Claim No. CFI 070/2018

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

IDBI BANK LIMITED

Claimant

and

(1) MABANI DELMA GENERAL CONTRACTING CO LLC
(2) [NOT USED]
(3) DELMA ENGINEERING PROJECTS COMPANY LLC
(4) DELMA EMIRATES DIESEL
(5) DELMA EMIRATES GENERAL TRANSPORT
(6) AHMED KHALIL KHALED ALMERAIKHI
(7) SHERIFA AHMED KHALIL KHALED ALMERAIKHI
(8) MARIAM AHMED KHALED ALMERAIKHI

Defendants

ORDER OF JUSTICE LORD ANGUS GLENNIE

UPON reviewing the Court file

AND UPON the Claimant's Application No. CFI-070-2018/9 dated 23 December 2021 filed pursuant to RDC 4.3 and/or RDC 28.36 for an order that unless the Defendants re-file and serve affidavits which comply with the terms of the October Order, the Defence shall be struck out and judgment automatically entered for the Claimant (the **"Unless Order Application"**)

AND UPON the Court having adjourned the Unless Order Application insofar as directed at the Third Defendant with liberty to restore by way of its Order dated 2 March 2022

AND UPON the Court having restored the Unless Order Application insofar as directed at the Third Defendant to be heard at the present hearing

AND UPON reviewing the Rules of the DIFC Courts (the **"RDC"**)

AND UPON reviewing the terms of the Consent Order in these proceedings dated 28 October 2021 (the **"October Order"**)

AND UPON the Defendants having agreed to provide Document Production of the documents produced or located as part of the internal investigation into the affairs of the **"Delma Companies"**(defined in the October Order as including the Defendants, Al Dhafra Trading Enterprise Company (**"ATECO"**), Delma Emirates Group, Delma Investments and Delma Emirates Travel)

AND UPON reviewing the affidavit of the Mr Hussein Salem Al Hashemi dated 9 November 2021 filed on behalf of the Third Defendant pursuant to the terms of the October Order

AND UPON hearing Mr Shivji QC for the Claimant and Mr Al Hashemi for the Third Defendant at the hearing on 6 July 2022

IT IS HEREBY ORDERED THAT:

1. The Third Defendant shall by **4pm on 10 August 2022** provide Document Production of the documents produced or located (to include any instructions in relation to the scope or conduct of the internal investigation) as part of the internal investigation into the affairs of the Delma Companies.

2. The Third Defendant shall by **4pm on 10 August 2022** file and serve an affidavit which contains the information listed at paragraph 5 of the October Order. Further, the affidavit:

(a) Shall include an explanation as to why the Third Defendant failed to comply with the terms of the October Order.

(b) Shall address each of the defects identified in the Third and Fourth Witness Statements of Patrick Dillon-Malone as set out in the Schedule A to this Order.

3. The Third Defendant shall provide to the Claimant copies of each of the documents mentioned at paragraph 53 of the affidavit of the Seventh Defendant dated 7 November 2021 by **4pm on 10 August 2022.**

4. The Third Defendant shall provide to the Claimant a copy of the entirety of the attendance book of the Defendants' Umm Al Nar office, mentioned at paragraph 13 of the witness statement of Samah Abdelmonem Zein Elshishtawy dated 15 July 2020, by **4pm on 10 August 2022.**

5. Pursuant to RDC 28.39 the Third Defendant shall produce the documents, carry out the searches and address the defects set out in Schedule B

to this Order by **4pm on 10 August 2022.**

6. In the event that the Third Defendant does not comply fully with paragraphs 1, 2, 3 and 4 of this order, or any of those paragraphs, the Third Defendant's Defence may be struck out. The question of whether the Third Defendant has complied with this Order, and the full consequences of any non-compliance, shall be determined at the hearing specified in paragraph 7.

7. A further hearing shall be listed **on 24 August 2022 at 9am London time / 12pm Dubai time** with a time estimate of 3 hours. The hearing may be discharged on a written application by the Claimant.

8. The Third Defendant shall pay the Claimant's costs of and occasioned by the Unless Order Application on the indemnity basis, immediately assessed in the sum of AED 187,109.00, by **4pm on 20 July 2022.**

Issued by:
Nour Hineidi
Registrar
Date of issue: 7 July 2022
At: 4pm

SCHEDULE A

Defect No.	Description of Defect	Reference	Explanation or Action Required of the Third Defendant
	Defects in Affidavits		
General			
1.	***Electronic Data repositories*** While the existence of servers and storage devices are identified the persons in paras 5(c) or 5(d) of the October Order whose data they contain are not.	PDM3 146	The Third Defendant must identify whose data is contained on the servers and storage devices mentioned in the Affidavit of Mr Al Hashemi.
2.	The Defendants have previously stated in correspondence on 23 October 2021, that back-ups exist for the PCs of Rajanikanth Radhakrishnan, Siddarth Appaiah and Sajith Kumar, but do not list these back-ups amongst the electronic data repositories.	PDM3 121	The Third Defendant must explain whether backups exist for the PCs of these employees and, if so, explain why they were not included in the Affidavit of Mr Al Hashemi.
3.	The Affidavits fail to identify which of the devices are still available for inspection or production and which are not; and the devices which have been sold or scrapped have not been identified.	PDM3 118, 120	The Third Defendant must identify all of the devices which are still available for inspection or production.
4.	The Affidavits make no mention of servers, hard drives and storage devices, or to off-site and cloud storage systems	PDM3 117(e)-(f)	The Third Defendant must provide a list of all servers, hard drives, storage devices, off-site and cloud storage systems containing data for any of the individuals listed at paragraphs 5(c) and 5(d) of the October Order.
5.	***Domain Names*** Various email domains continued to be used from late 2017 into early 2018, despite all domains purportedly being closed in late 2016 - early 2017.	PDM3 142	The Third Defendant must explain how those domains continued to be used after the period in which it says those domains were closed; it must identify the exact date upon which it alleges that the domains were closed.
6.	The Third Defendant appear to have changed domain service provider on 28 September 2016. Despite this in all Affidavits only a single domain service provider is specified for each domain.	PDM3 143	The Third Defendant must provide a full account of the change in domain service provider, including by identifying who the domain service provider(s) was or were prior to 28 September 2016 and who they changed to after that date.
7.	***Hard Copy Files*** There has been a wholesale failure by the Third Defendant to list hard copy files on the basis that they are in a *"state of chaos."* This is contrary to Ahmed's DPSs in which he stated reasonable searches had been carried out of hard copy files.	PDM3 158 - 161	The Third Defendant must provide a catalogue of all hard copy document files within its possession and control.
8.	***Professional advisors*** Hussam Elsayed is a professional advisor acting for the Delma Group, but is not listed in any of the Affidavits.	PDM3 167(d)	The Third Defendant must explain the role of Mr Elsayed, including the nature of his role and the date of his appointment, and explain why he was not listed in the affidavit of Mr Al Hashemi.
9.	Mr Tim Swain is not listed as a professional advisor in any of the affidavits, despite having acted as an advisor to the Delma Group with regards restructuring its debts in 2017 onwards	PDM4 29(b)	The Third Defendant must explain the role of Mr Swain, including the nature of his role and the date of his appointment, and explain why he was not listed in the affidavit of Mr Al Hashemi.

10.	Mazars LLP are not listed as a professional advisor in any of the affidavits, despite apparently having acted as an advisor to the Delma Group with regards restructuring its debts in 2017 onwards	PDM4 29(b)	The Third Defendant must explain the role of Mazars LLP, including the nature of their role and the date of their appointment, and explain why they were not listed in the affidavit of Mr Al Hashemi.
	Other matters		
11.	Sources of information for matters stated in the Affidavits are are not properly identified.	PDM3 113	The Third Defendant must properly identify the sources of information in the Affidavit of Mr Al Hashemi.
12.	Affidavits cross-refer to each other without clarity as to what is being referred to.	PDM3 115	The Third Defendant must swear the affidavit referred to at paragraph 2 above without cross-referencing to other Affidavits.
	Hussein Al Hashemi (for D3)		
	Electronic Data Repositories		
13.	The affidavit states that Ahmed and Mariam used *"no corporate laptop"* but doesn't state whether they used a personal computer.	PDM3 117(a)	Mr Al Hashemi must confirm whether Ahmed and Mariam each used a personal computer and, if so, such computer(s) must be listed
	Email Accounts		
14.	The Affidavit refers to a senior admin employee called Nasar, (para 8) but does not disclose his email address nasar@delco-uae.com, despite his engagement in correspondence with banks.	PDM3 157(a)	The Third Defendant must explain why this email address was not listed in the Affidavit of Mr Al Hashemi.
	Present Location of Data and Lost Data		
15.	The affidavit lists a number of devices stored in Al Mafraq Industrial Area, but does not state the employees or Defendants for whom they hold relevant data.	PDM3 119	Mr Al Hashemi must identify the employees or Defendants for whom the devices stored in the Al Mafraq Industrial Area hold relevant data.
	Other points		
16.	At paragraph 21, Mr Al Hashemi refers to the *"table of cases in my sister's affidavit"* which indicates the Affidavits have been copy pasted, and that Mr Al Hashemi did not carefully review his affidavit before signing	PDM3 115	Mr Al Hashmei must swear the affidavit referred to at paragraph 2 above without making any cross-references to affidavits given by the other Defendants.

SCHEDULE B

Defect No.	Description of Defect	Reference	Explanation or Action Required of the Third Defendant
		General Defects	
1.	No explanation has been given of the alleged forensic document search and retrieval process run by the Delma Group's IT department in September 2019, nor have any documents been identified or produced as having resulted from that search	PDM3 57(c)	The Third Defendant must provide an explanation of the nature and extent of this process and list the documents which resulted from that search
2.	No documents have been produced illustrating the final destination of payments made under the Facility to Delma Group entities	PDM3 57(e)	The Third Defendant must in the first instance list all bank accounts held by the Delma Companies and identify if and when any payments were made under the Facility into those accounts.
3.	No explanation or description has been given of the "*additional searches*" which were mentioned in the Defendants' email of 11 October 2021.	PDM3 59	The Third Defendant must explain the nature, form and scope of these additional searches and why the documents located as a result of them were not produced before 11 October 2021.
4.	No explanation has been given of the scope or extent of hard copy document searches which have been undertaken	PDM3 61	The Third Defendant must provide a full explanation of all hard copy document searches undertaken to date, including the material searched, how it was organised and retained, and the documents which were identified as a result of those searches.
5.	No explanation has been given as to how or why the Defendants located a copy of the financial statements for the First Defendant for the FY2015 in circumstances where their position was previously that such financial statements did not exist, nor why it was produced the night before the hearing on 24 October 2021	PDM3 63 - 66	The Third Defendant must explain how the financial statements were located and what searches resulted in their production; and why it previously asserted that such financial statements did not exist.
6.	No explanation has been given as to the searches undertaken which resulted in the production on 14 November 2021 of documents relating to the incorporation or corporate authorities of the Third and Fifth Defendants.	PDM3 67 - 78	The Third Defendant must explain why the documents produced on 14 November 2021 were said not to be relevant and why they were not located during previous searches.

7.	The metadata of the trade licence of Heliopolis Electric Company LLC produced on 14 November 2021 demonstrates that it was a scan taken in 2019 (and therefore would have been located by the Defendants in soft copy). The Defendants have, however, alleged that it was located as a result of hard copy searches	PDM3 77	The Third Defendant must explain how and when it discovered the existence of this document.
8.	Inconsistent explanations have been provided as to how the Defendants have access to certain emails of Mr Umesh Mohanan	PDM3 105 - 106	The Third Defendant must provide a full and proper explanation as to how the native emails involving Mr Umesh Mohanan identified in PDM3 were located, and explain why it has provided inconsistent accounts as to the provenance of these emails.
9.	No explanation has been given as to the nature of the alleged *"indexing problem"* which resulted in the production of 657 additional emails on 22 November 2021. The Defendants have not explained how this problem arose; how it was resolved; or why it resulted in the capture of 657 additional emails.	PDM3 107 - 109; PDM4 14 - 15	The Third Defendant must provide a full and proper explanation of the searches which resulted in the identification of the 657 additional emails, including: when those searches were conducted; the nature of those searches; why the searches were conducted after the Third Defendant had already produced a selection of emails in September 2021; and why this was previously said to have been the result of an *"indexing problem."*
10.	The Defendants have not provided native copies of emails *"included in email threads"* (which the Defendants erroneously refer to as *"duplicates"*) in the emails produced by them on 22 November 2021.	PDM4 13c	The Third Defendant must provide these emails.
11.	There are documents within the Claimant's possession which ought to have been captured by the Defendants' stated searches	PDM4 13	The Third Defendant must explain why these documents were not captured by its searches and/or why they have not been produced by the Third Defendant.
12.	The Defendants have produced emails which would not have been captured by their own stated searches	PDM4 15	The Third Defendant must explain how these documents were located.