of legal title whilst the beneficial interest remained with whoever owned it previously. Mr Manes says that this was Ms Zhilla, which she effectively endorsed in her Defence as referred to above, whilst the Claimant says that it was Mr Manes who was at all times the ultimate beneficial owner. That, therefore, is the critical issue which I have to determine. If Mr Manes was both legal and beneficial owner of the Five Dining shares between 10 October 2019 and 24 August 2020, all transfers thereafter, whether from Five Aces to Ms Zhilla and her children or from them to the Receiver could only pass the legal title to the shares since the beneficial interest remained with him.

19. At paragraph 19 of Ms Zhilla's second witness statement and at paragraph 5 of Mr Manes' fifth witness statement, it was said that there was agreement between them, through their respective legal representatives in the Dubai Courts, that she would transfer the shares to him so that she could be removed as a party from the DIFC Courts' proceedings on his promise to pay her and her children a price of USD 150,000 to enable him to seek to dispose of the Dubai Restaurant for best value in order to meet his debts, including the judgment debt. She referred to this as an agreement in principle between the Defendants, subject to the Court's permission and the discharge or variation of the Freezing Order issued against her. At paragraph 6(a) of Mr Manes' sixth witness statement, he referred to this as agreed but, because the Claimant refused to agree any payment, he had made a "counterproposal" of payment of AED 500,000 (USD 136,000 approximately) which, because of the smaller sum involved, would mean that the Small Claims Tribunal could decide the issue which is now before this Court.

The Court's consideration of the evidence

20. The starting point in any consideration of ownership is that legal ownership ordinarily carries with it beneficial ownership and if the two are separated, some special arrangement must be established to show that- see *Stack v Dowden* [2007] 2 AC 432, 440 at [8]. *"Equity follows the law"*. Whilst it is common ground that, when Mr Manes transferred the legal title to Five Aces in the Five Dining shares, there was no transfer of beneficial interest, it is for the Defendants to establish that, before the transfer, there was a trust relationship by which Mr Manes held the legal title on trust for, or as nominee for Ms Zhilla. This, they have failed to do.

21. There are numerous reasons why the version of events put forward by Mr Manes and Ms Zhilla is not credible. Despite the number of witness statements filed by the two Defendants, at no point have they ever descended into any detail about the position from the date of incorporation of Five Dining to the date of transfer of the shares in it to Five Aces. They have produced no documents of any kind to evidence any such trust relationship. Ms Zhilla, in her second affidavit, at paragraph 12-13 said this:

> "12. As to the DIFC Restaurant, on 17 August 2020, Mr Axel Manes transferred all of the shares in the DIFC Restaurant to Five Aces Ltd, an offshore company registered in Jebel Ali Free zone, Dubai (registration No. 223771), which was fully owned and controlled by me. In 2019, I began planning to move to Dubai and requested Mr Axel Manes, who was in Dubai at that time, to establish the DIFC Restaurant for me. The initial registration of the DIFC Restaurant and the signing of the DIFC lease was done in the name of Mr Axel Manes, however, the agreement was that I would be the owner and will manage the DIFC Restaurant, when I relocate to Dubai. I provided the initial investment funding to Mr Axel Manes from my personal funds.
>
> 13. As part of our divorce settlement agreement .., on 1 February 2022, I formalised the transfer of DIFC Restaurant's shares from Five Aces Ltd to me (34%), and our children.... (33%) .... and (33%)".

22. This alleged agreement is not supported by any record of any kind. It lacks commercial logic and the documents which the Court has seen tell a different story. Mr Manes has expressly stated the contrary on one occasion and has, at different times, said inconsistent things to support whatever position he was then seeking to advance to the courts. The divorce settlement does not assist since it was an agreement reached between the parties, sanctioned by the court in order to provide some maintenance for the children out of dividend income and is not binding in any way on any third party.

23. The agreement, as alleged is vague and unparticularised. Ms Zhilla asserts that *"she would be the owner and would manage the restaurant in the DIFC when I relocate to Dubai"*.

> 23.1. On its face, the agreement made at an unspecified date in 2019, (when Five Dining was incorporated on 10 October of that year), refers not to the date of incorporation but to some point in the future when she was to relocate to Dubai. The agreement was for something to happen in the future, not for a current trust relationship.
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> 23.2. No information is given as to when she did move to Dubai or what happened then.
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> 23.3. The reason proffered for the absence of any transfer until 17 August 2020 makes no sense in the context of COVID where restrictions only commenced in about March 2020.
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> 23.4. As appears below, it is clear that Mr Manes has at all times been running the restaurant, despite denying it on several occasions, when it suited him to do so. He was the registered sole director from the outset and remained a director until 21 January 2022 when Ms Zhilla was appointed.
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> 23.5. There is no evidence of any kind that Ms Zhilla ever managed the restaurant in Dubai and all the material presented to the Court shows that Mr Manes did so at all material times.
>
> 23.6. Mr Manes is the restauranteur not Ms Zhilla, who does not suggest that she had any expertise in running a restaurant at all.
>
> 23.7. The part of Five Dining's Articles of Association exhibited by the Defendants, reveals that Mr Manes' authority to act for the company was built into its constitution with an ability to carry out all major functions on its behalf.

24. There is no evidence of any kind that Ms Zhilla provided any funding to Mr Manes or Five Dining, beyond her assertion that she did so. No financial documents of any kind have been put before the court. Even if she did provide finance, there is no commercial logic in the suggestion that she would be the sole owner of the restaurant.

24.1. Mr Manes provided his expertise, connections and work, according to him, in exchange for a salary of AED 44,000 per annum (about USD 39,200). Head chef packages, on the evidence put before the court normally range from AED 500,000 to AED 650,000 per annum and Mr Manes is a well-known chef and restauranteur. It is inconceivable that the only benefits which was to accrue to him was that small salary, which would be the case if the shares in the business were beneficially owned by Ms Zhilla.

24.2. If Ms Zhilla was to run the restaurant, she would no doubt be the recipient of a salary and that would be no reason for her to be a shareholder.

24.3. If she provided money, without any formal provision for her to be a shareholder, the ordinary conclusion to be drawn would be that she was simply to be a lender.

24.4. Furthermore, any shareholding would undoubtedly be related to the extent of funding, none of which is in evidence.

24.5. In any event, as appears elsewhere in this judgment, funding appears to have come from Societe Generale, with security furnished by Mr Manes himself.

25. Under RDC 28.61: *"If a party fails without satisfactory explanation to produce any document requested in a Request to Produce to which he has not objected in due time or fails to produce any document ordered to be produced by the Court, the Court may infer that such document would be adverse to the interests of that party"*.

26. On 15 December 2022, this Court ordered the Defendants to disclose various categories of documents which they have failed to do. Amongst them were the following:

26.1. Contemporaneous communications in which agreement was reached as to the ownership of Five Dining;

26.2. Documents evidencing the payments that Ms Zhilla claims that she made by way of investment;

26.3. Documents evidencing the registration or notification by Mr Manes of the ultimate beneficial owner of Five Dining in accordance with the DIFC Ultimate Beneficial Ownership Regulations or otherwise;

26.4. Documents evidencing attempts to transfer the shares prior to August 2020;

26.5. Correspondence between the two Defendants concerning that transfer;

26.6. Documents evidencing when Mr Zhilla moved to Dubai and her role in the restaurant; and

26.7. Documents evidencing the ownership of Five Aces.

27. The absence of any documents of this kind, all of which could be expected to be in the control of the Defendants, if they existed, tells against any assertion of an agreement of the kind alleged. If such documents existed and supported the Defendants' case, it would be expected that they would produce them. They have not done so. Adverse inferences fall to be drawn in relation to those contentions which are otherwise unsupported. When the failure of both Defendants to provide witness statements or to appear at the trial is taken into account, there is simply no basis for the court accepting what appears in defences and in an affidavit in the vaguest of terms in relation to any suggestion of separation of the legal and beneficial ownership of the shares at any point between 10 October 2019 and 24 August 2020.

28. When account is taken also of documents which have emerged during the course of the receivership application, this conclusion is reinforced. The documents showed that:

28.1. Five Dining had taken out loans from Societe Generale in November 2019 of approximately EUR 4 million, with an increase in September 2020 backed by a cash deposit and personal guarantee, both provided by Mr Manes.

28.2. On 12 November 2019, in order to obtain the loan for Five Dining, Mr Manes signed an undertaking as *"beneficial owner"* of Five Dining in favour of Societe Generale, agreeing that from 12 November onwards he would not *"sell, transfer, assign or otherwise dispose of the shares of the company to any third party without prior written notice"* and undertaking *"to advise you of any change in the shareholding structure of the company"*. That undertaking tallies with the absence of any registration of a different ultimate beneficial owner in the DIFC Companies register under the Ultimate Beneficial Ownership Regulations 2018, Regulation 4.1. The failure to produce a copy of this register, pursuant to the order for disclosure, is, once again, telling.

28.3. Mr Manes also appears that to have been able to obtain a loan from Five Dining itself in order to make a personal loan of EUR 2.7 million to a M Doumet. In correspondence relating to the receivership, in an email to the Receiver dated 29 December 2022, Mr Manes described the cash collateral for the loan and the sums paid to M Doumet as being *"funds advanced by me"*. It appears therefore that the initial investment funding required to establish the restaurant in 2019 came from Societe Generale, with Mr Manes' collateral, and that he was able to find funds to make loans himself which suggests that he had no need of funding from Ms Zhilla.

28.4. After 24 August 2020, and between 31 December 2020 and 31 October 2022, Mr Manes received a dividend of AED 3 million from Five Dining and drew down an additional AED 23,726,593 from the shareholders' equity account. Although the dates are not clear, it appears that this also includes the period after January 2022 when the legal title to the shares was transferred to Ms Zhilla and the two children from Five Aces.

28.5. Ms Zhilla has, at all times during this litigation in the DIFC, maintained that she had inadequate funds to pay for lawyers and sought to take a minimal role in the action in consequence, leaving it to Mr Manes to fight the battles, so far as possible. Had she been a shareholder in Five Dining, she would presumably have had access to the funds to which Mr Manes appears to have had ready access from that company.

29. It is also clear that Mr Manes has told lies in relation to the running of Five Dining. In his sixth witness statement in the English proceedings, whilst confirming that he had a full beneficial ownership interest in the Belgian company which ultimately owned the Paris restaurant, despite the "to-ing" and fro-ing" in transfers of shares, to which the following paragraph of this judgment refers, he said that he did not ultimately control or run the Dubai Restaurant though he was a director of Five Dining and worked there. In a letter from his English lawyers dated 3 March 2022, he claimed to have stepped down as a director and to have had no role whatsoever in Five Dining from January 2022 onwards. However, it became clear during the course of arguments about the appointments of a receiver and Manager, that he did run the Dubai Restaurant. One of the major planks in the argument put forward by him against appointing the Receiver as Manager of the business was that the licence agreement for the restaurant required him to retain a direct or indirect majority interest in Five Dining and that he should remain in charge of the operation and management of the restaurant. It was argued that any change in the shareholding in Five Dining could forfeit the lease as well as any change in management. When I asked Counsel for Mr Manes at the hearing of the applications for appointment of a Receiver whether Mr Manes did or did not run the restaurant, there was a degree of prevarication before it was accepted that he did run it, despite the pretence that had been made of absence of access to the company's records and the production of a power of attorney, supposedly to enable him to market the assets of Five Dining (which was not issued by any current director at the time).

30. Whilst matters relating to the Belgian Company are not for this Court to determine, the oddities and timing of transfers of shares in that company, which indirectly owns the Paris restaurant, is worth noting. On 26 March 2019, Mr Manes subscribed for all the shares in the Belgian Company. On 20 May 2020, following the dismissal of his strike out application in the English proceedings, he transferred those shares in the Belgian company to Ms Zhilla as a gift (in French a *"donation"*). On 3 January 2021, he revoked that gift (*"revocation de la donation"*). On 13 January 2022, Mr Manes gave undertakings to the English Court that he would not deal with any of his assets prior to the further hearing of the application for a worldwide freezing order and on 24 January, the English court granted such an order. Nonetheless, on 18 January 2022, Mr Manes transferred the same shares to Ms Zhilla once again. Not only is Mr Manes shown to have been in breach of the English injunction but the sequence of events bears a marked similarity to dealings in the shares in Five Dining, with what appears to have been exactly the same motivation, namely to seek to make himself judgment proof.

31. Furthermore, Ms Zhilla has also told lies about the shares in the Belgian Company. In her affidavit she claimed that the shares were transferred to her by Mr Manes on 20 May 2020 by way of donation in recognition of her provision of initial investment funding. Although she does not there allege any contract similar to that alleged in relation to the Five Dining shares, she then said that Mr Manes had revoked the donation without her knowledge. When reference is made to the register of title for the Belgian Company, it can be seen that, on each of the three transfers in which she was involved, her initials appear as one of parties to those transfers.

32. As the Claimant points out, Sir Michael Burton, in his judgment in the English proceedings, found that Mr Manes had transferred his shares in a company called Ragnar to a third party, retaining beneficial ownership in them but maintaining throughout the proceedings that he had no interest more control over them.

33. As to the agreement for the sale by Ms Zhilla and the children of the shares in Five Dining to Mr Manes for USD 150,000 and then subsequently for a revised price of AED 500,000, it is clear that the prices contemplated bear no resemblance whatsoever to the value of the shares, when the Restaurant itself is being marketed for something in excess of EUR 6.5 million. The unreality of this agreement is manifest. The notion that, if she and the children were truly the beneficial owners of the shares, they would dispose of them for USD 150,000 and then agree to a reduction to AED 500,000, in order that any claim should be susceptible to the jurisdiction of the Small Claims Tribunal, is risible.

34. Finally, in this context, it is worth drawing attention to the inconsistency in the position adopted in relation to the Divorce Settlement and its effect. It was the Defendants' case in onshore Dubai that Ms Zhilla was in a position to transfer 66% of the shares to her children and as between the divorcing spouses, that was not in issue before that court. There is however an oddity for her then to apply to the Dubai Courts for the enforcement of the obligation to transfer the shares as she did on 10 February 2022, where she was the Applicant and Mr Manes was "the Executee". She then applied to the DIFC Court to enforce the agreement against herself, presenting it as a judgment, in which she appeared as the applicant but with no named judgment debtor and the address given for the latter as her own address. The effect was nonetheless, in the absence of any objection, that the DIFC Court asked the Registrar of Companies to change the registration. If, however, Ms Zhilla was the owner of Five Aces, the transfer could have been effected without any order of any kind since it depended solely upon her making the necessary transfer to the children. It is apparent that the purpose of the exercise was to seek to cloak a transfer which was in reality from Mr Manes as ultimate beneficial owner to herself and the children.

**Conclusion**

35. In the light of this material, with the legal ownership vested in Mr Manes prior to 24 August 2020, it is for the Defendants to establish that the beneficial interest lay elsewhere from 19 October 2019 onwards. The Defendants have not only failed to discharge the burden of proof which lies upon them to show that the beneficial interest lay elsewhere than with the legal ownership, but their account of events is so inconsistent with the documents and commercial probability that the Court cannot accept it.

36. In circumstances where the Defendants have failed to produce witness statements directed to the issues which the Court has to determine, have failed to appear to be cross examined on the statements in their Defences and earlier affidavits/witness statements, have failed to produce documents in accordance with the Court's order which could have substantiated their case if it was true, have told lies to this Court or the English Court and have made inconsistent statements, their evidence in those earlier statements and Defences lacks any credibility. The documents that the Court has seen are inconsistent with the Five Dining shares being held on trust for Ms Zhilla and the Court has no hesitation in concluding that Mr Manes as at all times since the incorporation of Five Dining on 10 October 2019 been the beneficial owner of all the shares in it.

37. In the circumstances and for these reasons, the Claimant is entitled to the declaration sought and to the costs of the action. The conduct of the Defendants is way beyond the norm both in dishonestly putting forward a version of events relating to the ownership of the Five Dining shares, in

seeking to avoid enforcement of a judgment debt, following a three-week trial in London and in taking multiple points which had no merit in an effort to impede the progress of this action.

38. Insofar as costs have already been awarded on the standard basis, those orders remain extant but in relation to every other application where costs orders have not been made, the indemnity basis is appropriate, as it is for the action as a whole. On being addressed by Counsel for the Claimant, who on an ex parte basis raised such arguments as he could imagine the Defendants making, I have concluded that an interim payment is appropriate, the details of which appear in the Order to which these Reasons are scheduled.

| | Date | Nature of Order | Order made on costs in principle | Order on account |
|---|---|---|---|---|
| 1 | 25 March 2022 | Orders of Justice Lord Angus Glennie granting the Claimant's application (CFI-021-2022/1) for {freezing injunctions against D1 and D2 | Costs were reserved | N/A |
| 2 | 24 May 2022 | Order of the Registrar Hour Hineidi regarding the Claimant's Application (CFI-021-2022/5) seeking an extension of time to respond to D2's JJC stay application | No order as to costs | N/A |
| 3 | 29 June 2022 | Order of HE, Justice Maha Al Mheiri granting a stay of the proceedings further to the following applications being made:<br>• D2's Application for stay of proceedings (CFI-021- 2022/3)<br>• D1's Application for a stay of proceedings (CFI-021- 2022/6)<br>• D2's Application for a stay of proceedings (CFI-030- 2022/2)<br>• D1's Application for a stay of proceedings (CFI-030- 2022/3)<br>*Note: the Order of 29 June 2022 was subsequently set-aside by the Order of H.E. Justice Ali Al Madhani dated 1 August 2022* | No order as to costs | N/A |
| 4 | 7 September 2022 | Order of H.E. Deputy Chief Justice Ali Al Madhani dismissing D2's Application for an extension of time to challenge jurisdiction (CFI-(030-2022/8) | D2 to pay C's costs on the standard basis, to be assessed by the registrar if not agreed | N/A |
| 5 | 14 October 2022 | Order of Justice Sir Jeremy Cooke granting C's Immediate Judgment Application (CFI-030-2022/1) against D1 and dismissing D1's Part 8 jurisdiction application (CFI- 021-2022/4), Part 7 jurisdiction application (CFI-030-2022/9) and ADR application (CFI-030-2022/12) | D1 ordered to pay C's costs in respect of all four applications, to be assessed if not agreed | N/A |
| 6 | 20 October 2022 | Order of Justice Sir Jeremy Cooke dismissing D2's application for an extension of time to file her defence (CFI-030-2022/11) | D2 to bear her own costs of the application | N/A |
| 7 | 1 November 2022 | Order of H.E. Justice Ali Al Madhani awarding the Claimant's its costs of its application to set aside the order of 29 June 2022 (CFI-030-2022/5) which was granted and its costs of D1 and D2's De Novo Applications (CFI- 030-2022/6 and CFI-030-2022/7), which were dismissed | D1 and D2 to pay the costs of the three applications on the standard basis or determined by the registrar if not agreed | N/A |
| 8 | 15 December 2022 | Order of Justice Sir Jeremy Cooke granting the Claimant's document production requests against D1 | D1 to pay C's costs of C's document production request against D1, subject to assessment if not agreed | N/A |
| 9 | 22 December 2022 | Order of Justice Sir Jeremy Cooke granting C's Receivership application (CFI-030-2022/16) | D1 to pay C's costs of the following applications, to be assessed if not agreed:<br>• C's Receivership application (CFI-030-2022/16)<br>• D1's Receivership application (CFI-030- 2022/14)<br>Costs of D2's discharge application (CFI-030-2022/15) to be costs inthe case | D1 to pay $110,000 on account of the costs ordered in respect of C and D1's Receivership Applications by 3 January 2023 |