Claim No. CFI 080/2018

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

MUZOON HOLDING LLC

Claimant/Appellant

and

ARIF NAQVI

Defendant/Respondent

ORDER OF CHIEF JUSTICE ZAKI AZMI

UPON the Judgment of Justice Sir Jeremy Cooke dated 5 October 2022 (the "Judgment")

AND UPON the Claimant's Appeal Notice dated 26 October 2022 seeking permission to appeal the Judgment (the "First Permission Application")

AND UPON the Order of Justice Sir Jeremy Cooke dated 14 December 2022 refusing the First Permission Application

AND UPON reviewing the Claimant's Appeal Notice dated 4 January 2023 seeking a renewed permission to appeal the Judgment (the "Second Permission Application")

AND UPON reviewing the Defendant's submissions dated 25 January 2023 filed in response to the Second Permission Application

AND PURSUANT TO the Rules of the DIFC Courts (the "RDC")

IT IS HEREBY ORDERED THAT:

1. The Second Permission Application is refused.

2. The Applicant shall pay the Respondent costs summarily assessed in the sum of AED 60,000.

Issued by:
Hayley Norton
Assistant Registrar
Date of issue: 3 February 2023
At: 12pm

SCHEDULE OF REASONS

1. This is an application for second permission to appeal against the decision of the learned Judge Justice Sir Jeremy Cooke. Briefly, the background of the case was that the Claimant had obtained a default judgment against the Defendant and that default judgment was set aside. The Defendant sought to dismiss the claim for lack of jurisdiction but failed. The case then went on for trial before the learned judge.

2. In his reasonings dismissing the claim, the learned judge went through in detail, considering the facts, the affidavits and all related laws. For the purpose of considering the Second Permission Application, I am not going regurgitate them. Suffice for me just to refer to the points necessary for to make my decision.

3. Basically, the claim is for deceit allegedly committed by the individual Defendant who was the employee of the Abraaj group. The Claimant claimed that AED 20 million was sent to Abraaj Investment Management Limited ("AIML") for the purposes of investment. Of this AED 20 million, USD one million was returned, the balance of the AED 20 million investment was lost. The Abraaj group went into liquidation, and two partners in Deloitte act as Joint Official Liquidators of the Abraaj group ("JOLS").

4. The Claimant relied on disputed documents consisting of three DFSA decision notices, limited scope report sent by Deloitte, the document emanating from United States of America. The DFSA notices referred to misdoings on the part of those engaged in the business of Abraaj. The learned judge rejected the admission of these notices, and he gave his reasons in paragraph 13 of his Judgment for doing so.

5. The other document which the Claimant relied on to prove his case was the Deloitte report. According to the Judgment, several passages of the report were deleted or blacked out. There were also emails that followed the report. The judge found that the emails were incomprehensive and questionable as there were large gaps between the dates of those that are produced and the judge as a matter of fact has found that there have been other documents that have not been seen by the Court. At paragraph 19 of the Judgment, the Judge concluded that the Deloitte report was hearsay/opinion which could have been admitted with special leave as evidence of an expert. However, they were not so sought to be admitted. I agree that it being something of evidence from an expert it must be tested by cross examination, but this was also not done. The Defendant had no opportunity to test the evidence by way of cross examination and this became of greater concern when there is a disclaimer by Deloitte in their

report.

6. In regard to the documents from the United States comprising as "EC complaints and US court documents and ancillary documents", I agree with the conclusion by the judge that the allegations contained in the report establish nothing useful and in any case, findings of any court or body in the United States is not binding on the DIFC Courts. There were "other sundry extracts" from newspapers and web sourced news reports and a book by an investigative journalist entitled "The Key Man". I also agree with the judge that these too cannot be admitted as fact, being hearsay.

7. The learned judge also went on to consider exchanges of correspondence between the parties as well as internal emails at Abraaj, including those produced by the liquidators. He also discussed other evidence adduced before him and concluded that he was doubtful that the Claimant was the investor entitled to make any claims against Abraaj companies. The learned judge went to also consider the allegation of whether the Claimant had given discretion to the Defendant as to how the investment was to be made (see paragraphs 40 - 47). He concluded that he could not find in the evidence available that the Defendant fraudulently misrepresented to the Claimant in either of the emails or letters relied on nor "misrepresented that the investment to a particular level had taken place at the time when the second payment was made." He concluded that the claim of deceit must fail.

8. On the Article 32 claim, the judge after discussing the facts and the evidence adduced before him, concluded that the Claimant failed to produce any evidence to show the unlawful delving into such client's account done at the instigation of the Defendant or his authority.

9. The Defendant denied personal liability and contended in his defence that Abraaj group had a structured decision-making process that the Defendant could not make an individual decision relating to the actions of the company's group. Overall, the trial judge being the judge of the Court of First Instance having the facts before him, listening to the submissions by the parties, has made his decision. It is well established that an Appeal Court rarely interferes with the finding of facts by the trial judge.

10. The allegation of deceit, which fraudulent representation is serious, and the burden lies heavily on the alleging, albeit the burden remains on balance of probabilities.

11. I realise this is only an application for permission to appeal, and not the appeal yet. I went through the reasonings of the judge only to determine if there is a real prospect of success should permission be given. I also considered the Applicant's/Claimant's submission. Unfortunately, I do not see any reason to persuade me to decide in its favour. On my analysis of the judges reasonings, I find there is no prospect of success of the appeal, if permission is given. I also cannot find any compelling reasons why the appeal should be heard. On what amounts to real prospect of success I do not need to cite many authorities for these are quite well established principles. If authority is required, then suffice for me to refer to case *of Barclays Bank PLC & others v Essar Global Fund Limited [2016]* DIFC CFI-036.

12. The Second Permission Application is therefore denied.

13. Costs are to be paid by the Applicant to the Respondent. Justice Cooke had fixed AED 30,000 assessed costs. Since this Second Permission Application involved further work by the Respondent, I assess a sum of AED 60,000 as costs to be paid by the Applicant to the Respondent.