Claim No. CFI 002/2017

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

KBC ALDINI CAPITAL LIMITED

Claimant

and

(1) DAVID BAAZOV

(2) CANACCORD GENUITY CORP

(3) CANACCORD GENUITY (DUBAI) LIMITED

Defendants

and

ALEKSEI CHEGODAEV

First Part 21 Defendant

FERDYNE ADVISORY INC.
(a company incorporated in the British Virgin Islands)

Second Part 21 Defendant

REASONS FOR THE ORDERS OF JUSTICE ROGER GILES MADE ON 23 FEBRUARY 2020

UPON the applications filed by the Defendants on 20 February 2020

AND UPON hearing counsel for the First, Second and Third Defendants and Mr Kalani for the Claimant on 23 February 2020

AND UPON the Orders of Justice Roger Giles made on 23 February 2020

REASONS FOR ORDERS

These proceedings are fixed for hearing for five days commencing on 8 March 2020. On 13 February 2020 I heard, amongst other applications, an application by the Defendants for security for costs. For reasons then given, I declined to order security for past costs, but ordered that the Claimant provide security for the costs of the Defendants going forward in the amount of $900,000 for the First Defendant and $400,000 for the Second and Third Defendants, by payment into court by 4.00 pm on 19 February 2020.

At 2.00 pm on 19 February 2020, Mr Kalani, the sole shareholder and CEO of the Claimant, emailed the Registry first, saying that the Claimant could not arrange the funds and asking it be allowed to provide them if and upon judgment being given in the proceedings; and secondly, saying that the Claimant's retainer of its lawyers was in the process of termination and it would be engaging new lawyers. The email had not been copied to the Defendants, and the Registry caused it to be forwarded to them. The Registry informed Mr Kalani that he should file an application. No application has been filed.

Unsurprisingly, on 20 February 2020 the Defendants both filed applications for orders that unless the Claimant provided the respective securities within 48 hours, the claim should be struck out and judgment be entered for the Defendants. The Defendants' applications included the request that they be dealt with without a hearing.

Also on 20 February 2020, the Claimant's lawyers emailed the Registry advising that they would no longer be acting as the Claimant's legal representatives, and enclosing a form of consent order signed on behalf of the Claimant for an order accordingly pursuant to RDC 37.11.

I considered it appropriate to make orders having the effect that the Claimant's lawyers would cease to be its legal representative without a formal application. I was not prepared to consider the "unless" orders sought by the Defendants without a hearing. Given the imminent hearing date and the continued incurring of costs, however, I fixed the Defendants' applications for hearing today, 23 February 2020, and gave directions for service by which Mr Kalani would be given notice of that fixture and that the Claimant or its new lawyers should be present.

At the hearing Mr Kalani informed me, at my request, that he had spoken to another firm of lawyers with a view to engaging them and to making financial arrangements with them, but that he could not complete those arrangements until he had received the papers from his previous lawyers. He said that he had received some of those papers and would be receiving the remainder shortly.

As to providing security, although - as I have said - Mr Kalani is the sole shareholder of the Claimant, there was no suggestion that security would be provided by him or any indication of his ability to provide it. Instead, he informed me that it was proposed to obtain equity capital by issuing

shares to new shareholders, the equity capital being then used to provide the security. This, he said, would take some time, as it would be necessary to comply with numerous formalities and hold a directors' meeting.

However, as of today no new shareholders have indicated that they will participate in this venture. The furthest it appears to have gone is that Mr Kalani said he would be approaching a potential new shareholder following the hearing today. He said that he was unable effectively to approach potential shareholders until he had the papers from which they could judge the nature of the present claim; implicitly, the success or failure of the claim being the key factor in any decision to participate.

In my view, this is a quite unsatisfactory situation. I allow for the fact that Mr Kalani is without his previous lawyers, although it should be said that that appears to have been a parting of the ways by consent rather than anything done by the lawyers to jettison the Claimant. I have to form a view as to the prospect of the security ever becoming available. The suggestion from Mr Kalani that security be provided if and upon judgment being given against the Claimant is plainly unsatisfactory, as it would defeat the entire objective of the provision of security.

The option which has exercised my mind, since it would be quite wrong to permit the case to go to a hearing while uncertain steps, if any, are taken to arrange security, is to order a stay of the proceedings for a period, giving the opportunity to obtain funds from which security can be provided and the proceedings then revived; but if that did not occur within a certain period, the proceedings would then be struck out. I have decided against that course, as it seems to me that the prospect of security ever being provided is negligible.

Mr Kalani is not going to provide it, either from choice or because he cannot. He does not have any committed equity contributor, nor any real steps towards obtaining one. There does not seem to me to be a real prospect of any equity contributor participating in a company whose solvency is presently in considerable doubt against the possibility of success in these proceedings. The new shareholder or shareholders would have to put up a not inconsiderable sum of money, which would immediately leave the Claimant's coffers and be paid into court, and any return to them would depend on success in the proceedings which, although brought bona fide, are by no means without difficulties.

In short, it seems to me wishful thinking for Mr Kalani to think he can find the money necessary for the security from new equity shareholders. In my view, in that situation, it is best to strike the proceedings out now. I do not think that, in the circumstances as they have been demonstrated, it is even appropriate to permit the 48 hours requested by the Defendants. There is just no point to it, and it would only mean more incurring of expense as they would prudently continue on another couple of days of expenditure of costs.

For that reason, it seems to me that, the security not having been provided in accordance with the orders made on 23 February, the proceedings should now be struck out.

Issued by:

Nour Hineidi

Deputy Registrar

Date of issue: 11 March 2020

At:1pm