THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

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

IN THE COURT OF FIRST INSTANCE

BETWEEN

JOHNSON ARABIA LLC

Claimant

and

BIC CONTRACTING LLC (FORMERLY HLG CONTRACTING LLC)

Defendant

JUDGMENT OF H.E. JUSTICE ALI AL MADHANI

ORDER

UPON the Claimant's claim filed on 16 September 2020

AND UPON the Defendant's defence without counterclaim filed on 5 November 2020

AND UPON the Claimant's reply to the Defendant's defence filed on 26 November 2020

AND UPON the Claimant's application for immediate judgment against the Defendant filed on 11 January 2021 (the **"Immediate Judgment Application"**)

AND UPON the Defendant's response to the Immediate Judgment Application filed on 9 February 2021

AND UPON the witness statement of Mr Martin Kirby and the Claimant's reply to the Defendant's response both filed in support of the Immediate Judgment Application and both dated and filed on 22 February

AND UPON considering the other relevant documents on the Court's file

IT IS HEREBY ORDERED THAT:

1. The Immediate Judgment Application is granted.

2. Judgment for the Claimant against the Defendant for AED 2,701,719.37 (the **"Judgment Sum"**)

3. Pursuant to Practice Direction No. 4 of 2017, the Defendant shall pay interest on the Judgment Sum at a rate of 9% per annum from the date of this judgment until the date of payment of the Judgment Sum.

4. The Defendant shall pay the Claimant the costs of these proceedings on the standard basis, to be assessed by a Registrar if not agreed.

Issued by:
Nour Hineidi
Registrar
Date of Issue: 23 June 2021
Time: 2.30pm

SCHEDULE OF REASONS

Introduction

1. This is Claimant's (**"C"**) application for immediate judgment against the Defendant (**"D"**) filed on 11 January 2021 (the **"Immediate Judgment Application"**). Immediate judgment may be given against a defendant on the whole or a part of the claim or on a particular issue if, pursuant to RDC r. 24.1, the Court considers that the "defendant has no real prospect of successfully defending the claim or issue" (RDC r. 24.1(1)(b)) and "there is no other compelling reason why the case or issue should be disposed of at trial" (RDC r. 24.1(2)).

2. The application is unique because, when filed, the entire explanation for it was a mere four-line entry in Part A of the Application Notice; a statement, moreover, that did no more than convert RDC r. 24.1(1)(b) and (2) into a proposition. D's response to the Immediate Judgment Application (the **"Response"**), on the other hand, highlighted the shortcomings of the application, averred that C had failed to address a number of points in its Defence, argued that there remained "significant issues in dispute" between the parties and submitted that witness evidence and production of documents were required for the determination of these issues, all of which suggested that the Immediate Judgment Application was optimistic insofar as it could be said to have any substance at all. Yet on closer analysis, and with the benefit of further submissions filed in support

of the Immediate Judgment Application, it became apparent that C had in fact made a serious application, as it proved difficult, on the other hand, to identify exactly what issues remained in dispute between the parties at the time C had made it.

3. Before determining the Immediate Judgment Application, I think it is necessary to first outline and assess the case as it had developed up until the Immediate Judgment Application had been made. That is the context within which the application is best understood and with regard to which, in my judgment, it must be determined.

Pre-Immediate Judgment Application

C's claim

4. C's claim is set out at [3] to [5] of its particulars of claim dated 8 September 2020 (the **"POC"**), and is as follows.

5. C's claim is for payment under hire agreements for unpaid invoices:

> The Defendant had executed a Hire Agreement with the Claimant for hiring heaving equipments for Defendant's different projects and placed various purchase orders to get the machineries on hire from the Claimant. As per such orders, the claimant had made deliveries of various equipments on hire to the defendant with utmost care and perfection and submitted respective invoices for payment from time to time. Now from various transactions, there is an outstanding amount of AED 2,701,719.37 /-. is due from Defendant to Claimant. ([3] of the POC)

6. Also at [3] of the POC, C listed 320 transactions to which the alleged outstanding balance pertained. Each entry specified a "local purchase order" (**"LPO"**) number and a corresponding agreement number, invoice number, invoice date and a price in UAE dirhams.

7. At [4] to [5] of the POD, C submitted:

> 4. The total amount of business transactions during the period from 2018 to 2019 was AED3,981,928.17/- out of which the Defendant had paid to the Claimant AED1,280,208.80/- till date. Therefore, the Claimant has to receive AED2,701,719.37/- from the Defendant. All supporting documents to substantiate this due amount from the Defendant are attached.
>
> 5. Despite several requests from the part of the Claimant, the Defendant had failed to settle this due amount of AED 2,701,719.37/-, as such, a legal notice had been served to the defendant on behalf of the Claimant on 17/06/2020 demanding the defendant to pay the outstanding amount. The defendant did never respond to the legitimate demand of the claimant and not yet paid any amount towards the outstanding due. In these circumstances, the Claimant is left with no option, but to approach this Honorable court for relief.

D's defence

8. As set out in its defence with no counterclaim dated 5 November 2020 (the **"Defence"**), D disputed C's claim as follows.

9. Most fundamentally, D submitted:

> 6. As to the first sentence of paragraph 3, the Claimant has failed to clarify or specify which Hire Agreement it is referring to, given that the Claimant exhibits a number of Hire Agreements with its Particulars of Claim.
>
> 7. The second sentence of paragraph 3 is denied. The Claimant is put to strict proof as to which alleged "various equipments" were said to be delivered with "utmost care and perfection" to which location and at what date and time.
>
> 8. The third sentence of paragraph 3 is denied. The Defendant does not accept that any of the invoices for "various equipments" are due and payable unless they are supported by signed delivery notes.
>
> 9. The fourth sentence of paragraph 3 includes a schedule containing 320 lines of entries which the Claimant alleges shows the "outstanding payment" due to it from the Defendant ("Schedule"), and which is denied by the Defendant.
>
> .
>
> 11. In reality, the Defendant submits that the Claimant has pleaded and presented its case very poorly and has merely undertaken a *"document dump"* on the Defendant without properly particularizing or explaining the relevance and significance of the documents or developing cogent arguments in relation to its claim.
>
> 12. Accordingly, the Defendant reserves its right to plead further if and when the Claimant properly particularises and explains the relevance and significance of its exhibited documents and develops any cogent arguments in relation to its claim.
>
> 13. As to the Schedule and supporting documents, the Defendant has done its best to try to understand them and pleads as follows.

10. At [14] to [17] of the Defence, D highlighted that some of the documents referred to in C's list of 320 transactions had not been provided by C with the POC (the **"Missing Documents"**). At [16] of the Defence, D invited the Court to dismiss C's claim insofar as it relied on the Missing Documents (i.e. to a value of AED 243,999.72) and at [17] reserved its right to plead to the Missing Documents if they were later produced.

11. At [18] to [20] of the Defence, D highlighted that some of the documents provided by C were not fully legible (the **"Illegible Documents"**). At [19] of the Defence, D highlighted that the value of the invoices associated with the Illegible Documents was AED 382,744.02, but it did not go so far as to invite the Court to dismiss C's claim insofar as it relied on them. It did, however, reserve its right to plead to the Illegible Documents if they were later reproduced clearly.

12. At [21] of the Defence, D submitted that 20 of the hire agreements provided by C were not executed by D as they did not contain either D's

company stamp or an authorised employee's signature (the **"Alleged Unauthorised Agreements"**). At [22] of the Defence, D highlighted that the value of the invoices associated with the Alleged Unauthorised Agreements was AED 585,862.56, but it did not go so far as to invite the Court to dismiss C's claim insofar as it relied on them.

13. At [24] of the Defence, D submitted that another four of the hire agreements provided by C were not *properly* executed by D as they did not contain D's company stamp (the "Unstamped Agreements"). At [25] of the Defence, D highlighted that the value of the invoices associated with the Unstamped Agreements was AED 132,195.00, but it did not go so far as to invite the Court to dismiss C's claim insofar as it relied on them.

14. At [27] of the Defence, D acknowledged that it had paid to C an amount of AED 1,280,208.80, as C had claimed in the POC.

15. From [28] and [31] of the Defence, D stated:

> 28. No admissions are made in relation to paragraph 5 save that the Defendant denies that the Claimant is owed an amount of AED 2,701,719.37, or at all.
>
> 29. No admissions are made in relation to paragraph 6 save that the Defendant denies that the DIFC Courts have jurisdiction over the various parts of the Claimant's claim as more particularly described herein and in the Defendant's Application challenging jurisdiction.
>
> **Relief**
>
> 30. . the relief requested by the Claimant should not be granted by the Court for all of the reasons stated herein as well as in the Defendant's Application challenging [the Court's] jurisdiction.
>
> 31. In the premises, the Defendant requests that the Claimant's claim should be dismissed in its entirety for lack of proof and lack of jurisdiction and the Defendant be awarded its costs in the case.

16. To recap, D's denials of C's claims in the Defence are as follows:

> a. D denied that C delivered "various equipments [sic]" "with utmost care and perfection" (the **"First Denial"**);
>
> b. D denied that there is an outstanding amount of AED 2,701,719.37 due from it to C, *unless the underlying invoices are supported by signed delivery notes* (the **"Second Denial"**);
>
> c. D denied it had executed the Unauthorised Agreements (the **"Third Denial"**); and
>
> d. D denied that the Unstamped Agreements had been properly executed (the **"Fourth Denial"**).

17. To recap D's reservations, these were as follows:

> a. D reserved its right to plead further if and when C "properly particularises and explains the relevance and significance of its exhibited documents and develops any cogent arguments in relation to its claim";
>
> b. D reserved its right to plead to the Missing Documents if they were later produced; and
>
> c. D reserved its right to plead to the Illegible Documents if they were later reproduced clearly.

18. The Defence has not been amended and nor, as far as I am aware, has C's consent to amend the Defence or the Court's permission to do so been sought.

C's reply to D's Defence

19. On 26 November 2021, C filed a reply to D's Defence (the **"Reply"**).

20. At [4] of the Reply, C pointed out that it had in fact specified which hire agreement it referred to for each transaction listed in the POC.

21. In respect of D's denial noted at [14. i)] above, C submitted with the Reply the invoices with signed delivery notes, as noted at [7] of the Reply.

22. C also submitted with the Reply the Missing Documents, as noted at [9] of the Reply, and the Illegible Documents, as noted at [13].

D's jurisdiction challenge

23. By application notice dated 5 November 2020, D applied for an order declaring that the Court did not have jurisdiction to hear certain parts of the claim which had an accumulative value of AED 718,057.56 (the **"Jurisdiction Application"**). The application was made on the basis, D submitted, that a number of the hire agreements exhibited by C with the POC were not signed and/or stamped by D-being the Alleged Unauthorised Agreements and the Unstamped Agreements-such that they were not executed by D (the **"Signature Objection"**) and not properly executed by D (the **"Stamp Objection"**), respectively.

24. In both cases, D contended that there would be no opt-in agreement for the purposes of Article 5(A)(2) of Dubai Law No. 12 of 2004, the Law of the Judicial Authority at the Dubai International Financial Centre, the provision pursuant to which contracting parties may opt into the jurisdiction of this Court, and which provides:

> The Court of First Instance may hear and determine any civil or commercial claims or actions where the parties agree in writing to file such claim or action with it whether before or after the dispute arises, provided that such agreement is made pursuant to specific, clear and express

provisions.

25. C and D are UAE onshore limited liability companies and, in the absence of an opt-in agreement, D argued, were therefore not subject to the jurisdiction of the DIFC Courts.

26. By judgment dated 14 December 2020, Justice Roger Giles dismissed the Jurisdiction Application (the **"Judgment"**). Giles J found that the disputes over liability to pay the invoices corresponding to all the Allegedly Unauthorised Agreements and the Unstamped Agreements were caught by provisions opting into the jurisdiction of the DIFC Courts and that D's challenge was without merit: [23] of the Judgment.

27. Giles J also made findings of relevance to the present application and to D's defence to the claim more generally. Indeed, at [11], the learned judge stated, "It should be noted that, in making this Application, the Defendant invites a decision which may impact on its substantive defence as to the relevant invoiced amounts."

28. In respect of the Stamp Objection, Giles J found at [16]:

> . while it has to an extent become conventional a stamp in addition to signature on behalf of a company is not necessary. The signatory to the unstamped hire agreements is the same person who signed undisputed hire agreements, signing as Chief Operating Officer, and they bind the Defendant as a written agreement. (emphasis added)

29. In respect of the Signature Objection, Giles found that:

a. if hire agreement 22367, which the learned judge took as an illustration ([17]), "did not come into force because it was not signed on behalf of the Defendant, the terms of. [certain] prior hire agreements [duly signed and stamped] continued to govern" ([18]);

b. Giles J continued at [19]:

> Those terms included the opt-in provision, agreed in writing in [the prior] hire agreements... It catches any dispute "arising out of or in connection with this Hire Agreement", and dispute over liability to pay the invoiced amount for the May 2018 hiring is such a dispute because "this Hire Agreement" is the hire agreement as varied. It does not matter that the variation is not in writing signed by the Defendant. There can be an agreement in writing, after the dispute arises, to submit to the Court of First Instance a dispute arising under an oral contract - it is only the agreement to opt in that must be in writing. (emphases added)

c. the judge pointed out that the claim is to the invoiced amounts and, properly understood, C claims under the agreement for the hiring by which the invoiced amount was incurred ([21]);

d. despite the details varying, the position was the same for other hire agreements, namely 22368, 22371, 22372, 26569, 27020, 27021 and 26960 ([22]);

e. hire agreements 26597 and 21836 were not entirely in the same position but the judge had "no hesitation in inferring that, in a manner not revealed but consistently with the course of business as shown in the documents. the same position [resulted]" ([22]); and

f. importantly, the "disputes over liability to pay the invoices corresponding to all the hire agreements in the Appendices are caught by the opt-in provision" (emphasis added) ([23]).

30. The Judgment was not appealed.

Assessment of the case pre-Immediate Judgment Application

31. As stated above, D advanced four denials in its defence to C's claim. Were these denials or any of them live at the time the Immediate Judgment Application was made?

The First Denial

32. I do not understand that the First Denial nor C's corresponding assertion-that it delivered "various equipments. with utmost care and perfection"-were intended to be determinative in these proceedings. To the extent they or either of them were, they appear to not have been pursued.

The Second Denial

33. D denied in its Defence that there was an outstanding amount of AED 2,701,719.37 due from it to C, unless the underlying invoices were supported by signed delivery notes.

34. Signed delivery notes have been filed by C along with its Reply. I have reviewed all of them. Each delivery note contains a signature. D has not disputed that all the delivery notes in question have been filed.

35. There appears not to be, therefore, an extant issue in respect of the amount claimed by C insofar as that claim relies on the underlying invoices being supported by signed delivery notes.

The Third Denial

36. As to D's denial of C's claim insofar as it relies on the Alleged Unauthorised Agreements, in my view, D is now estopped from pursuing this defence inasmuch as Giles J has decided the issue to which it pertains in the Judgment, a decision which has not been appealed.

37. The crux of Giles J's decision on the question of the Alleged Unauthorised Agreements was that the disputes over liability to pay the invoices

corresponding to all hire agreements in this category were caught by provisions opting into the jurisdiction of the DIFC Court on the basis that, even if a certain hire agreement did not come into force because it was not signed on behalf of D, meaning, needless to say, that its opt-in clause would not come into force also, the terms of a prior hire agreement would govern, and so too the opt-in clause contained within them. In other words, irrespective of whether certain hire agreements were properly executed or not, clauses opting into the jurisdiction of the DIFC Court would in any event govern the corresponding transactions.

38. In my judgment, intrinsic to Giles J's finding that, if the Alleged Unauthorised Agreements were in force their opt-in clauses governed, while if they were not in force the opt-in clauses of other hire agreements governed, is a finding that each transaction was governed by some hire agreement, properly executed, between C and D. The only consequence of any hire agreement from amongst the Alleged Unauthorised Agreements not being in force, therefore, is that that particular hire agreement would be of no consequence, not that the corresponding transaction vanished or that D was not C's counterparty therein. In other words, Giles J's alternative routes to finding that the transactions corresponding to the Alleged Unauthorised Agreements were captured by opt-in clauses necessarily amounts to a finding that each transaction was governed by a hire agreement between C and D.

39. Though discussing a situation where an issue was previously determined in another action, not earlier in the same action as in the present case, Lord Keith's description of the circumstance in which issue estoppel may arise in Arnold and others v National Westminster Bank plc [1991] 3 All ER 41 at 47 can, in my judgment, be applied to the latter situation too:

> Issue estoppel may arise where a particular issue forming a necessary ingredient in a cause of action has been litigated and decided and in subsequent proceedings between the same parties involving a different cause of action to which the same issue is relevant one of the parties seeks to reopen that issue.

40. Issue estoppel within a single action operates to prevent parties to that action from challenging issues already determined other than by appeal of the decisions in which those issues were determined, except in exceptional circumstances. In my judgment, the proposition that there existed some binding hire agreement between C and D in respect of all the transactions corresponding to the Alleged Unauthorised Agreements is a necessary ingredient of Giles J's finding that, if the Alleged Unauthorised Agreements and so too their opt-in clauses did not come into force, still, other hire agreements governed all the relevant transactions and so too their opt-in clauses. The Judgment was not appealed. It follows, in my judgment, that D is estopped from reopening this issue: there can be no consequence to the Alleged Unauthorised Agreements being unsigned.

41. Even if issue estoppel does not arise in this case, I adopt the learned judge's conclusion on the Signature Objection and apply it to the Third Denial.

The Fourth Denial

42. As to D's argument that the Unstamped Agreements had not been properly executed, again, Giles J found at [16] of the Judgment that "a stamp in addition to signature on behalf of a company is not necessary." This finding was not appealed by D. D is in my judgment, therefore, estopped from pursuing this defence.

43. Even if issue estoppel does not arise in this case, I adopt the learned judge's conclusion on the Stamp Objection and reapply it to the Fourth Denial.

Conclusion

44. In my view, by the time the Immediate Judgment Application was issued, there was no extant defence to C's claim.

The Immediate Judgment Application

C's application

45. Only a draft order was attached to the application notice in respect of the Immediate Judgment Application. The content of the application notice, therefore, comprised the entirety of C's application:

> **The applicant intends to apply for an order that:**
>
> 1- Pursuant to RDC 24.1, the immediate judgment application is granted. (2)There shall be Judgment for the Claimant against the Defendant who are liable to pay and shall pay the Claimant : a) The sum of AED 2,701,719.37 owed by the Defendants to the Claimant 3)3. Pursuant to PD 4/2017, the Defendants shall pay interest on the Judgment Sum to the Claimant at the rate of 9% annually from the date of this judgment until the date of payment. 4)The Defendants shall pay the Claimant's costs of the Immediate Judgment Application.
>
> **because ...**
>
> A. This is an Application for Immediate Judgment made under RDC Part 24 (see RDC 24.7) B. The Defendants have no real prospect of defending the claim or succeeding on the claim. There is no other compelling reason why the case should be disposed of at a trial (RDC 24.2)

D's Response

46. As stated above, on 9 February 2021, D filed its Response.

47. At [2] to [4], D correctly, in my view, objected to the brevity of C's application: "The Claimant has. provided no explanation or justification as to why Immediate Judgment should be granted, and has filed no evidence in support of its Application for Immediate Judgment" ([3]); "The Claimant has. failed to explain or establish that (i) *"the Defendant has no real prospect of successfully defending the claim", and (ii) that "there is no other compelling reason why the case should be disposed of at a trial"*([4]]).

48. At [5], D stated that it relied on its previous submissions, including the Defence, and at [6] reiterated the First to Fourth Denials.

49. At [7], D acknowledged that C had, with its Reply, "provided a number of the *"missing documents"* and *"documents not fully legible"* which the Defendant identified in its Defence," but stated that C "failed to address a number of the points raised by the Defendant in its Defence regarding the Claimant's Claim."

50. At [8] to [10] of the Answer, relying on the content of an agreed list of issues prepared in advance of a case management conference on 24 January 2021 (the **"Agreed List of Issues"**) and an unagreed list of issues (the **"Defendant's List of Issues"**), D averred that "there remain significant issues in dispute between the Parties" ([8]) involving "disputed matters of fact and law, on which further evidence and submissions are required for the Court to be able to properly determine these issues and properly determine the entirety of the Claimant's claim" ([10]).

51. At [11] to [14] of the Response, relying on the contents of C's and D's case management information sheets filed in advance of the case management conference, D highlighted that both C and D had indicated that they intended to rely on witness evidence at trial: "Both parties, therefore, clearly recognize that there will be a need for witness of fact and oral evidence to determine the issues in dispute between the parties" ([14]).

52. At [15] of the Response, D highlighted that it intended to make requests for production of documents, in particular regarding:

a. delivery notes and timesheets signed and stamped by D's authorised personnel;

b. missing delivery notes and timesheets;

c. in relation to invoices claimed for replacement equipment, reasons for such replacement; and

d. in relation to alleged damage to hired equipment, invoices claimed for such alleged damage.

53. D stated at [21] that it is "carrying out a full investigation into the issues in dispute. in order to assess and determine exactly what (if any) amounts are properly owed and payable to the Claimant in respect of its entire Claim" and at [22] that "the case should be adjourned in order to allow the parties to try to settle the case."

Martin Kirby's witness statement

54. In an apparent effort to remedy the brevity of the Immediate Judgment Application, C's manager, Mr Martin Kirby, filed a witness statement dated 22 February 2021 in support of the application (**"MK1"**).

55. At [18] and [19] of MK1, Mr Kirby relevantly stated:

> 18. Having carefully considered the Defence with no counterclaim (and the documents challenging the jurisdiction) it is apparent to Johnson Arabia LLC that it discloses no defence to the claim of Johnson Arabia instead stated some missing documents and illegible documents which has been submitted by Johnson Arabia together with the reply to defence and the defendant has not filed any further response, clearly proves that the defendant have no real prospect of defending the claim or succeeding the claim and that there is no other compelling reason why the case should be disposed of at trial.
>
> 19. Accordingly, in the interests of justice and to save time and costs, Johnson Arabia LLC has resolved to bring the present application for immediate judgment.

56. At [20] of MK1, Mr Kirby responded to the points of defence advanced by D in the Defence, which he said were four in number. The following seem to me to be the most pertinent responses. Mr Kirby clarified that:

a. C had submitted the Missing Documents with the Reply;

b. C had given details of the equipment, locations, dates and times relevant to the various transactions the subject of the hire agreements and invoices with its POC;

c. C re-submitted the Illegible Documents with the Reply;

d. the "other issues raised by the defendant has been judged by this Honourable Court in the Judgment on the Jurisdictional objection";

e. Mr Kirby stated "I am told and understand that the defendant has submitted before the CMC to provide time to settle the matter with the Claimant proves that the claim of Johnson Arabian LLC is true and genuine";

f. D "indicated that it intends to make request for the production of the documents and the documents which the defendant refers to are already submitted before this Court by the Claimant and the documents well clarifies the claim"; and

g. the "documents submitted by the Claimant which has been acknowledged by the defendant in full does not require any further witness in fact as the documents speaks for itself."

C's reply to D's Answer

57. Also on 22 February 2021, C filed a reply to D's Answer. This submission made the same points as those that were made in MK1 and therefore need not be recounted. For brevity I will refer to MK1 only as a source of C's arguments.

Discussion

58. In my Judgment, the observations and arguments made in MK1 constitute a complete rebuttal of D's response to the Immediate Judgment Application specifically and its defence to the claim generally. As mentioned at [37] of this decision, in my view, by the time the Immediate Judgment Application was made, there was no extant defence to C's claim as each denial D had advanced had been remedied or rebutted. For completeness, however, I will briefly comment on the arguments made by D in its Response.

59. As to D's acknowledgment that C had provided "a number of" the Missing Documents and the Illegible Documents with its Reply, it is not clear exactly what D means by this statement. If there are still documents missing or illegible, D should have guided C and the Court as to which documents they are. Alternatively, if all the identified documents have been submitted and, in the case of the Illegible Documents, re-submitted, a phrase like "a number of,"-which suggests "not all of"-should not have been used by D. In my view, it is probably the case that either all the Missing Documents and the Illegible Documents have been provided or that any documents still missing or illegible have no or only negligible impact on C's claim and/or D's defence thereto.

60. As to D's contention that C had failed to address a number of the points raised by it in its Defence, D has not identified what these were. In my view, nothing remained outstanding of D's defence to C's claim by the time the Immediate Judgment Application was made. Perhaps C had come to the same conclusion. Indeed, the content of MK1 suggests that it had. And to the extent that C failed to address points raised in the Defence-and it has already been acknowledged that the Immediate Judgment Application as initially filed was extremely brief-I think this was adequately remedied by MK1 and C's reply to D's Answer.

61. Regarding the Agreed List of Issues and the Defendant's List of Issues, on which D has placed relatively significant emphasis, as a list of supposed unresolved issues in the matter that make the dispute inappropriate for immediate judgment, these are as follows:

> **AGREED LIST OF ISSUES**
>
> 1. Whether the Claimant has delivered the equipment on hire to the Defendant?
>
> 2. Which equipment was delivered by the Claimant to the Defendant, to whom was it delivered and at which location, and on which time and date?
>
> 3. Whether the delivery notes were validly signed and stamped by the Defendant's authorized personnel or at all?
>
> 4. Whether the timesheets were validly signed and stamped by the Defendant's authorized personnel or at all?
>
> 5. Whether and to what extent the equipment delivered by the Claimant was damaged and/or defective?
>
> 6. Whether and to what extent the Claimant is entitled to claim for its invoices for equipment allegedly damaged by the Defendant?
>
> 7. Whether the Claimant is entitled for the Claim amount of AED 2,701,719.37/0 from the Defendants?
>
> 8. Whether the Claimant is entitled for 9 % legal interest?
>
> 9. Whether the Claimant or Defendant is entitled to court fees and costs?

(**"AI One** to **Nine"**)

> **DEFENDANT'S ADDITIONAL LIST OF ISSUES**
>
> 1. Whether and to what extent the Claimant otherwise breached the Hire Agreements?
>
> 2. Whether and to what extent the Claimant is entitled to claim for its invoices for replacement equipment?
>
> 3. Whether the Claimant has factored in and deducted Letter of Credit charges wrongfully incurred by the Defendant?
>
> 4. What amount (if any) is the Claimant entitled to in respect of its Claim?

(**"DI One** to **Four"**)

62. The requirement to produce a list of issues come from RDC r. 26.7(2):

> **26.7**
>
> Unless the Court orders otherwise, the claimant, in consultation with the other parties, must produce:.
>
> (2) a list of issues (see Rule 26.9).

63. RDC r. 26.9(3) outlines the required content of agreed lists of issues:

> **26.9**
>
> The Case Memorandum should contain:.
>
> (3) an agreed list of the important issues in the case. The list should include both issues of fact and issue of law.

64. It will be noted that RDC r. 26.9(2) provides that agreed lists of issues should concern "the important issues in the case." (emphasis added) In my view, this means "issues that are part of the parties' cases," that is, in fact. In Scicluna v Zippy Stitch Ltd & Ors [2018] EWCA Civ 1320 at

[14], the Court explained the purpose of lists of issues:

> Ever since the Woolf reforms, parties in the High Court have been required to agree lists of issues formulating the points which need to be determined by the judge. That list of issues then constitutes the road map by which the judge is to navigate his or her way to a just determination of the case.

In *Parekh v London Borough of Brent* [2012] EWCA Civ 1630 at [31], the Court stated that a list of issues is a "tool developed. to bring. order, structure and clarity to proceedings." In my judgment, lists of issues are intended to bring focus to proceedings and are not submissions that might supersede or supplement a litigant's statement of case.

65. With this preliminary remark made about lists of issues generally, I turn now to consideration of the Agreed List of Issues and the Defendant's List of Issues.

66. In my view, the issues in these two lists can be divided into several categories, one of which concerns issues that merely paraphrase fundamental aspects of the case and which are too broad to be determinative in an immediate judgment application. In this category I place: AI Seven, which asks whether C is entitled to the amount it claims; AI Eight, which asks whether C is entitled to interest on any judgment in its favour at a rate of 9% (as, I should point out, provided for by Practice Direction No. 4 of 2017, "Interest On Judgments"); AI Nine, which asks whether C or D is entitled to court fees and costs (a question usually determined rather straightforwardly in favour of the successful party in proceedings, pursuant to RDC r. 38.7(1)); and DI Four, which queries what amount "if any" C is entitled to in respect of its claim. In my view, these issues are ones that can be determined without any difficulty in accordance with a decision granting immediate judgment or deferred until the outcome of trial if immediate judgment is not granted.

67. A second category concerns issues for which there are corresponding claims by, pleadings of and evidence from C-exhaustive or substantial-but no corresponding denial from D. In this category I place AI One and AI Two, which concern whether C delivered the equipment on hire to D and the identity of the equipment, the person to whom it was delivered and the location, time and date of delivery, respectively. Inasmuch as it is C's claim that it delivered the equipment and, moreover, inasmuch as C has provided rather exhaustive evidence pertaining to those deliveries while D has not denied any of the same, I do not think that AI One and AI Two are in fact issues properly so called.

68. A third category concerns issues for which no legal consequences have been identified, whichever way they might be determined. In this category I place AI Three and AI Four, which concern the delivery notes and timesheets and whether they were "validly signed and stamped by the Defendant's authorized personnel or at all." As Giles J stated in the Judgment, properly understood, C's claim is made under the agreement for the hiring by which the invoiced amount was incurred ([21]). If there was an agreement for hiring in place and amounts invoiced to D were in fact incurred, it is unclear to me how unsigned and unstamped delivery notes and timesheets might interfere with C's entitlement to those amounts. In my view, AI One captures the issue which AI Three and AI Four apparently aim at; an issue which, as explained above, is not, in my judgment, in fact an issue inasmuch as D has not denied C's corresponding claim.

69. The final category concerns novel issues apparently not reflected in the parties' pleaded cases. In this category I place: AI Five and AI Six, both of which concern damaged equipment; DI One, which concerns whether C "otherwise" breached the hire agreements; DI Two, which concerns invoices related to replacement equipment; and DI Three, which concerns a letter of credit allegedly "wrongfully incurred" by D. AI Five and AI Six are not as easily disregarded as the other issues inasmuch as C has agreed that they are issues, as evidence by the fact that it included them in the Agreed List of Issues. With that said, if the Agreed List of Issues is the first submission in which these issues have appeared, I am content to dismiss them on the basis that they have not been explained by D never mind pleaded beforehand. C has demonstrated significant unfamiliarity with the procedures of this Court in the Immediate Judgment Application. It is not unlikely that C made concessions to D in respect of the content of the Agreed List of Issues, irrespective of the merit of the proposed issues or whether they were the subject of any of D's pleadings, in a spirit of cooperation and without apprehending that such concessions could derail the Immediate Judgment Application or some part of it. An agreed list of issues should set out the points which are required to be determined and functions as a navigation tool. In my judgment, such a list is not a place to introduce a new case. On this basis I dismiss the agreed issues in this final category too.

70. Each of the issues in the Agreed List of Issues and the Defendant's List of Issues is in one of these four categories. It follows, in my judgment, that each of the issues does not evidence "disputed matters of fact and law, on which further evidence and submissions are required for the Court to be able to properly determine these issues and properly determine the entirety of the Claimant's claim," as D has argued, and they are accordingly disregard.

71. To turn to the question of witness evidence and whether an inference can be properly drawn from the fact that C indicated in its case management information sheet that it intended to call a witness, I think D has relied too heavily on the content of that document. Or more accurately, it has relied too heavily on the part of it that lends itself to D's position. I say this because, in the same information sheet, C also stated, in response to the question "What other applications will you wish to make at the Case Management Conference?," "Application for Immediate Judgment." In fact, C had already filed that application six days earlier. Heavy reliance on the precise content of C's case management information sheet would, therefore, require accepting that C also believed that the case was appropriate for immediate judgment. In my view, it is more likely that C intended to call a witness at trial if the Immediate Judgment Application was unsuccessful, but that otherwise it thought any witness evidence would be unnecessary.

72. As to D's reliance on its own intention, to call two witnesses, D has said nothing-not a word-in explanation of the purpose that their evidence would serve. Indeed, my own conclusion, as outline above, is that there is currently nothing in dispute that D's proposed witness evidence might shed light on.

73. Finally, in relation to D's intention to make requests for production of documents, this seems to be as non-determinative in this application as the first and fourth categories of issues, discussed above. Firstly, in relation to replacement and to alleged damaged equipment, these issues do not appear to relate to the parties' pleaded cases. Secondly, in respect of the delivery notes and timesheets, these issues have not been particularised and no legal consequences have been identified, even if it is found-contrary to my own conclusion, having reviewed all the delivery notes and timesheets submitted by C-that some such documents were unsigned, unstamped or missing. In my judgment, therefore, no purpose whatsoever

for production has been highlighted, suggesting it would be a pointless exercise.

Conclusion

74. I think this case is a model of the type which immediate judgment was designed to spare the parties and the Court the burden of its going to trial-something that would necessarily require time and resources, for both the parties at the Court-inasmuch as there appears to be no defence at all, never mind one with a real prospect of success, nor some other compelling reason why the case should not be disposed summarily. Accordingly, immediate judgment is given against D.

Costs

75. Pursuant to RDC r. 38.7(1), the general rule is that the unsuccessful party will be ordered to pay the costs of the successful part. I see no reason to depart from the general rule in this case. D shall, therefore, pay C its costs of these proceedings, on the standard basis, to be assessed by a Registrar if not agreed.

Orders

76. I make the following orders:

i) the Immediate Judgment Application is granted;

ii) judgment for C against D for AED 2,701,719.37 (the **"Judgment Sum"**);

iii) pursuant to Practice Direction No. 4 of 2017, D shall pay interest on the Judgment Sum at a rate of 9% per annum from the date of this judgment until the date of payment of the Judgment Sum; and

iv) D shall pay C the costs of these proceedings on the standard basis, to be assessed by a Registrar if not agreed.