Claim No. CFI 013/2026

**IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURT**

**IN THE COURT OF FIRST INSTANCE**

N/A

BETWEEN

**GREEN COMMUNITY HOLDINGS LIMITED**

Claimant/Respondent

and

**(1) MITCHELL WHITE**
**(2) GRACE ALEXANDRA WHITE**

Defendants/Applicants

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**ORDER WITH REASONS OF H.E. JUSTICE MARK PELLING**

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**UPON** the Part 7 Claim Form dated 4 March 2026 (the "Claim")

**AND UPON** the Claimant's Request for Default Judgment against the First and Second Defendants dated 10 June 2026 pursuant to Rule 13.4 of the Rules of the DIFC Courts ("RDC")

**AND UPON** the Default Judgment of H.E. Justice Mark Pelling dated 16 July 2026 (the "Default Judgment")

**AND UPON** the First and Second Applicants' Application No. ENF-251-2026/1 dated 31 July 2026 under RDC Part 14 for an order setting aside the Default Judgment (the "Set Aside Application")

**AND UPON** the Order of Assistant Registrar Hayley Norton dated 3 August 2026 transferring the Set Aside Application to this Claim

**AND UPON** the Order with Reasons of H.E. Justice Mark Pelling dated 2 September 2026 by which the Set Aside Application was dismissed (the "Dismissal order")

**AND UPON** the Defendants' Appeal Notice dated 17 September 2026 seeking permission to appeal the Dismissal Order (the "PTA Application"), the Defendants' Application s for (i) permission to rely on further evidence (the "Further Evidence Application")and (iii) a stay of the Default Judgment (the "Stay Application") (collectively the "Appeal Applications")

**IT IS HEREBY ORDERED THAT:**

1. The Further Evidence Application is dismissed.

2. The PTA Application is refused.

3. The Stay Application is refused.

4. In relation to the Respondent's application for an Order that the Applicants pay its costs of opposing the Appeal Applications to be assessed immediately in the sum claimed in the Respondent's Statement of Costs filed with its submissions in answer to the Appeal Applications (the "Appeal Costs Application").

(a) By no later than 4pm (GST) 14 days from the date of this Order, the Applicants are to file and serve their written submissions in answer to Appeal Costs Application;

(b) The Respondent is to file and serve its written submissions in reply to those referred to in (a) above by no later then 4pm 7 days thereafter; and

(c) The Appeal Costs Application will be determined on paper as soon as practicable thereafter.

Issued by:
**Delvin Sumo**
Assistant Registrar
Date of issue: 9 October 2026
At: 9am

**SCHEDULE OF REASONS**

**The Further Evidence Application**

1. The Further Evidence Application is refused because, generally speaking, parties are not permitted to rely upon material on an appeal that was not before the First Instance Judge, unless it can be demonstrated that such material could not have been obtained despite reasonable diligence on

the part of the Party seeking to rely upon the material - see RDC 44.114(2), *Nest Investments v. Deloitte & Touche (ME)* [2020] DIFC RCD 003 (23 April 2020), *Emirates NBD v ADM LLC* [2022] DIFC CA 012, CPR, 52.21(2)(b) and *Ladd v Marshall* [1954] 1 WLR 1489.

2. The Set Aside Application was issued on 31 July 2026. All the documents other than 2 (MW15 and MW18) were self evidently actually available to the Applicants prior to that date. That much is apparent from the dates on the documents themselves and because they have been relied on by the Applicants in the past for other purposes in these proceedings. MW13 is a series of emails dated between 24 and 28 April 2026 that were printed out on 30 April 2026. They are communications by or to the Applicant's legal representative. MW18 is an email from the Applicants to the Registry and cannot even arguably be said that it would have an important influence on the result of the case. Similar considerations apply to MW15, which is an application to the CJT by reference to proceedings commenced by the Applicants in the onshore courts (a) after the commencement of these proceedings and (b) before the 31 July 2026.

3. It is acknowledged by the Applicants that the Set Aside Application suffered from the defects identified by me in paragraph 5-11 of the Schedule of Reasons included in the Dismissal Order. The Further Evidence Application is an attempt to avoid the consequences of that failure even though there is no good or any explanation offered as to why this material was not deployed earlier if the Applicants' wished to rely on it. If as appears to be accepted the omission were the result of negligence on the part of the Applicants' previous advisors, that is a bad not a good reason for granting an application of this sort. On analysis, this application is simply an attempt to avoid the consequences of failing to comply with the RDC and is an attempt to obtain a rehearing of the Set Aside Application, thereby undermining the finality principle that must be applied in order to keep the time used in and cost of litigation within reasonable bounds and ensure that other litigants can obtain access to the courts within a reasonable time. Even allowing for the generosity that the Court of Appeal referred to in *Emirates NBD* (ibid.), this is not an application that should succeed.

4. In any event, for the reasons explained below, even if the Further Evidence Application were to succeed, it would not provide the Applicants with a *".real prospect of successfully defending the claim."*.

**The PTA Application**

5. Permission to Appeal must be refused unless the appeal would have a real as opposed to a no more than fanciful chance of success, or there is some other compelling reason why the appeal should be heard. Neither consideration is satisfied in relation to any of the grounds relied on and permission to appeal is therefore refused.

6. Ground 1 is unarguable (a) because of the procedural failings set out in Paragraph 5-11 of the Schedule of Reasons included in the Dismissal Order which the Applicants have sought to circumvent by the Further Evidence Application and (b) because the matters the Applicants allege were not considered were in fact considered at Paragraph 4 of the Reasons contained in the Dismissal Order. The service point was addressed in Paragraphs 2-3 of the Reasons in the Dismissal Order and on the evidence available was bound to be resolved in the way it was resolved.

7. Ground 2 is unarguable because it depends on documents that the Applicants did not rely on in the Set Aside Application. In any event, they do not provide an arguable basis for defending the Claim and have been held not to do so - see the Order of 11 June 2026.

8. Ground 3 fails because the Further Evidence Application fails.

9. Ground 4 is a new case. To date there has been no challenge to the jurisdiction of this Court to determine the Respondent's claim. At no stage has either Applicant sought to challenge jurisdiction under RDC Part 12. In any event, any such challenge would be unarguable. The agreement on which the Respondent has based its claim (the "SPA") was subject to an exclusive jurisdiction agreement in favour of the DIFC Courts to which is an agreement by which the parties agreed *". in writing to the DIFC Courts' jurisdiction."* in express terms that were clear and specific and so came within the scope of Article (14) B of the DIFC Courts Law.

10. The Claim is for money due from the Applicants under the SPA which itself is subject to an exclusive jurisdiction agreement is favour of the DIFC Courts. The Default Judgment is not concerned with title to real property. The DCCFI judgment to which the Applicants refer is not material to these proceedings for the reasons identified in Paragraph 8 of the reasons contained in the Dismissal Order. This Ground also ignores the fact that the various procedures that would have become potentially relevant at completion never became relevant because the SPA was terminated as a result of the failure of the Applicants to pay the sum due under a year before the date when completion would otherwise have occurred.

11. Under clauses 5.1 and 6.1 of the SPA, completion was not due until the final instalment had been paid on 1 October 2026. The Applicants defaulted on their payment obligations on 1 October 2025, the notice of 3 February 2026 identified AED 867,525 as outstanding (MW 10), and the SPA was terminated by reason of non-payment by the notice of 17 February 2026 (MW11). Nothing that the Applicants rely on excuses the non-payment on which the Respondent has relied or provides an answer to any of the contractual consequences that the parties had agreed would follow from such a non-payment and on which the Respondent relies as entitling it to the judgment it has obtained.

12. Ground 5 is unarguable as a free standing ground of appeal. Whether a party against whom a regular judgment in default has been entered should be permitted to defend the claim depends on whether that party has a *".real prospect of successfully defending the claim."* - see RDC 14.2(1) not on what the Applicants call the *". balance of prejudice."*. Assuming that the effect of the judgment on the Applicants is *".severe and potentially irreversible."*, that is immaterial in the absence of such a real prospect. It is the consequence of the Applicants having chosen to enter into a contract in the terms of the SPA. The loss of occupation of the Property is the result of the Order of 11 May 2026 from which there has been no appeal. This is from first to last a money claim.

**The Stay Application**

13. The Stay Application only arises for consideration if Permission to Appeal had been granted and it has not been for the reasons set out above. In any event, the Conflicts of Jurisdiction Tribunal stayed enforcement proceedings before the Dubai Courts and the DIFC Courts while it considers the Applicants' application of 11 September 2026. There is therefore no present need for a stay and in any event the default position established by the RDC is that a stay will not be granted unless the risk of injustice requires such an order to be made. Here, permission to appeal

has been refused. That is a powerful consideration in assessing whether a stay should be granted. There is no evidence available that suggests that a stay is either presently necessary or that there is any risk of injustice that justifies departing from the default position. The Stay Application is therefore refused.