Claim No. CFI 044/2021

IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE

IN THE COURT OF FIRST INSTANCE

BETWEEN

SHIRAZ MAHMOOD

Claimant

and

STANDARD CHARTERED BANK DIFC

Defendant

ORDER WITH REASONS OF JUSTICE WAYNE MARTIN

UPON the Court indicating on 20 February 2024 its view that witnesses of the Defendant should not attend Court prior to the giving of their own testimony

AND UPON the Defendant seeking on 21 February 2024 that the Court make a formal ruling

AND UPON the application of the Claimant on 21 February 2024

AND UPON hearing oral submissions from the Claimant and the Defendant

AND HAVING REGARD TO the nature of the disputes in the case and the Court's case management powers and powers to control witness evidence (including RDC r. 4.9 and 29.9(3))

IT IS HEREBY ORDERED THAT:

1. From the opening of the Defendant's case each of those due to be called by the Defendant to give evidence (the "Defendant's witnesses") shall be sequestered (as defined in paragraph 3 below) until such time as they have completed their own oral testimony.

2. The Defendant's witnesses who have not yet given evidence must not access or be told about the other witnesses' evidence in any way until they have completed providing each of their oral testimony in the proceedings.

3. As to sequestration, by paragraph 1 of this order the Defendant's witnesses are prohibited from the following until they have completed their oral testimony:

(a) Communicating about these proceedings with a Defendant's Witness who has been called to give evidence or who is giving evidence (without prejudice to the obligations of a witness giving evidence) either directly or indirectly;

(b) Attending Court in person;

(c) Accessing the oral evidence of other witnesses via any video or audio link or by any other electronic or virtual means including in particular YouTube; and

(d) Receiving any information, summary or transcript of the oral testimony of the other witnesses from any person.

4. Upon completion of providing their oral testimony, witnesses shall continue to be prohibited from communicating about these proceedings with any witnesses who are yet to give their oral testimony.

5. This order does not prohibit the Defendant's witnesses from listening to the oral testimony of the Claimant.

6. There shall be no order as to costs.

Issued by:
Hayley Norton
Assistant Registrar
Date of issue: 22 February 2024
At: 3pm

SCHEDULE OF REASONS

1. The submissions I have heard are concurrent in that both parties contend that I have a discretion to make an order to exclude the Defendant's witnesses until such time as they have given their evidence and that is a discretion to be exercised in the particular circumstances of the case.

2. The application that is now made for such an order is made prior to any of the Defendant's witnesses giving evidence and is therefore, in my

view, timely, although I accept that it would be usual practice for such an order to be sought at the commencement of a trial. In this case no harm is done because no objection is taken to the presence of the Defendant's witnesses during the cross-examination of the Claimant.

3. The question I must determine is whether the circumstances of this case justify the making of an order to the effect that each of the Defendant's witnesses shall remain out the court and shall not be exposed to any of the testimony given by any of the other Defendant's witnesses before giving their own testimony.

4. A significant component of this case is an allegation that many officers of the Defendant colluded and collaborated with each other in order to cause disadvantage to the Claimant for reasons that were related to one or other of the protected characteristics and in particular the allegation of discrimination on the basis of race/nationality.

5. The factual issues pertinent to that claim turn very much upon issues of credibility and extensive periods have been set aside for the cross-examination of all the witnesses in this case, because of the consideration that the case may turn critically upon credibility issues.

6. Given that the nature of the case is one of collusion between persons, who include many and indeed most of the witnesses who will be giving evidence on behalf of the bank, this seems to me to be pre-eminently a case in which an order of the kind sought should be made in the interests of justice in order that I can assess the credibility of the witnesses untainted by anything they may have heard as a result of being exposed to the testimony of witnesses who have given evidence prior to them.

7. For those reasons, there will be an order that the Defendant's witnesses are to remain out of court until giving their evidence and are not to be given any information in relation to the testimony of other Defendant's witnesses before giving their evidence. After they have given their evidence, they are free to remain in court, but there is no obligation for them to do so. None of the Defendant's witnesses are to have any access to any information relating to the testimony of witnesses who give evidence prior to them, and that includes accessing information through publicly available means such as YouTube.