THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

In the name of His Highness Sheikh Mohammad Bin Rashid Al Maktoum, Ruler of Dubai

N/A

IN THE COURT OF APPEAL

BEFORE H.E. JUSTICE ROBERT FRENCH, H.E. JUSTICE THOMAS BATHURST AND H.E. JUSTICE ROGER STEWART

BETWEEN

ZUZANA KAPOVA

Claimant/Appellant

and

(1) MILOSLAV MAKOVINI
(2) PHARM TRADE HOLDING LTD

Defendants/Respondents

and

SEBASTIAN KAPA

Third Party

Hearing : **4 September 2026**

Counsel : Sajid Suleman and Maria Mulla instructed by Abdulla Al Awadi, Advocates & Legal Consultants for the Appellant
Kartikey Mahajan instructed by SK Legal Consultants FZ-LLC for the Respondents

Judgment : **14 October 2026**

JUDGMENT OF THE COURT OF APPEAL

UPON the settlement agreement between the parties (the "Settlement Agreement") executed on 13 January 2026 providing, among other things, for the Claimant to pay the First Defendant the sum of EUR 1,000,000 (the "Settlement Sum") in three instalments of EUR 400,000, (the "First Instalment") EUR 300,000 and EUR 300,000 respectively, with the First Instalment falling due within fourteen days of the date of the execution of the Settlement Agreement, and, in the event of default in payment of the First Instalment, for the Settlement Sum to fall due at the election of the non-defaulting party (the "Accelerated Settlement Sum") and for the stay of existing proceedings to be lifted in that event

AND UPON the Consent Order dated 14 January 2026 staying all further proceedings in this action with immediate effect and granting the parties liberty to apply (the "Consent Order")

AND UPON the Defendants' Application No. CFI-004-2023/20 dated 3 February 2026 (the "Application"), to lift the stay of proceedings due to the failure of the Claimant to pay the First Instalment and for an order that the Claimant pay the First Defendant the Accelerated Settlement Sum forthwith (the latter being the "Immediate Judgment Application")

AND UPON hearing counsel for the Claimant and counsel for the Defendants at the Application Hearing held before H.E. Justice Sir Jeremy Cooke on 14 April 2026

AND UPON H.E. Justice Sir Jeremy Cooke providing an ex tempore decision in favour of the Defendants (the "Decision")

AND UPON the Claimant's oral application for permission to appeal the Decision (the "Initial PTA Application")

AND UPON the Order with Reasons of H.E. Justice Sir Jeremy Cooke dated 29 April 2026: (i) granting the Immediate Judgment Application; (ii) entering judgment for the First Defendant against the Claimant at paragraphs 3, 4, 5 and 6; and (iii) dismissing the Claimant's Initial PTA Application (the "29 April Order")

AND UPON the Claimant's Appeal Notice dated 20 May 2026 seeking renewed permission to appeal the Decision (the "Renewed PTA Application")

AND UPON the Claimant's Application No. CFI-004-2023/21 dated 20 May 2026 seeking a stay of execution of paragraphs 3, 4, 5 and 6 of the 29 April Order pending determination of the Renewed PTA Application (the "Stay Application")

AND UPON the Order of H.E. Chief Justice Wayne Martin dated 23 June 2026 granting the Stay Application (the "Stay Order")

AND UPON the Order with Reasons of H.E. Chief Justice Wayne Martin dated 20 July 2026 (the "20 July Order") granting the Renewed PTA

Application and continuing the Stay Order (the "Appeal")

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

IT IS HEREBY ORDERED THAT:

1. The Appeal is dismissed.

2. The stay of execution granted by the Stay Order and the 20 July Order is lifted.

3. The Claimant is to pay the Defendants' costs of the Appeal, including the Initial PTA Application, the Renewed PTA Application, and the Stay Application which will be assessed on a summary basis by the Court.

4. The Defendants are to provide a statement of the costs claimed within 7 days of this Order

5. The Claimant is to respond to the statement of the costs and make any submissions as to the appropriate basis for assessment within 7 days thereafter.

Issued by:
Hayley Norton
Assistant Registrar
Date of issue: 14 October 2026
At: 3pm

SCHEDULE OF REASONS

Introduction and Summary

1. It is almost a century since Tomlin J issued a Practice Note[1] in the English Chancery Division which led to use of the form of order bearing his name when parties, who have settled a dispute, wish to be able to return to the same court in order to enforce the settlement. Many common law jurisdictions contain within their rules, provisions, descended from the original Practice Note, setting out the appropriate form of order.

2. The relevant DIFC Courts' Rules are at RDC 36.28 and 36.29. RDC 36.28 requires an application for an agreed order to include a draft of the proposed order signed on behalf of all parties to whom it relates. RDC 36.29 provides that where proceedings are to be stayed on agreed terms

> "(1) The draft order should include the following:
>
> > (1) The Defendant having agreed to the terms set forth in the schedule hereto, IT IS ORDERED THAT all further proceedings in this claim be stayed, except for the purpose of carrying such terms into effect.
> >
> > (2) Liberty to apply in order to carry such terms into effect; and
>
> (2) Settlement terms should be set out in a schedule attached to the draft order."

3. The central issue in the Appeal is whether the Judge, H.E. Justice Sir Jeremy Cooke (the "Judge"), was correct to find that he had jurisdiction, within the settled action, to enforce the terms of the Settlement Agreement entered into in order to settle that action notwithstanding that the form of the Consent Order made following the settlement did not follow the recommended Tomlin form. It is accordingly necessary to consider both the Consent Order and Settlement Agreement and the nature and basis of the Court's jurisdiction to enforce a settlement in existing proceedings.

4. If the Judge did have jurisdiction, there are important subsidiary issues as to whether, in the circumstances, such jurisdiction should have been exercised so as to permit summary enforcement. There are also questions relating to the admission of additional evidence.

5. The Appeal is brought with the permission of H.E. Chief Justice Wayne Martin, granted by an Order with Reasons dated 20 July 2026.

6. For the reasons following the Court considers that the Judge was correct to find that he had jurisdiction to enforce the Settlement Agreement and that he was entitled to enter summary judgment.

7. In relation to evidence:

> (a) The Court does not take account of evidence not available before the Judge where no application has been made to adduce additional evidence; and
>
> (b) In relation to the additional evidence for which permission was sought, such evidence cannot affect the result of this Appeal.

The Material Background

8. The underlying claim was issued by the Claimant ("Ms Kapova") on 11 January 2023 against the First Defendant ("Mr Makovini") and the Second Defendant, a DIFC company, Pharm Trade Holding Ltd ("Pharm") (the "Claim"). Mr Miloslav filed a counterclaim against Ms Kapova and her son ("Mr Kapa") who was added as a Third Party. Ms Kapova, Mr Makovini and Mr Kapa are all Slovak nationals.

9. There were substantial allegations made by and against all the relevant parties including allegations of misrepresentation and breach of fiduciary duty. Ms Kapova alleged that Mr Makovini had designed, advised and implemented a corporate and tax structure which in fact operated to Ms Kapova's detriment and enabled Mr Makovini improperly to obtain substantial funds belonging to Ms Kapova. In her witness statement in support of her Renewed PTA Application dated 20 May 2026, Ms Kapova describes her original Claim at paragraph 10 as being "at its core, a claim

concerning a sustained course of false statements of fact made by Mr Makovini over time".

10. The matter came on for trial before the Judge and he heard evidence and submissions between 6 and 9 January 2026. During the course of the trial, the Judge, as set out at paragraph 14 of his Schedule of Reasons, encouraged the parties to enter into settlement discussions. He made an observation to the effect that neither side was likely to be satisfied by his judgment when produced.

11. Between the hearing and 13 January 2026, settlement discussions duly took place between the parties which led to the Settlement Agreement being signed on 13 January and the Consent Order was issued on the following day.

12. The Settlement Agreement was in writing headed "Full and Final Settlement Agreement" and was said to be dated 12 January 2026 although it is common ground that it was not signed until the following day as recorded against the signatures of each of the four parties to the action, including Mr Kapa, at the end of the document.

13. The Settlement Agreement:

(a) Was 12 pages long;

(b) Contained 4 recitals under the heading "Background" namely:

(i) Recital A recording the original action and counterclaim including the counterclaim against Mr Kapa;

(ii) Recital B, which was in wide terms and provided

> "For the purpose of avoiding further litigation, costs time and uncertainty, the Parties have agreed to resolve the Claim, the Counterclaim, and all existing and prior disputes between them on the terms set out in this Full and Final Settlement Agreement in full and final settlement of the Claim and the Counterclaim, and of all existing and prior disputes, claims, actions, proceedings, and liabilities of whatsoever nature, whether known or unknown, howsoever arising between them and any Related Parties, in the UAE or in any other jurisdiction, which have arisen or exist as of the date of execution of this Agreement";

(iii) Recital C which made it clear that the Settlement Agreement did not apply to claims or causes of action arising after the date of execution; and

(iv) Recital D which provided that nothing in the Agreement should constitute an admission of liability;

(c) Contained at clause 1 a series of definitions including a wide definition of "Related Parties";

(d) Had 4 sub-clauses at clause 2:

(i) Sub-clause 2.1 which provided that the Agreement should be immediately fully and effectively binding on them upon execution, without any condition precedent, further act, or formality and should be enforceable in accordance with its terms;

(ii) Sub-clause 2.2 which provided a confirmation by each party amongst other things that it had had the opportunity to obtain independent legal advice prior to entering into the Agreement, fully understood its legal effects and consequences and "enters into it voluntarily and without duress, coercion, misrepresentation, or undue influence";

(iii) Sub-clause 2.3 which provided "No Party shall be entitled to revoke or withdraw from this Agreement except in accordance with its express terms or as permitted under the applicable law governing this Agreement and each Party expressly waives any right to challenge this Agreement on the grounds of mistake, misapprehension, or subsequent change of circumstances, to the fullest extent permitted by law";

(iv) Sub-clause 2.4 which provided that the invalidity or unenforceability of any provision of the Agreement would not affect the validity or enforceability of the remaining provisions and that any invalid or unenforceable provision should, to the extent possible be deemed modified to be valid and enforceable whilst preserving the original intent of the Parties;

(e) Clause 3.1 provided the payment terms whereby:

(i) Ms Kapova was to pay Mr Makovini 1 milllion Euros;

(ii) Mr Makovini was to pay Ms Kapova the sum of up to 1 million Euros from Mr Makovini's share of net profits from future work jointly performed by the parties and related parties after the Agreement until 1 million Euros was paid with provisions setting out how this was to be done;

(f) Clause 3.2 (a) provided for the 1 million Euros payable by Ms Kapova to paid:

(i) As to 400,000 Euros within 14 calendar days of the date of execution of the Agreement - that is by 27 January 2026;

(ii) As to 300,000 Euros on or before 30 April 2026; and

(iii) As to 300,000 Euros on or before 30 September 2026;

(g) Clause 4.1 under the heading "Stay of Claim and Counterclaim" provided

> *"Subject to the due and timely payment in full of the Settlement Amount in accordance with Clause 3 of this Agreement, the Parties hereby consent to, and shall promptly take all necessary steps to procure, a Consent Order in the form attached at*

Appendix A hereto, staying the Claim and the Counterclaim in [DIFC] Court of First Instance Claim No. CFI-004-2023. In the event of any failure by any Party to comply with any provision of this Agreement, the non-defaulting Party shall be entitled, to apply to lift the stay and proceed with the Claim and/or Counterclaim in Claim No. CFI-004-2023, and/or to seek enforcement of this Agreement before ethe courts of the Dubai International Financial Centre and/or any other court or competent authority of appropriate jurisdiction, as may be applicable"

(h) Clause 5 provided

"WITHDRAWAL OF ALL CASES IN AII JURISDICTIONS

5.1 Each Party shall, at its own cost and within 2 months of the execution of this Agreement, take all necessary steps to procure the withdrawal, discontinuance, termination, or dismissal with prejudice (where legally permissible) of all judicial, arbitral, administrative, criminal, regulatory, or investigative proceedings of any nature whatsoever, whether current or pending, in Slovakia and/or any other jurisdiction, filed by it (or on its behalf) or its Related Parties against the other Party and/or Party C, and shall cease and refrain from any further legal actions arising from the settled matters. Accordingly:

(a) [Mr Makovini] shall take all necessary steps to withdraw, discontinue, or procure the dismissal of all proceedings filed by [Mr Makovini] and/or [Pharma] against [Ms Kapova and [Mr Kapa] in Slovakia or any other jurisdiction; and

(b) [Ms Kapova] shall take all necessary steps to withdraw, discontinue, or procure the dismissal of all proceedings filed by [Ms Kapova] against [Mr Makovini] and/or Party C in Slovakia or any other jurisdiction.

The Parties shall cooperate in good faith and execute all documents reasonably required to give effect to this clause.

5.2 Each Party shall provide the other Party with written evidence to the other Party confirming that the relevant proceedings have been withdrawn, discontinued, or dismissed.

5.3 Failure by any Party to comply with this Clause 5 shall constitute a material breach of this Agreement and shall entitle the non-defaulting Party to seek immediate enforcement, injunctive relief, damages, and/or reinstatement of claims, without prejudice to any other rights or remedies available under this Agreement or applicable law.

5.4 From the date of execution of this Agreement, no Party shall commence, pursue, support, or encourage any new civil or criminal complaint, action, or proceeding against any other Party or any Related Party arising out of or in connection with the Released Claims.

5.5 For the avoidance of doubt, nothing in this Agreement shall be construed as a guarantee of the outcome of any criminal or regulatory process, which remains subject to the discretion of the competent authorities; however, each Party shall be deemed to have complied with its obligations under this Clause only if it has taken all lawful and reasonable steps within its control to procure such withdrawal or closure."

(i) Clause 8 provided

"8. RELEASE

8.1 Subject to the full, due, and timely performance by all Parties of all obligations under this Agreement, including without limitation:

a) payment of the Settlement Amount in accordance with Clause 3;

b) procurement of the stay of proceedings in accordance with Clause 4;

c) withdrawal and closure of proceedings in all jurisdictions.

d) compliance with the dissolution and related obligations set out in Clauses 6 and 7, each Party hereby irrevocably releases and forever discharges the other Parties and their respective Related Parties from all civil actions, claims, rights, demands, causes of action, and set-offs of whatsoever nature, whether known or unknown, whether in law or equity, and whether arising in this jurisdiction or any other, which have arisen or exist as of the date of execution of this Agreement, and which arise out of or are connected with the Parties' relationship (alleged or otherwise) (the "Released Claims").

8.2 Without limiting the generality of Clause 8.1, the Released Claims include:

a) the Claim (as defined);

b) the Counterclaim;

c) the following proceedings commenced in the Slovak Republic:

(i) Civil Case No. 23Cb/23/2022 before the District Court in Presov;

(ii) Case No. 23Cb/161/2021, Pharm Trade a.s. v Miloslav Makovini;

(iii) Case No. 21Cb/8/2022, Miloslav Makovini v Pharm Trade a.s.;

*(iv) Criminal Case No. *KRP-44/2VYS-PO-2022; and*

d) all matters, facts, allegations, and causes of action contained in or arising from each of the above proceedings.

8.3 For the avoidance of doubt:

a) nothing in this Agreement shall be construed as an unlawful waiver or compromise of criminal liability, which remains subject to the exclusive discretion of the competent authorities;

b) the release set out in this Clause shall apply to criminal matters only to the extent permitted by applicable law, and shall be deemed satisfied where the relevant Party has withdrawn, discontinued, or formally requested the closure of any criminal complaint or report.

8.4 In the event of any failure by any Party to comply with any provision of this Agreement, no release under this Clause 8 shall take effect, and the non-defaulting Party shall be entitled to pursue all rights, remedies, and enforcement actions available to it, including before the courts of the Dubai International Financial Centre and any other competent jurisdiction."

(j) Clause 9, entitled "Agreement not to Sue" provided *"Each Party agrees, on behalf of itself and on behalf of its Related Parties not to sue, commence, voluntarily aid in any way, prosecute or cause to be commenced or prosecuted against the other party or its Related Parties any action, suit or other proceeding concerning the Released Claims, in this jurisdiction or any other."*

(k) Clause 11 provided

"11. Consequences of Breach

11.1 Each Party acknowledges that, save where expressly stated otherwise in this Agreement, time is of the essence in respect of its material obligations. Any failure by a Party to comply with any material provision of this Agreement shall constitute a material breach.

11.2 In the event of any breach or threatened breach of this Agreement, the non-breaching Party shall be entitled, without prejudice to any other rights or remedies, to seek:

a) specific performance;

b) injunctive or equitable relief; and/or

c) enforcement of this Agreement,

including before the Dubai International Financial Centre Courts and any other competent jurisdiction, as applicable.

11.3 The breaching Party shall indemnify and hold harmless the non-breaching Party from and against all losses, damages, liabilities, costs, and expenses (including reasonable legal fees) incurred as a result of such breach.

11.4 If any payment due under Clause 3 of this Agreement is not made on its due date:

a) such failure shall constitute a material breach;

b) any outstanding unpaid amount shall, at the election of the non-breaching Party, become immediately due and payable; and

c) interest shall accrue on any overdue amount at the maximum rate permitted by applicable law, calculated from the original due date until payment in full.

11.5 All costs and expenses incurred by the non-breaching Party in enforcing its rights under this Agreement, including legal and professional fees, shall be borne by the breaching Party.

11.6 Each Party shall take all lawful and reasonable steps to withdraw, dismiss, discontinue, or procure the closure of any claims, proceedings, or complaints required to be withdrawn under this Agreement.

11.7 Any failure by a Party to take such steps, without lawful justification, shall constitute a material breach and shall entitle the non-breaching Party to all remedies available under this Agreement and at law..

11.8 For the avoidance of doubt, no release under Clause 8 shall take effect, or shall continue to have effect, in the event of a material breach of this Agreement by any Party."

(l) Clause 15 was an entire agreement clause in the following terms

"This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements, negotiations, correspondence, discussions, promises, assurances, warranties, representations, and understandings, whether written or oral relating to its subject matter" and

(m) Clause 16 provided that the governing law should be that of the DIFC and provided for exclusive jurisdiction to the courts of the DIFC albeit that nothing would prevent any Party from seeking enforcement of the agreement or any judgment arising therefrom in any other court or competent authority of appropriate jurisdiction.

14. The Consent Order:

(a) Had two recitals:

(i) The first referring to the trial having taken place between 6 and 9 January before the Judge; and

(ii) The second identifying that the parties had entered into "a full and final settlement agreement dated 12 January 2026";

(b) Contained three orders expressed to be made by consent;

(i) The first staying all further proceedings with immediate effect;

(ii) The second providing that the parties had liberty to apply;

(iii) The third providing that each party should bear its own costs.

15. The Consent Order thus departed from the Tomlin form set out in RDC 36.29 in that:

(a) The settlement terms were not set out in a schedule to the Order (although the Settlement Agreement was referred to in a recital); and

(b) There was no statement in the operative part of the order that there should be liberty to apply in order to carry the terms of the settlement into effect although there was a general and unspecified liberty to apply.

16. On 3 February 2026, Mr Makovini issued the Application seeking:

(a) A lifting of the stay contained in the Consent Order;

(b) An order providing that Ms Kapova pay forthwith the sum of 1 million Euros on the basis that she had not paid the initial sum of 400,000 Euros due by 27 January and that the Settlement Agreement provided for the entire sum to become payable on breach;

(c) Interest and costs on the indemnity basis; and

(d) That the matter be determined without a hearing.

17. The Application was supported by a witness statement of Mr Makovini which set out the relevant terms of the Settlement Agreement and asserted:

(a) That the first instalment had not been paid;

(b) That Ms Kapova had not advanced any contractual or lawful justification for her failure to comply with the payment obligations in the Settlement Agreement;

(c) That:

(i) The stay was "expressly conditional" upon Ms Kapova's compliance with the Settlement Agreement; and

(ii) That under Clause 4 the non-breaching party was entitled to apply to the DIFC Courts to "lift the stay and to seek enforcement of the Settlement Amount".

18. On 10 February 2026, Ms Kapova issued a document entitled "Defendant's response to the Applicant's Application Notice" and a witness statement of the same date. A witness statement was also served by Mr Kapa. The response:

(a) Asserted that the Application was misconceived in that it sought to convert a stayed action into a vehicle for immediate and final judgment;

(b) That the Application sought impermissible selective enforcement of the Agreement and wrongly sought acceleration and constituted an abuse of process[2];

(c) Submitted that the Application was not suitable for determination without a hearing; and

(d) That there was material "non-disclosure" prior to the settlement[3].

19. On 17 February 2026, Mr Makovini served a witness statement responding to the two witness statements of Ms Kapova and Mr Kapa. That witness statement:

(a) Gave an account of the settlement discussions;

(b) Identified a request made by WhatsApp on 14 January asking for "the order discontinuing the proceedings" to which Mr Makovini replied saying "I already requested it yesterday;

(c) Identified that on 16 January Ms Kapova had sent a WhatsApp message saying that she did not consider the agreement fair but "life goes on";

(d) That the order discontinuing the Slovak criminal proceedings was sent on 17 January 2026; and

(e) That Ms Kapova had not paid the first 400,000 Euros due on 27 January 2026.

20. Notwithstanding that Mr Makovini had applied for the Application to be dealt with without a hearing, it was listed for a half day hearing before

the Judge on 14 April 2026.

21. The skeleton argument put forward on behalf of Ms Kapova dated 10 April 2026:

(a) Asserted that during the settlement discussions prior to the Settlement Agreement:

(i) Mr Makovini "repeatedly represented that the Slovak criminal proceedings (Criminal Case No. KRP-44/2VYS-PO-2022) were ongoing, serious in nature, and posed substantial legal and reputational risks to [Ms Kapova], her business operations, and the future career of [Mr Kapa], and indicated that a prompt settlement would bring those proceedings to an end"[4]

(ii) The representations were central to the negotiations and were relied upon by Ms Kapova;

(b) Relied on paragraph 17 of Ms Kapova's witness statement which stated

"During that call[5], Mr Makovini referred repeatedly to criminal proceedings in Slovakia and spoke in a manner that I experienced as pressurising. The call included references to:

***17.1.** the alleged seriousness and consequences of the Slovak criminal proceedings;*

***17.2.** potential consequences for me personally;*

***17.3.** potential consequences for my business activities; and*

***17.4.** references to my son and his future career (my son is a law student)."*

(c) Referred to the fact that it was only after the Settlement Agreement had been entered into that Ms Kapova was sent, on 17 January 2026, an official decision showing that the Slovak criminal proceedings had been discontinued in January 2025 approximately 12 months prior to the Settlement Agreement[6];

(d) Stated at [26] that this disclosure suggested that material information as to the true state of the criminal proceedings had been withheld from Ms Kapova;

(e) Referred at [28] to an email dated 27 January 2026 which was said to be a formal communication raising documented and legitimate requests for clarification;

(f) Submitted:

(i) That the effect of the Settlement Agreement was to stay the substantive proceedings with what was said to be the effect that the Court should not entertain summary enforcement of the terms in the present proceedings[7] and that the Application exceeded the proper procedural scope of the provision permitting liberty to apply;

(ii) That it was inappropriate for the matter to be determined without a hearing or with summary disposal;

(iii) That there were serious material misrepresentations which could not be decided summarily;

(iv) That the facts supported liability under Article 30 of the Law of Obligations or "[a]lternatively, the evidence supports a case of fraudulent misrepresentation or deliberate non-disclosure"[8];

(v) That there was a serious issue as to whether the Settlement Agreement was voidable for duress or that Ms Kapova was entitled to withhold performance until Mr Makovini fulfilled his obligations.

22. Mr Makovini's skeleton argument:

(a) Sought immediate judgment under RDC Part 24 and stated that no prejudice was caused by the fact that the Application did not itself refer to RDC Part 24;

(b) Sought the lifting of the stay only to the extent necessary to enforce the Settlement Agreement;

(c) Stated that the test for immediate judgment was met as:

(i) There was plainly a breach of the obligation to pay the first instalment of 400,000 Euros by 27 January 2026;

(ii) Ms Kapova had not sought to avoid the Settlement Agreement for misrepresentation;

(iii) That the Settlement Agreement precluded reliance on any pre-contractual representation or any non-fraudulent misrepresentation and there was an express waiver of the right to challenge the Settlement Agreement on the grounds of mistake, misapprehension or subsequent change of circumstances or duress.

The Judgment

23. The Judge acceded to the Application to lift the stay and enter judgment for Mr Makovini for 1 million Euros plus interest by a judgment given orally on 14 April 2026. The reasons were then set out in a Schedule of Reasons in the 29 April Order.

24. The Judge:

(a) Held that, on a proper construction of the Settlement Agreement and, in particular, clause 4.1, Mr Makovini was entitled to lift the stay and seek enforcement of the Settlement Agreement in "exactly the same way as if a formal Tomlin order had been made which provided for a stay save for the purpose of enforcement of the Settlement Agreement";

(b) That there was no difficulty in treating the Application as one in which immediate judgment was sought;

(c) That there was no approbation and reprobation as had been alleged by Ms Kapova;

(d) That the terms of the Settlement Agreement made it plain that there was no room for any factual dispute which arose out of the discussions, negotiations, misrepresentations or mistaken assumptions which led to the Settlement Agreement with the only exception being if there was a case of fraud being made out;

(e) That, although fraud was suggested as a possibility at paragraph 51 of Ms Kapova's skeleton argument, the witness statements of Ms Kapova and Mr Kapa did not suggest any misrepresentation at all let alone a fraudulent one but rather were supportive of a case of non-disclosure; and

(f) As there were no triable issues, judgment would be entered for Mr Makovini.

The Grounds of Appeal and Post Judgment Evidence

25. Ms Kapova seeks to appeal on four grounds as set out in her Appeal Notice:

(a) Ground 1 - That the Judge wrongly categorised the case as one of non-disclosure and assumptions when there was "a positive written representation, by conduct" that the Slovak proceedings were extant;

(b) Ground 2 - That the Judge determined the Application summarily notwithstanding that there was an acknowledgement of a plain and material dispute of fact;

(c) Ground 3 - that there was no jurisdiction to enforce the terms of the Settlement Agreement under the Consent Order as the terms had not been incorporated into any operative part of the of any Court Order; and

(d) Ground 4 - that the Judge was wrong to dismiss the case of economic duress notwithstanding that compelled execution of a clause precluding duress was possible.

26. The Grounds of Appeal were supported by a witness statement of Ms Kapova which she said was made "to clarify the findings" in identified paragraphs of the Schedule of Reasons "to set out clearly what Mr Makovini said to me and my son during the three-day negotiation period between 9 and 12 January 2026". She said that her case "properly understood" had always been one of fraudulent misrepresentation. She also exhibited what was said to be an independent legal analysis of the Slovak criminal proceedings by Mgr Sonderlich a Slovak lawyer. She asserted that there had been misrepresentations to the effect that criminal proceedings were still ongoing when they had, in fact, been closed in January 2025 and Mr Makovini had been trying to have them re-opened by applications made in September and October 2025 to the Slovak authorities.

27. Mr Makovini filed a Respondent's Notice with six grounds additional grounds for upholding the Judge's Order:

(a) That the Court had jurisdiction to enforce the Settlement Agreement even in the absence of a Tomlin order;

(b) That the Court had power to determine the matter summarily notwithstanding the existence of disputed facts where there was no real prospect of defeating enforcement;

(c) The alleged representations did not induce the Settlement Agreement as she resumed negotiations after initially withdrawing from them;

(d) That there was no imminent threat capable of amounting to economic duress in accordance with Article 41 of the DIFC Contract Law;

(e) That Ms Kapova affirmed the Settlement Agreement with full knowledge of the matters relied upon said to amount to misrepresentations; and

(f) There was, in any event, no notice of avoidance exercising any alleged right to avoidance.

28. On 1 September 2026, Ms Kapova made an application seeking to adduce fresh evidence being a further witness statement from her and an Order of the Regional Court in Kosice dated 29 May 2026. The evidence went to non-compliance by Mr Makovini and Pharma with the requirement in clause 5 of the Settlement Agreement to withdraw one of the sets of proceedings identified in Clause 8.2 within 2 months of execution.

Was there jurisdiction to enforce the Settlement Agreement in the present action?

29. It is convenient to deal with this issue, which comprises Ground 3 of the Appeal, first. If Ms Kapova is correct in relation to this issue, the other Grounds of Appeal do not arise.

30. Ms Kapova submitted:

(a) That the Consent Order in this case was not a Tomlin order with a stay of the proceedings but express liberty to apply in order to enforce the terms of the Settlement Agreement;

(b) That *Green v Rosen*[9] is authority for the proposition that an order in the terms of the Consent Order does not give the Court the power to

enforce the Settlement Agreement summarily;

(c) That the form of Consent Order, not being in Tomlin form, was likely to have been deliberate with the consequence that the parties had not agreed to the Court having jurisdiction in this action to enforce its terms;

(d) That Clause 4.1 of the Settlement Agreement could not provide such power and in any event contained a serious problem in that it appeared by the use of the phrase "and/or" both to permit enforcement of the Settlement Agreement and to resume the original proceedings.

31. In argument, Ms Kapova accepted that the stay could be lifted to resume the original proceedings but maintained that the enforcement of the Settlement Agreement was not possible.

32. Mr Makovini submitted:

(a) That the Consent Order and the Settlement Agreement, read together, permitted an application to lift the stay in order to enforce the terms of the Settlement Agreement;

(b) That the natural construction of the Settlement Agreement, and in particular, Clause 4.1, expressly permitted such an application;

(c) That Courts had permitted the enforcement of Settlement Agreements even when the terms of the relevant Consent Order had not been in precise Tomlin terms[10];

(d) That *Green v Rosen* did not support Ms Kapova's argument as no order at all was made in that case;

(e) That to the extent that the Consent Order was not in the form set out in RDC 36.29 and the Registrar's Direction No. 4 of 2010, the matter could be remedied in accordance with RDC 4.51; and

(f) Requiring the issue of a fresh claim would be inconsistent with the Overriding Objective.

33. Given Ms Kapova's submission that there was no jurisdiction to enforce the Settlement Agreement *summarily*, it is important to distinguish between:

(a) Whether the Court had any jurisdiction to enforce the Settlement Agreement in the existing action;

(b) If so, whether such jurisdiction should have been exercised in any way; and, if so

(c) Whether it was appropriate to exercise such jurisdiction summarily as the Judge did.

34. It is only the first issue which properly falls within Ground 3 although, given the submissions made by Ms Kapova as to the effect of the Settlement Agreement, it is appropriate to consider the second under this head as well.

35. The third issue properly governs matters covered within Grounds 1, 2 and 4. This is because the Court making a Tomlin order in conventional form providing for a stay with liberty to apply for the purpose of enforcing the terms identified in a schedule, never binds itself to make such an order if, in due course, an application is made to it. The Court retains full power to enforce or not to enforce such an agreement or to enforce only part of it and it also retains the power to decide the procedure appropriate to decide whether to order such enforcement.

36. At the stage of the making of an agreed order in Tomlin form, the Court is not required to and generally does not consider the enforceability or appropriateness of the settlement which the parties have agreed. As Warby J explained in *Zenith Logistics v Coury*[11] when deciding that the principle of open justice did not require that the terms of a settlement agreement referred to in a confidential schedule to a Tomlin order be open to public inspection (as would be the case for the operative parts of an order of the Court):

> *"The Court has no power to amend or vary the terms of the agreement. A Tomlin order, if made, does not represent endorsement or approval of those terms, or a conclusion that they are enforceable. The Court will normally have no business inspecting the terms unless and until an issue is raised on an application to enforce."*

37. So far as the second issue is concerned, it is appropriate to consider:

(a) The status of the action after the Consent Order was made; and

(b) The issues which could properly fall for decision in such an action.

38. A stay of an action, unlike a discontinuance, withdrawal, dismissal or judgment in the action does not bring an action to an end. It still continues, albeit that before any substantive steps can be taken in it, the stay must be lifted.

39. The Court imposes a stay of an action in a variety of different circumstances including, by way of example, until security for costs is provided or in order to allow negotiations for settlement to take place or for case management reasons (such as important legal issues being decided in another action).

40. The form of the order being made will, if properly drafted, identify the purpose for which a stay is made and, accordingly, the circumstances when it may be lifted.

41. In the present case, the reference to the Settlement Agreement in the recital and the express liberty to apply provision could only contemplate that there at least might be circumstances in which the stay would be lifted for purposes connected with the Settlement Agreement.

42. Ms Kapova accepted that the stay could be lifted to continue the original action. This acceptance was correct. If a party was contending that the Settlement Agreement was inapplicable (because, for example it had been avoided), the proper forum in which to seek relief was the existing action. Indeed, it seems likely that raising fresh proceedings traversing the same ground as the original action might well be abusive.

43. However, once such acceptance takes place, it will be impossible to avoid the possibility that it will be necessary to consider the Settlement Agreement. If valid and existing, the Settlement Agreement will provide a defence to a party resisting a claim made in reliance on the original allegations in the action. Furthermore, such a party is likely not merely to defend the original allegations but defend on the basis of its own entitlement under the Settlement Agreement.

44. It follows that it is not possible to restrict the lifting of the stay for the purposes of enforcing the original obligations to consideration only of such original obligations. The existence and enforceability of the Settlement Agreement is inevitably likely to affect whether the original obligations are enforceable.

45. The decision of Slade J in *Green v Rosen* does not provide support for the proposition that the Court had no jurisdiction to enforce the Settlement Agreement in this case. In that case no order at all was made when the case was settled. There was, however, a separate later order by which costs were taxed (which taxation was made pursuant to one of the agreed terms of the settlement). The judge emphasised that he was dealing with a case where no order at all was made following the settlement. Having considered various possible methods of settling a case his finding is set out in the last paragraph of the judgment:

> *"The court made no order of any kind whatsoever, and, having considered such authorities as I have been able to find, I arrive at the conclusion that in those circumstances the new agreement between the parties to the action supersedes the original cause of action altogether, that the court has not further jurisdiction in respect of the original cause of action which has been superseded by the new agreement, and that, if the terms of the new agreement are not complied with, then the injured party must seek his remedy on the new agreement. I mentioned to counsel for the plaintiff what I thought were one or two of the difficulties in his way. He is asking me to give him judgment for £83 6s 8d, as well as the costs. The sum of £83 6s 8d, which is one third of £250, arises only under the terms of the new agreement. Counsel cannot ask me to remove the stay because I have made no order for the stay: there is nothing to be removed. In my judgment, therefore, the plaintiff's remedy in this case to enforce the sum of £83 6s 8d, plus the taxed costs which the defendants agreed to be paid, must be by action on the new agreement. I am sorry to have to come to that conclusion, because it may mean starting a new action, under RSC Ord 14, but, in my judgment, I have no jurisdiction - this is not a matter of discretion - to give to the plaintiff the relief which she seeks. In those circumstances the application must be refused. If I am asked for it, and if it is necessary, as to which I express no opinion, I shall give leave to appeal. The point is by no means an easy one".*

46. It is clear that the *ratio* of the case is limited to one where there was no order at all following the settlement. Further the passage set out is supportive of the position that if there had been a stay, the Plaintiff might have been entitled to seek that it be lifted.

47. It is also clear that Slade J was not entirely happy with the conclusion that he had reached - for the simple reason that it meant that fresh proceedings had to be issued.

48. It is not necessary to consider whether this Court, faced with the same factual position as faced by Slade J, would today come to the same conclusion. It appears at least arguable that as no order had been made by the Court, the action had not come to an end. If, for example, the validity of the settlement were in question, it is difficult to see why the Court would not have had jurisdiction to consider whether or not the settlement was valid and, in such circumstances, to enforce the settlement if appropriate to do so.

49. What is, however, clear is that in this case the Consent Order expressly contemplated the continuation of the action. Furthermore, it expressly, albeit in the Recitals, referred to the Settlement Agreement. In such circumstances we consider that the Court had jurisdiction, if it considered it appropriate, to lift the stay for the purposes of enforcing the terms of the Settlement Agreement.

50. The suggestion that the terms of the Settlement Agreement itself constituted an agreement not to seek to enforce the terms of the Settlement Agreement in the existing proceedings, is rejected. It is true that the second sentence of clause 4.1 of the Settlement Agreement as set out above is not entirely felicitous. On the face of it, it appears to contemplate by the use of the phrase "and/or" that a non-defaulting party shall be entitled both to proceed with the Claim and counterclaim in the existing proceedings and to seek enforcement of the Settlement Agreement before the courts of the DIFC or any other court. Those remedies are, of course, alternative and could not be pursued simultaneously. It appears that one of two constructions is possible:

(a) The first is that "and/or" should be read as "or" so that the non-defaulting party is entitled either to proceed with the existing Claim and counterclaim or enforcement of the Settlement Agreement; or

(b) That the correct construction is that the non-defaulting party is entitled:

(i) Either to lift the stay and proceed with the existing Claim and counterclaim; or

(ii) To lift the stay and enforce the Settlement Agreement; or

(iii) To apply to seek enforcement of the Settlement Agreement otherwise than in the existing proceedings.

51. Either of those constructions appears possible and either expressly contemplates the lifting of the stay which is likely to have been understood to be the easiest and most straightforward method of enforcing the Settlement Agreement. Neither provides support for a proposition that the parties had agreed not to lift the stay for the purposes of enforcing the Settlement Agreement. Furthermore, as set out above, once the lifting of the stay was contemplated for any purposes, consideration of the Settlement Agreement would be very likely to be required.

52. The parties could come to an agreement which had the practical effect of precluding issues relating to the Settlement Agreement being raised in

the original action - most obviously by providing for binding arbitration or the exclusive jurisdiction of another Court. However, there would seem to be no practical purpose in requiring issues relating to the Settlement Agreement to be raised by way of separate proceedings in the same court. In any event that is not what was agreed in this case.

53. For all of the above reasons, the Court considers that the Judge was right to find that he had jurisdiction, if appropriate, to enforce the terms of the Settlement Agreement.

Should the Judge have exercised his jurisdiction in the way that he did?

54. This question involves consideration of each of the remaining Grounds of Appeal, numbers 1, 2 and 4. Grounds 1 and 2 concern alleged misrepresentation whilst Ground 4 concerns alleged economic duress.

55. Having found that he had jurisdiction, the Judge proceeded on the basis that he could and should enforce it if the Claim was valid on the face of the Settlement Agreement and there were no material issues of fact to be determined.[12] He then found that there were no triable issues and no real prospect of success in any defence that could be put forward or had been put forward.[13] In making such findings he was clearly applying the appropriate test for immediate judgment. We do not understand this to be in dispute. The central question is, accordingly, whether the Judge was wrong in the application of the test.

56. Ms Kapova submits:

(a) Under Grounds 1 and 2, that the Judge was wrong

(i) To characterise Ms Kapova's case as one of non-disclosure and assumptions rather than a positive case of misrepresentation;

(ii) To treat clauses 2.2, 2.3 and 15 of the Settlement Agreement as barring such a claim given his acknowledgement that fraud is an exception;

(iii) To determine the application summarily given the Judge's acknowledgements of the existence of disputes of fact; and

(b) Under Ground 4 that the Judge was wrong to dismiss the Appellant's Grounds of Economic Duress under Article 41 of the DIFC Contract Law given that compelled execution of a clause such as Clause 2.2 was possible.

57. In support of her case under Grounds 1 and 2, Ms Kapova:

(a) Sought to rely on factual assertions made and evidence adduced for the first time in her witness statement in support of the Renewed PTA Application dated 20 May 2026;

(b) Submitted that "there was a positive written representation, by conduct that the Slovak criminal proceedings were extant and capable of being withdrawn";

(c) Asserted that this representation insofar as in writing was first made by the submission of a first draft of the Settlement Agreement[14] which was produced with her witness statement in support of the Appeal;

(d) Sought to rely on statements alleged to have been made during the course of negotiations as oral representations that there were extant Slovak criminal proceedings;

(e) That as misrepresentations were said to be contained within the contractual documentation itself, they were not precluded by the terms of the contract; and

(f) Alternatively, that liability arose in deceit pursuant to Article 31 of the DIFC Law of Obligations.[15]

58. In the Chief Justice's reasons for granting the Renewed PTA Application in the 20 July Order he observed, in relation to her witness statement filed in support of the Renewed PTA Application, that as there had been no application to adduce additional evidence in support of Ms Kapova's appeal he would disregard that part of her statement which contain assertions of fact[16].

59. Mr Makovini objects to any evidence adduced on this Appeal which was not before the Judge and relies on the fact that there has been no application to adduce fresh evidence on the Appeal. His skeleton argument was filed before the limited application to adduce evidence referred to in paragraph 25 above. With the exception of that limited application, there has still been no application to adduce additional evidence. There is, accordingly, no basis upon which to consider or take into account fresh evidence, not before the Judge.

60. Even if that evidence were to be allowed we consider that it discloses no basis for a finding that there was any form of misrepresentation contained within the Settlement Agreement itself. In particular:

(a) The Settlement Agreement contains no identified representations;

(b) The relevant clauses in relation to Ms Kapova's argument are clauses 5 and 8 as set out above;

(c) Both of those clauses are in wide terms;

(d) Although there is an identified criminal case in sub-clause 8.2(c)(iv), the withdrawal and release obligations contained in those clauses extend far beyond the criminal case;

(e) We do not consider it arguable that the reference to the identified criminal case constituted a representation by Mr Makovini to Ms

Kapova that the criminal proceedings were still extant as at the date of the Settlement Agreement as the operative clauses are not expressed in the language of representation;

(f) Although the reference to the specific criminal proceedings does almost certainly mean that there was a common understanding between the parties that the identified criminal proceedings had been issued at some stage (as otherwise they would not have had a number), there was no statement as to whether they were ongoing or, indeed as to their precise state;

(g) Clause 5.1 which was concerned with the withdrawal of all cases in all jurisdictions required the withdrawal, discontinuance, termination or dismissal with prejudice of all judicial, arbitral administrative, criminal, regulatory, or investigative proceedings of any nature whatsoever whether current or pending and specifically required Mr Makovini to withdraw, discontinue or procure the dismissal of all proceedings filed against Ms Kapova or Mr Kapa in Slovakia or any other jurisdiction; and

(h) Clause 8.2 contained a release not only in relation to the identified Slovak criminal proceedings but also "all matters, facts, allegations and causes of action contained in or arising from each of the above proceedings".

61. The Settlement Agreement contained valid and operative requirements in relation to the identified Slovak criminal proceedings, once they had been issued, whether they were still being pursued by the Slovak authorities (as Ms Kapova states that she understood the position to be) or in circumstances where they had been terminated by the Slovak authorities but Mr Makovini was seeking their resuscitation (as appears to have been the actual position).

62. The same position applies to the first draft settlement agreement submitted during the course of negotiations (which was not, in any event, before the Judge). It was in materially the same terms as the final version and did not contain any written misrepresentations.

63. It follows that any case on behalf of Ms Kapova in relation to misrepresentation required both:

(a) An identified case as to oral misrepresentations; and

(b) A basis to circumvent the contractual restrictions contained in the Settlement Agreement as to applicable misrepresentation.

64. Settlement Agreements such as the present will very commonly contain restrictions which are designed to minimise the scope for argument as to the enforceability of the relevant agreement. There are good commercial reasons for such restrictions. Parties in cases such as the present will have been litigating, often at considerable expense and with considerable hostility, for substantial periods of time. If a settlement agreement is reached a well advised party may well consider that it is in their interests that the other party is not easily able to circumvent the provisions of the agreement. Otherwise they face the real prospect that the litigation which have accepted will be brought to an end (often with some reluctance) may re start.

65. We consider, in agreement with the Judge, that the provisions of clauses 2.1, 2.2, 2.3 and 15 of the Agreement precluded Ms Kapova from relying on alleged misrepresentations, save in respect of a viable case of fraudulent misrepresentation. The relevant clauses would not prevent the existence of such a viable case as:

(a) It is well established that, absent an express reference to fraud, a party will not be taken to have agreed to exempt a party from liability for such fraud; and

(b) It is, at the least, highly doubtful as to whether a party can absolve itself of liability for his own fraud.

66. As with other common law systems, there are specific requirements relating to the pleading of fraud in the DIFC:

(a) RDC 17.43 requires a party specifically to set out in his statement of case where he wishes to rely on them in support of his case "full and specific details of any allegation of fraud, dishonesty, malice or illegality."

(b) Paragraph 15.11 of the DIFC Courts Code of Best Professional Practice requires a lawyer not to "draft any originating process, pleading, affidavit, witness statement or notice or grounds of appeal containing - . (b) any allegation of fraud unless he has clear instructions to make such allegation and has before him reasonably credible material which as it stands establishes a prima facie case of fraud".

67. There was not before the Judge:

(a) any pleading of fraud; or

(b) any document setting out the required ingredients of a case for fraudulent misrepresentation namely:

(i) the terms of the relevant representation including when and how it was said to have been made;

(ii) the respects in which it was false; and

(iii) the basis for alleging that it was made dishonestly, that is either knowing it to be false or not caring whether it was true or false.

68. Neither Ms Kapova's first witness statement nor that of Mr Kapa nor her initial response to the application made any allegations of fraudulent misrepresentation. The only reference to fraudulent misrepresentation before the Judge was that contained in Ms Kapova's skeleton argument as set out in paragraph 18 above "[a]lternatively, the evidence supports a case of fraudulent misrepresentation or deliberate non-disclosure"[17].

69. It was not correct to say that the evidence supported a case of fraudulent misrepresentation and no particulars at all were provided of any basis for such an allegation. On that basis we consider it clear that the Judge was fully entitled not to consider any possible allegation of fraudulent misrepresentation.

70. Furthermore, since the hearing before the Judge there are still no clear allegations of fraud or proper particulars of the same. The highest the matter is put is:

(a) In her witness statement in support of the Appeal, Ms Kapova stated at paragraph 5 "My case, properly understood, has always been one of fraudulent misrepresentation" and "The position as explained in Exhibit WS03 is fundamentally different from the position Mr Makovini represented to me during the negotiations. I respectfully say that the difference between these two positions is the essence of the fraudulent misrepresentation in this case"; and

(b) In the skeleton argument in support of the Appeal, it was submitted:

(i) at paragraph 53 "In particular, where the circumstances relied upon by the Appellant fall within an exception such as fraud, the contractual exclusion cluses cannot themselves dispose of the issue without first determining whether the relevant exception is made out"; and

(ii) at paragraph 121 "The position is even stronger if the representation was fraudulent. Where a material representation is fraudulent, there is a strong presumption it was relied upon".

71. No document identifying the alleged fraudulent misrepresentation with proper particulars of the same has, accordingly, been provided either to the Judge or this Court. It should particularly be noted that there is no identification as to the grounds upon which it is said that any statement made by Mr Makovini was one which he intended to mislead Ms Kapova or made not caring whether it was true or false. On the facts, it is clear that Mr Makovini was trying to persuade the Slovak authorities to reinstitute the identified Slovak criminal proceedings. Given the necessarily rather vague and imprecise nature of the alleged oral statements (which have changed over time), it is unsurprising that there is no statement as to the basis for any alleged fraud.

72. This consideration is sufficient to dispose of Grounds 1 and 2. If there was a document setting out clearly the alleged fraudulent misrepresentations, it would be necessary to consider it very carefully against the known facts. It is plain that there are numerous features which point against the existence of any fraudulent misrepresentations including:

(a) The immediate provision after the Settlement Agreement, by Mr Makovini of the document by which the Slovak criminal proceedings had been terminated a year earlier; and

(b) The lack of any immediate reaction to such document from Ms Kapova.

73. If there really had been a fraudulent misrepresentation to the effect which Ms Kapova may be putting forward, that the Slovak criminal proceedings were extant, it is hardly likely that Mr Makovini would have immediately forwarded the document showing the statement to be untrue. Further if Ms Kapova had understood there to have been such a misrepresentation, an immediate reaction could have been expected but there was none.

74. The final ground of appeal is Ground 4 which seeks to maintain that there is a triable case of economic duress pursuant to Article 41 of the DIFC Contract Law.

75. Article 41 provides

> "A party may avoid the contract when it has been led to conclude the contract by the other party's unjustified threat which, having regard to the circumstances, is so imminent and serious as to leave the first party no reasonable alternative. In particular, a threat is unjustified if the act or omission with which a party has been threatened is wrongful in itself, or is wrong to use it as a means to obtain the conclusion of the contract."

76. There are accordingly three required elements namely:

(a) A threat;

(b) Which is unjustified;

(c) Which, having regard to the circumstances is so imminent and serious as to leave the first party no reasonable alternative.

77. The Article distinguishes between lawful and unlawful threats. It follows that it is necessary to consider with some care both the nature of any alleged threat and whether such threat was wrongful in itself.

78. In the context of Article 41, it is plain that the requirement for a threat requires the identification of an act or omission which will adversely affect the threatened party if he does not conclude the contract which is sought to be avoided. This is clear from the fact that the requirement for a threat to be unjustified requires an act or omission with which a party has been threatened.

79. The material before the Judge did not disclose anything which was identified as a threat. There is no evidence or submission of a statement by Mr Makovini to the effect "Unless you enter into the settlement agreement and give me "x" I will do or not do "y". The highest that Ms Kapova's first witness statement puts the matter is that there was pressure to enter into settlement discussions. The 10-page reply to the Application to lift the stay did not refer to Article 41 or economic duress at all.

80. The suggestion of duress was first introduced by two rather confused paragraphs of the skeleton argument before the Judge where it was stated that:

> "[59] The evidence shows that [Mr Makovini] created significant pressure by repeatedly stating that criminal proceedings were ongoing and posed serious risks, when in fact they had already been discontinued. This created urgency and fear, leaving the Claimant with no

real choice but to settle. The negotiations took place over a short period of four days, including non-working days.

[60] Relying on the threat of criminal proceedings that had already been closed supports the Claimant's position that the pressure was unjustified and improper. The Claimant had no practical way to verify the true position within that timeframe".

81. There was no attempt to identify with any precision the nature of the alleged threat which is simply referred to as "the threat of criminal proceedings that had already been closed." Furthermore, the evidence of Ms Kapova demonstrates:

(a) That when there was first reference to the criminal proceedings, she brought short the negotiations; and

(b) She subsequently negotiated hard (and to an extent successfully) in relation to the terms of the Settlement Agreement.

82. Thus, not only was there no suggestion that Mr Makovini insisted on any particular figure by way of settlement but positive evidence that Mr Makovini was prepared to and did negotiate the terms of the Settlement Agreement. In the circumstances the "pressure" which is said to have been exerted can only have been to enter into a negotiated settlement agreement. The very terms in which the matter is put forward demonstrate that Ms Kapova had alternatives:

(a) She could and did negotiate as to the terms of the settlement;

(b) She could walk away from the settlement discussions; and

(c) She could have let the matter proceed to judgment.

83. The only suggestion in respect of which it is said that any pressure was illegitimate is that it is said that Mr Makovini suggested that criminal proceedings were ongoing. However for the reasons already found, there is no basis for any finding of fraudulent misrepresentation. Further and most materially there is no clear statement of what Mr Makovini would or would not do if a settlement was not concluded. In the circumstances we do not consider that there is any basis to find that the act or omission said to constitute the duress was wrongful in itself.

84. Mr Makovini referred to the decision of H.E. Justice Rene Le Miere in *Alumatawa v Al Mutawa* [2025] CFI 17/11/2025 in which:

(a) He identified the relevant principles; and

(b) Referred with approval to the decision of the UK Supreme Court in *Pakistan International Airline Corp v Time Travel (UK) Ltd* [2021] UKSC 40 where it was clarified that lawful act duress was confined to exceptional circumstances.

85. We consider that it is plain that there is no basis in this case for any finding that there was lawful act duress. Ms Kapova had access, at all times, to lawyers and legal advice before she entered into the settlement. There was no imminent danger to her or her son - indeed it is plain that her dispute with Mr Makovini had been underway for a considerable time. It follows that the Judge was right to find that there was no arguable case of economic duress.

86. Finally, although we agree with the Judge that it is possible for a party to force another party to enter into a contract which purports to restrict the right to assert duress in a way which the Courts will set aside, the contractual restriction obliges any court considering duress to focus on the agreement in the form in which it is entered into. Someone who enters into a contract with a gun to their head will not be held to a provision which says that they were not forced to enter it. However, the contractual restriction forces focus on the question as to whether the party was really forced to enter into the contract in the form in question including with the contractual restriction.

87. In the present case where Ms Kapova had full access to lawyers, it is impossible to suppose that she had no realistic alternative but to enter into the contract in the form in which it was entered into if she really was being forced in the way in which she now maintains. The very fact of successful negotiation shows that she was capable of and did explore alternatives to entering into the Settlement Agreement.

88. In her witness statement issued for the purposes of the Appeal, Ms Kapova did seek to put forward fresh evidence which was materially different from that she had submitted before the Judge. There is, however, no application to adduce the fresh evidence with the result that it is unnecessary to consider it.

89. The above matters are sufficient to dispose of the Grounds of Appeal without reference to the Respondent's Notice. However we consider that the Respondent is correct to point out:

(a) That there has been no attempt to avoid the Settlement Agreement (which would be essential to any case of fraudulent misrepresentation or duress); and

(b) That Ms Kapova made a number of statements confirming her intention to comply with the provisions of the Settlement Agreement after she became aware of the termination of the Slovak criminal proceedings which, in the circumstances, can properly be regarded as affirming the Settlement Agreement.

90. For all of these reasons the Grounds of Appeal fail.

The Application to Adduce Fresh Evidence

91. The final matter in relation to liability is the application to adduce fresh evidence of an alleged failure to withdraw proceedings. The relevance of this was not positively asserted at the hearing and was only dealt with in outline terms in the written submissions. This is unsurprising. Even if Mr Makovini has not complied with a provision of the terms of the Settlement Agreement (and that has not been investigated), it cannot affect the liability for summary judgment in respect of the 1 million Euros which occurred much earlier. It is irrelevant to the issues under appeal.

Costs

92. So far as costs are concerned:

(a) Mr Makovini seeks his costs on an indemnity basis but has not identified what sum is sought;

(b) It is plain that Mr Makovini is entitled to his costs;

(c) The Court will order the Defendants to provide a statement setting out their costs claimed within 7 days of the date of this judgment and Ms Kapova to respond to such statement and make any submissions as to the basis of the assessment of costs and then consider what order to make.