THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

OMID

Claimant/Appellant

and

ORAH

Defendant/Respondent

JUDGMENT OF H.E. JUSTICE THOMAS BATHURST AC KC

UPON the claim having been filed on 10 January 2025 (the "Claim")

AND UPON the Judgment of H.E. Justice Maha Al Mheiri dated 26 June 2025, (the "Judgment")

AND UPON the Claimant's Appeal Notice dated 9 July 2025 seeking permission to appeal the Judgment (the "Permission to Appeal")

AND UPON considering the documents and submissions filed by both parties and recorded on the case file

AND UPON the hearing taking place before H.E. Justice Thomas Bathurst AC KC on 18 September 2025 at which both the Claimant's and the Defendant's representatives appeared (the "Hearing")

IT IS HEREBY ORDERED THAT:

1. Permission to Appeal is refused.

2. There shall be no order as to costs.

Issued by:
Delvin Sumo
SCT Judge and Assistant Registrar
Date of Issue: 22 October 2025
At: 4pm

SCHEDULE OF REASONS

1. This is an application by the Claimant for permission to appeal and set aside the Judgment of H.E. Justice Maha Al Mheiri dated 26 June 2025.

The Claim

2. In the proceedings the Claimant, Omid ("Omid"), claimed an amount of USD 34,559.76 said to be due under a Hire Contract DB/1265375 between it and the Defendant, Orah ("Orah"), for the hire of certain equipment from the Claimant's Dubai yard for use by Orah on a project in Bahrain. The Claimant also claimed the disbursement of customs duties of USD 16,078. The Claimant also sought a delay penalty of AED 20,000 and contractual interest.

3. Orah denied liability for the customs duty. Further, it claimed an amount of USD 12,727 in respect of 11 lost rental days and USD 1,650 for truck hire which it asserted resulted from delay in mobilising the equipment at the Bahrain border causing loss of revenue, demurrage charges and reputational damage.

4. The Primary Judge found that Omid was entitled to payment in the amount of USD 20,122.76 being the amount of USD 34,559.76 claimed by it less the amounts claimed by Orah for lost rental days and truck charges. She also concluded that Orah was not liable to reimburse Omid for the customs duty.

5. Access Hire has appealed asserting that the Primary Judge erred in not ordering that FourQuest pay the full amount claimed by it.

Background

6. Omid is a company in the business of hiring out electrical equipment. By the Hire Contract, Orah agreed to hire certain equipment from the Claimant on the terms contained in the Hire Contract.

7. It was envisaged initially that the equipment would be delivered to Orah from Jebel Ali to Bahrain on a temporary export basis to avoid customs duty upon return. However, the Claimant later advised that the equipment was located in the Kingdom of Saudi Arabia ("KSA") thus requiring export from that country.

8. The genesis of the dispute in relation to the customs duty arises from the fact the customs documentation relevant to the dispute stated the goods were being exported from KSA on a permanent basis rather than a temporary basis. That led to the imposition of customs duty when the goods were returned from Bahrain to Omid's plant in KSA.

The Primary Judgment

9. The Primary Judge concluded that Omid, as the exporter of record, appointed and instructed the broker and retained control over export documentation and clearance. She stated that Orah had no involvement in the appointment or instruction of the broker. She stated that in those circumstances the responsibility for the agent's performance lay with Omid. She stated Omid was required to ensure that export had occurred under the agreed temporary classification and it failed to do so.

10. The Primary Judge stated that the evidence showed that Omid was the exporter of record and prepared the shipping documentation. She stated that Orah merely provided consignee details and instructed temporary export.

11. She concluded that although clause 25 of the Hire Contract suggested that transport responsibility lay with Orah, that clause could not be considered in isolation as once Omid advised the equipment was located in KSA and offered to handle the equipment it assumed control of the export process. She concluded it was Omid who instructed and exercised control over the broker and therefore bore legal responsibility for its conduct.

12. She also concluded that Omid did not act in good faith in that it failed to notify Orah that the equipment was being processed on a permanent basis or warn Orah that duties might be payable. In those circumstances, she found that Orah was not liable for the customs duty.

13. In relation to the claim for the delay, she stated that Orah had provided documentation substantiating both border delay and truck delay. She concluded that the balance of probabilities favours the Defendant's account that procedural shortcomings by the Claimant and/or the appointed broker contributed to the delay. In those circumstances, she concluded that Orah was entitled to offset USD 12,720 in lost rental days and USD 1,650 in truck charges against the Claimant's invoices.

The Submissions

14. Omid submitted that Orah expressly accepted the terms and conditions of the Hire Contract. It referred to clause 32 of that contract which provided that the terms and conditions always superseded and took authority over all customer purchase order terms and conditions. It referred to clauses 10, 25 and 27 of the terms and conditions contained in the Hire Contract which it submitted clearly assigned responsibility for customs clearance and freight logistics to the Defendant unless an alternative arrangement is expressly agreed in writing.

15. It submitted that contrary to Orah's assertion, Omid did not appoint or manage the freight broker. It pointed to the fact that Mr. Otha from Orah directly requested freight broker details from Omid and on receipt the Defendant engaged with the broker (Orren). It also noted that Orah expressly authorised Omid to pay customs duty on its behalf.

16. Omid also submitted that Orah did not provide any substantial proof of its loss.

17. Finally, Omid submitted the Court failed to take into account the offer by Orah to settle the matter for USD 40,000, stating it constituted an admission of liability.

18. Orah emphasised that the export of the equipment was agreed to be on a temporary basis which was consistent with the original shipping invoice. It submitted it was agreed at all times that Omid would arrange for the equipment to be imported and exported on a temporary basis. It submitted that Omid was aware at all times that Orah did not have an entity in KSA and could not operate as an importer/exporter. It submitted it gave no instruction to import the equipment on a permanent basis.

19. In relation to the claim that it did not provide any particulars of its losses, Orah referred to the documents attached to its Defence (Documents 5 and 7) and submitted that they supported the conclusion reached by the Primary Judge.

20. Orah submitted that its offer of settlement was a without prejudice offer made in an endeavour to settle the proceedings.

Consideration

21. It is correct as Omid submitted that the Hire Contract imposes any liability for customs duty on Orah. However, that liability, in my view, is a liability incurred in performance of the Contract, namely, a hire not a permanent supply of the goods. In my view, Orah would not be liable for any additional duty arising from the fact the goods were stated to be exported on a permanent basis unless it authorised documentation indicating export of the goods was on a permanent basis or that was done by its agent acting within the scope of its authority.

22. The circumstances surrounding the appointment of Orrenas its broker in respect of the transaction are somewhat obscure. On 6 June 2024 Mr. Otha of Orah requested Ms. Ovie of Omid to provide "your KSA agent details with their email and contact number". On the same day, Mr. Oxford of Omid emailed both Orah and Orrenstating that Orrenwas the KSA agent. That part of the email specially addressed to Orrenstated it attached documents for its review and requested confirmation "if the authorisation is still valid for KSA agent".

23. Importantly, it seems to me that Orah did not give any instructions to Orrento the effect that any documentation should indicate that the transfer was on a permanent rather than a temporary basis. The dispute arose whilst the equipment was at the Bahrain/KSA border, the customs officers refusing to let the goods into KSA until the duty was paid. Omid was claiming that Orah was liable for the duty and that until the duty was paid by Orahand the goods returned, Orah would remain liable for the hiring fees. In that context, Orrenwrote the following email to both parties:-

> "Dear All
>
> First of all, I don't know who provided my contact to your customer Orah to move this shipment. Secondly, the drivers shared the documents

and told me that this shipment we have loaded from Omid that has to be-sent to Bahrain and since I have been working with Omid from the past 5 to 6 years, I am very well aware such shipments done on the spot by Omid is always on permanent export, because for temporary export we have to wait for 5 to 8 days for approval from the Saudi customs and once approval is done then Omid moves the shipment.

They always mention in the email or their client always instructs that this has to go on temporary basis but in this case the drivers are sending me the documents and informing to clear the shipment and still I hesitated to do so because I was not informed and then Otha gave me a call to clear the shipment and pushed me to finish the procedure asap as its very urgent.

Below is the clear proof that I was not at all aware about this shipment.

Kindly don't involve me in this, sort it out and let me know, customs is behind me to send the shipment back so I am trying my best to support you all in holding the trucks but maximum I will just be able to hold it by 2pm Saudi time."

24. In these circumstances, it seems to me clear that Orah did not give any instructions to Orren in respect of the import/export of the goods. The evidence does not support the suggestion that when Mr. Otha told Orren to clear the shipment urgently, he acknowledged that the original export from KSA was on a permanent basis. Whoever prepared documentation to this effect, did so without the authority of Orah.

25. It is correct as Omid pointed out that by email of 23 July 2024 Mr. Ondre of Orah authorised Omid to pay the duty on its behalf. Although in many circumstances this would be considered a clear admission of liability, the letter was written in the context where it was likely that the equipment would be returned to Bahrain, export to KSA refused and Orah would remain liable to ongoing hiring fees. Having regard to the fact that the claim for customs duty was consistently rejected by Orah in the days leading up to that email, I do not think it constitutes an admission of liability to pay the fee.

26. In these circumstances, it seems to me that the circumstances where Orah did not agree that the transfer of the equipment from KSA to Bahrain was to be on a permanent basis, Orah has no liability to Omid for the duty.

27. The letter of offer of settlement does not, in my view, affect the position. As the Primary Judge pointed out, it was in effect, a without prejudice offer to settle the dispute. Although it was not headed "without prejudice" taken in context it was not an admission of liability.

28. In relation to the claim for wasted hiring fees and truck rental, I have read the documents relied upon by Orah and am satisfied that it was open to the Primary Judge to reach the conclusion she came to.

29. In the circumstances, I would refuse the Permission to Appeal.