**Claim No: CFI 045/2020**

**THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS**

**IN THE COURT OF FIRST INSTANCE**

BETWEEN

**(1) EMIRATES NBD BANK PJSC**
**(2) HSBC BANK MIDDLE EAST LIMITED**
**(3) ICICI BANK LIMITED, BAHRAIN LIMITED**
**(4) ICICI BANK UK PLC**
**(5) UNION BANK OF INDIA**
**(6) BANK OF JORDAN COMPANY**
**(7) NATIONAL BANK OF BAHRAIN BSC**
**(8) AHLI UNITED BANK BSC (DIFC BRANCH)**
**(9) COMMERCIAL BANK OF DUBAI PSC**
**(10) WARBA BANK KSCP**

Claimants

and

**(1) KBBO CPG INVESTMENT LLC**
**(2) MR KHALEEFA BUTTI BIN OMAIR YOUSIF ALMUHARI**
**(3) HIS EXCELLENCY SAEED MOHAMED BUTTI MOHAMED ALQEBAISI**
**(4) INFINITE INVESTMENT LLC**
**(5) GROUP OF FATHIMA CO LLC**
**(6) FATHIMA SUPERMARKET LLC (SHARJAH)**
**(7) FATHIMA SUPERMARKET WLL (ABU DHABI)**
**(8) FATHIMA TRADING & SUPERMARKET COMPANY WLL**
**(9) FAIRWAY GENERAL TRADING**
**(10) FAIRWAY CATERING SERVICES LLC (DUBAI)**
**(11) FAIRWAY CATERING SERVICES LLC (ABU DHABI)**
**(12) FATIMA GENERAL MARKET LLC**
**(13) TELE LINK COMMUNICATION LLC**
**(14) ONE PREPAY COMPANY LLC**
**(15) TECHLINK SYSTEMS LLC**
**(16) FRESHLY FROZEN FOODS FACTORY LLC**
**(17) SENORA FOODS LLC**
**(18) SPECTRAMI DMCC**
**(19) ONE PREPAY COMPANY LLC (KSA BRANCH)**

Defendants

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**REASONS FOR ORDER OF JUSTICE WAYNE MARTIN DATED 9 AUGUST 2021**

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**Introduction**

1. On 9 August 2021, I made orders allowing applications by the Claimants and:

(a) lifting an order staying these proceedings; and

(b) granting an interim anti-suit injunction against some of the Defendants,

for reasons to be published in due course. These are those reasons.

**The parties**

*The Claimants*

2. The Claimants are all banks. The First, Second, Third, Fifth and Eighth Claimants are each either registered, incorporated or recognised within the DIFC so as to render them DIFC Establishments within the meaning of the Judicial Authority Law[1] (the "JAL").

*The Defendants*

3. The First Defendant, KBBO CPG Investment LLC, is part of a group of companies known as the KBBO CPG Group.[2]

4. The Second Defendant, Mr Khaleefa Butti Bin Omair Yousif Almuhairi, is said to be the ultimate beneficial owner of the companies within the KBBO CPG Group.[3]

5. The Third Defendant, His Excellency Saeed Mohamed Butti Mohamed Alqebaisi is a businessman with ties to the Second Defendant.[4]

6. The Fourth Defendant is alleged to have guaranteed the repayment of funds advanced by the Claimants to the KBBO CPG Group.

7. The Fifth-Nineteenth Defendants are believed by the Claimants to be members of the KBBO CPG Group and are each alleged to have guaranteed the repayment of funds advanced by the Claimants to the First Defendant.

**The dispute**

8. In November 2019, the Claimants entered into an agreement for the provision of a loan facility in an amount of approximately USD300,000,000 (the "Facility") to the First Defendant. The First Claimant is the "Global Facility Agent" under the Facility, the Second-Seventh Claimants provided conventional lending and the Eighth-Tenth Claimants provided Islamic lending under the Facility.[5]

9. The Claimants allege that the Second-Nineteenth Defendants guaranteed the repayment of the Facility granted to the First Defendant either in the Facility Agreement itself, or in separate written guarantees.

10. Each of the relevant agreements, including the agreements which comprise the Facility and the guarantees, contain an arbitration agreement providing for a DIFC-LCIA arbitration, unless any of the Claimants elects that a dispute be resolved by litigation in the DIFC Courts, in which event each agreement provides that the DIFC Courts have exclusive jurisdiction in relation to that dispute.

11. A little under USD300,000,000 was drawn down under the Facility between 25 November 2019 and 23 December 2019.[6] The Claimants allege that the funds were deployed in ways which constituted breaches of the Facility. On 19 March 2020, the First Claimant notified the First Defendant that it was in breach of the terms of the Facility and had committed events of default.[7] On 13 May 2020, the First Claimant gave notice to the First Defendant that it was accelerating repayment of the indebtedness under the Facility. The amount due on that date was USD307,742,906.92. On the same date, the First Claimant served demand on all other Defendants under their respective guarantees.[7]

**The DIFC proceedings**

12. On 13 May 2020, these proceedings were commenced in the name of the First Claimant alone. On the following day, the remainder of the Claimants were joined as co-Claimants.

13. The claim enunciated in the initiating process has three elements:

(a) a claim against the First Defendant for repayment of the amounts advanced under the Facility;

(b) a claim against all other Defendants as guarantors of the first Defendant's debt to the Claimants;

(c) claims for relief arising from the alleged misuse of the funds advanced, on the basis that those funds were impressed with a Quistclose trust and for appropriate equitable relief in relation to that claim.

14. The Claimants have also foreshadowed claims for relief in the form of final mandatory injunctions compelling the performance of various provisions in the agreements relating to the provision and perfection of security.[9] Relief in this form was inadvertently omitted from the original Claim Form, and the Claimants have been precluded from amending their claim to include this relief by the stay of proceedings which was granted in the circumstances which I will describe in due course.

15. The Claimants immediately applied for interim injunctive relief without notice. On 15 May 2020, a Judge of this Court granted an interim injunction with the following components:

(a) An order freezing the assets of all the Defendants other than the Third Defendant, and requiring those Defendants to provide information on affidavit with respect to their assets;

(b) Proprietary injunctions and related ancillary relief in relation to the Quistclose trust claim; and

(c) Interim mandatory injunctions in relation to the claims relating to the provision of security.

The Judge ordered that the injunctions would remain in force until the return date, which was fixed for 28 May 2020.

**The representation of the Defendants**

16. The First, Second, Fourth, Thirteenth, Fourteenth, Sixteenth and Seventeenth Defendants are represented by Hadef & Partners. I will refer to these Defendants collectively as the Hadef Defendants (the "Hadef Defendants").

17. The Third Defendant is also represented by Hadef & Partners, but as his position is somewhat different to the other Defendants represented by that firm, I will refer to him as the Third Defendant (the "Third Defendant").

18. The Fifth to Twelfth Defendants are represented by Bestwins Law Corporation. I will refer to them collectively as the Bestwins efendants (the "Bestwins Defendants").

19. The Eighteenth Defendant is represented by Galadari ("Galadari").

20. The Fifteenth Defendant has taken no part in the proceedings.

21. Hadef & Partners filed an acknowledgement of service on behalf of the Nineteenth Defendant. However, the firm applied to come off the

record for that Defendant on the basis that it did not exist. That application had not been determined at the time the stay of proceedings was imposed.

**The course of the DIFC proceedings**

22. The Second Defendant initially filed an acknowledgement of service indicating an intention to contest jurisdiction, although that acknowledgement was superseded by an acknowledgement of service stating an intention to defend the claim.

23. The Third and Eighteenth Defendants each also served acknowledgements of service indicating an intention to contest the jurisdiction of the DIFC Courts. Both of those Defendants have filed applications challenging the jurisdiction of this Court which remain unresolved as a result of the stay of proceedings.

24. I have referred above to the positions of the Fifteenth and Nineteenth Defendants. All other Defendants have filed acknowledgements of service submitting to the jurisdiction of the DIFC Courts.

25. On 5 June 2020 the Hadef Defendants issued an application for orders that the entire claim be struck out on the grounds that the First Claimant did not have title to sue and the remaining Claimants had not been validly joined to the proceedings, and in the alternative, seeking immediate judgment, or the striking out of two components of the claim - namely, the Quistclose trust claim, and the claim relating to perfection of the securities.

26. On 11 June 2020, the Claimants filed an application seeking immediate judgment against the Hadef Defendants. By that time, the Hadef Defendants had responded to the order requiring them to provide information with respect to their assets by asserting that such information was privileged by reason of self-incrimination. The Claimants also sought orders requiring the Hadef Defendants to provide the information notwithstanding their assertion of privilege.

27. All applications, including the Eighteenth Defendant's challenge to jurisdiction, were listed for hearing over two days commencing on 30 June 2020 before Justice Sir Jeremy Cooke.

28. After hearing argument with respect to the order in which the various applications should be heard, Justice Cooke directed that the Claimants' application for immediate judgment and for determination of the claim of privilege should be adjourned to another date.

29. Justice Cooke then heard the Hadef Defendants' application to strike out the entire claim. After hearing argument, Justice Cooke indicated that he would dismiss that part of the application.

30. The remainder of the first day was taken up by the hearing of the Eighteenth Defendant's application to challenge jurisdiction and to discharge the freezing order.

31. The hearing of the Hadef Defendants' application for immediate judgment or striking out of aspects of the claim commenced on the Second day of the hearing. Following the completion of the oral submissions made on behalf of the Hadef Defendants, and during the course of the oral submissions made on behalf of the Claimants, counsel for the Hadef Defendants advised the Court that the Hadef Defendants had commenced proceedings in the Dubai Courts. This was the first occasion upon which notice of the commencement of those proceedings was given to either the DIFC Courts or to the other parties to the proceedings in this Court.

32. At approximately 4.00pm on the afternoon of the second day of the hearing, while the Claimants were presenting oral submissions, Hadef & Partners sent an email to the Registry of this Court stating that the Hadef Defendants had issued proceedings in the Dubai Courts and further advising that on the previous day, namely 30 June 2020, the Hadef Defendants had made an application to the Joint Judicial Committee (the "JJC") pursuant to Decree No. 19 of 2016 for a determination of the conflict of jurisdiction between the Dubai Courts and the DIFC Courts.

33. The email was drawn to the attention of Justice Cooke, who adjourned the hearing to enable the parties to consider this development. Upon the resumption of the hearing, Justice Cooke indicated that there was no reason to believe that the JJC would not determine the application promptly. His Honour then observed:

> "The end result is that I am bound to stay proceedings as of now and I have no option in that respect whilst expressing dismay at the behavior of the defendants who are responsible for this happening. I regard the idea that they can make an application of this kind to the court at the same as making an application to the onshore Dubai Court as claimant and then to the JJC as an appalling abuse of process."

34. An order staying the proceedings was issued on 1 July 2020. The order expressly provided that the interim injunctions previously ordered by the DIFC Courts were to remain in effect.

35. As a result of the stay, no further steps were taken in these proceedings until the applications the subject of these reasons were issued.

**The proceedings in the Dubai Courts**

36. The proceedings in the Dubai Courts were commenced on 28 June 2020, two days before the hearing before Justice Cooke was due to commence. In those proceedings the Third Defendant asserted that the signature on the guarantee upon which the Claimants relied, was not his. The Hadef Defendants did not make that assertion - rather, they asserted that they "suspect the validity of the documents attributed to them".

37. The relief sought in the Dubai proceedings included:

> (a) an order requiring the criminal laboratory to examine the guarantee alleged to be signed by the third defendant to determine whether the signature thereon is his and if not, an order cancelling the guarantee;
>
> (b) an order requiring the banks to submit the contracts of loan and guarantee to the Court for examination;

(c) an order requiring the banks to pay compensation in an amount of approximately USD295,000,000;

(d) the appointment of a committee of banking experts to verify the validity of the internal procedures of the banks and the validity of the documents pertaining to the loans.

38. The bank Defendants to the Dubai proceedings objected to the jurisdiction of the Dubai Courts. On numerous occasions those Defendants sought a stay of the proceedings in the Dubai Courts pending the determination of the JJC.

39. There were various hearings before the Dubai Courts, and case management hearings in that Court during the latter half of 2020 and the first half of 2021. During the course of those hearings, the parties to the proceedings submitted memoranda relating to the substantive merits of the claims made by the Hadef Defendants.

40. On 16 May 2021, the Dubai Courts ordered that all original documents relating to the Facility be submitted to that Court by 20 June 2021. On that date the Dubai Courts reserved the matter for judgment on 28 July 2021.

**The application to the JJC**

41. In the application to the JJC, the Third Defendant and the Hadef Defendants adopted the same position as they had adopted in the Dubai Courts - namely, the former asserting that his signature on the guarantee was forged and the latter raising "doubts about the authenticity of the documents attributed to them". All applicants to the JJC asserted that the JJC should determine that only the Dubai Courts have jurisdiction.

42. In their response to the application to the JJC the banks asserted that the DIFC Courts have exclusive jurisdiction to determine the dispute, not only because of the exclusive jurisdiction clause in the various agreements, but also because a number of the banks who are Claimants in the DIFC proceedings are DIFC Establishments, with the result that the DIFC Courts have exclusive jurisdiction under Article 5(A)(1)(e) of the Judicial Authority Law, and the remaining Claimants are necessary and proper parties to the proceedings. The banks further pointed out that all parties to the DIFC proceedings other than the Third and Eighteenth Defendants had submitted to the jurisdiction of the DIFC Courts and that the Hadef Defendants had invoked that jurisdiction in the applications which they brought in the DIFC Courts proceedings.

43. It is clear that the optimism expressed by Justice Cooke with respect to the time at which the JJC would determine the application has not come to pass. After the initial exchange of statements of the parties' positions, nothing further has happened in relation to the proceedings before the JJC. The legal representatives of the banks have made repeated requests to the JJC to ascertain the state of the proceedings. In mid-May 2020, those representatives were told that a decision was imminent and merely awaited signature.[10] However, no determination has been issued by the JJC.

**The applications by the Claimants**

44. The Claimants' applications for an order lifting the stay of proceedings and an anti-suit injunction were both lodged on 15 July 2021. The Claimants sought directions for an urgent hearing of both applications in light of the stated intention of the Dubai Courts to issue judgment on 28 July 2021.

45. Despite opposition from the Defendants, directions were made to enable both matters to be heard on 26 July 2021.

46. During the course of the hearing, the parties advanced competing submissions with respect to the proper construction and effect of Decree No. 19 of 2016 relating to the JJC. At the conclusion of the hearing I indicated to the parties that the positions that they had adopted were somewhat different to the positions which had been adopted by other parties in two other applications to lift the stay of proceedings which I had heard following publication of the decision of the Court of Appeal in *Lakhan v Lamia*.[11] In response to the Claimants' request for an immediate decision, I indicated that the public importance of these issues for the operation of the DIFC Courts made it essential for me to take the time to ensure that the decisions on the three matters pending before me were consistent and properly reasoned. I also expressed the view that it was not reasonable for the Claimants to expect the Court to make an immediate decision when they had delayed in commencing their applications for more than two months after the publication of the decision in Lakhan, and for more than three weeks after the Dubai Courts had indicated its intention to deliver judgment on 28 July 2021.

47. I therefore advised the parties that I would reserve my decision and granted liberty to the parties to notify me of any decision made by the Dubai Courts. Further, as the Bestwins Defendants had complained of having had insufficient time within which to obtain instructions and present submissions, I granted liberty to those Defendants to provide written submissions relating to the applications within seven days.

**The decision of the Dubai Courts**

48. As foreshadowed, the Dubai Courts delivered judgment on 28 July 2021. The Courts upheld the banks' objection to jurisdiction and ruled that the DIFC Courts had exclusive jurisdiction to determine the dispute between the parties.

49. Following the decision of the Dubai Courts, the Claimants pressed for an order lifting the stay of proceedings in the DIFC Courts and for an anti-suit injunction, although the latter was sought only in prohibitory rather than mandatory form.[12]

50. I directed that the Hadef Defendants provide a written statement of their position in relation to these matters following the decision of the Dubai Courts.

**The Abu Dhabi proceedings**

51. On the same day that direction was issued, the Hadef Defendants advised the Court that on 27 July 2021, the Abu Dhabi Court had issued a decision for the commencement of restructuring procedures under Chapter 4 of Federal Law No. 9 of 2016 on bankruptcy in relation to the Second Defendant as debtor, and that the First, Third, Fourth, Thirteenth, Fourteenth, Sixteenth and Seventeenth Defendants had been joined to

those procedures. The Court was further advised that the decision of the Abu Dhabi Court included a provision to the effect that proceedings against those parties were to be suspended from the date of the decision. The email from Hadef & Partners concluded:

> "We expect that an application will be made to the DIFC Court in due course to:
>
> (i) have the . [decision] recognized by the DIFC Court and
>
> (ii) to have the abovementioned proceedings stayed in accordance with the terms of the . [decision]."

52. In response to my direction, the Hadef Defendants advised that they continued to oppose the lifting of the stay and the making of an anti-suit injunction. In relation to the lifting of the stay, it was contended that:

> (a) there was little purpose in lifting a stay when there was a real prospect that a fresh stay would be imposed in the near future on the basis of the decision of the Abu Dhabi Court;
>
> (b) "As a matter of local law, the Dubai Courts' decision of 28 July 2021 is only final and binding following an appeal, which appeal our clients intend to lodge as soon as reasonably practicable".

53. In relation to the application for the anti-suit injunction, the Hadef Defendants reiterated the grounds of opposition to that application which had been enunciated during the hearing.

54. Following receipt of those contentions, I directed that the Claimants be given an opportunity to respond.

55. In the meantime, the Bestwins Defendants had also presented their written submissions in opposition to the Claimants' applications.

56. Following receipt of the Claimants' response to the position enunciated by the Hadef Defendants, and my consideration of the written submissions of the Bestwins Defendants, for the reasons which follow I decided that the Claimants' applications to lift the stay of proceedings and for an anti-suit injunction should be granted.

**The application to lift the stay of proceedings**

57. Many of the arguments advanced in support of and in opposition to the application to lift the stay of the proceedings have been overtaken and rendered otiose by the decision of the Dubai Courts.[13] By that decision the proceedings commenced by the Hadef Defendants and the Third Defendant in the Dubai Courts have been dismissed, and those courts have expressly disclaimed jurisdiction. It follows that there is no conflict in the jurisdiction of the two courts, and no basis for the continuation of the stay of proceedings.

58. I have set out the relevant portions of Dubai Decree no 19 of 2016, and my views with respect to the operation and effect of the Decree in two recent decisions.[14] It is unnecessary to repeat those matters in these reasons.

59. On any of the English translations of the Decree which are available, it is clear that the Decree only operates where there is a dispute or conflict as to jurisdiction between the Dubai Courts and the DIFC Courts because both Courts have claimed or both Courts have disclaimed jurisdiction in relation to a particular dispute. By the decision of 28 July 2021, the Dubai Courts have expressly disclaimed jurisdiction, and this court is exercising jurisdiction in respect of the claim against all but the Third and Eighteenth Defendants, whose objections to jurisdiction remain unresolved. It follows that, as things presently stand, there is no dispute or conflict of jurisdiction as between the two Courts, and therefore no basis for the continuation of the stay.

60. I do not accept the proposition that the stay of proceedings should be maintained because there is a possibility that an appeal may be brought (notwithstanding the asserted insolvency of the Hadef Defendants and the Third Defendant) and that if such an appeal is brought, there is a possibility that it may be successful. The Decree operates by reference to the decisions of the respective Courts with respect to their jurisdiction. The Dubai Courts have made such a decision, and there is nothing in the terms of the Decree which would suggest that it is only a decision of the relevant Court of Appeal of each Court which can avert a dispute or conflict as to jurisdiction.

61. Further, with respect, the assertion that the decision of the Dubai Courts is not final misses the point. Every decision of every court subject to appeal is not final, in the sense that it might be overturned on appeal. However, if there is no appeal, or if an appeal is unsuccessful, the decision stands. Whether or not the stay of the proceedings in the DIFC Courts should be maintained must be determined by reference to the current state of affairs, and not by reference to future possibilities. The current state of affairs is that the Dubai Courts have expressly disclaimed jurisdiction, with the result that the Decree has no application and the proceedings before the JJC have become moot.

62. Similar considerations apply to the contention based upon the decision of the Abu Dhabi Court. I note that only some of the Defendants are parties to those proceedings but in any case, as I observed in Credit Suisse, it would be wrong in principle to decide the application to lift the stay on the basis of pre-empting a decision on an application for recognition and enforcement which has not yet been made.

63. For the sake of completeness, I will address the specific contentions advanced by the Hadef Defendants and the Third Defendant in opposition to the application to lift the stay.

64. First, it is contended that the application to lift the stay is incompetent because there has been no material change of circumstances since the stay was granted. Obviously this submission was made prior to the decision of the Dubai Courts. Irrespective of that decision, I rejected a similar submission in Credit Suisse, and would reject the submission in this case for the same reasons.

65. But in any case, since this contention was advanced, there has been a most material change in circumstance, in that the Dubai Courts have upheld the Claimants' objection to their jurisdiction. That decision provides every justification for this Court to act so as to lift the stay of proceedings.

66. It is also contended that the Court should refuse to lift the stay in the exercise of its discretion because of delay in making the application. Again, a similar submission was made and rejected in Credit Suisse. As I there observed, the relevant period of delay should be taken to commence from the publication of the decision in Lakhan, which marked a significant change in the practice of the Court. Viewed in that context the delay in making the application to lift the stay is not inordinate. Further, the event which has proven to be critical in the determination of the application to lift the stay - namely the decision of the Dubai Courts to refuse jurisdiction had not even occurred when the application was brought. In these circumstances, the issues of delay are irrelevant.

67. It is also contended that the Claimants cannot "approbate and reprobate" by seeking to lift the stay on the basis that the JJC lacks jurisdiction because there is no conflict in jurisdiction, when it made many applications to the Dubai Courts for a stay of proceedings in that Court on the basis of the application to the JJC. A similar submission was made in Credit Suisse. I reject the submission in this case for the same reasons as I rejected it in Credit Suisse.

68. But any event, the decision of the Dubai Courts has fundamentally altered the circumstances in such a way that the previous positions adopted by the parties are no longer relevant.

69. I turn now to the written submissions presented on behalf of the Bestwins Defendants subsequent to the hearing. Their first contention is that the application to lift the stay should not have been brought urgently because the alleged urgency was a consequence of the time at which the application was brought. As I observed during the hearing, there is force in this contention. However, as the Bestwins Defendants were given the time which they requested to provide written submissions, the urgency with which the application was brought has become irrelevant to its outcome.

70. Next it is submitted that the judgment of the Dubai Courts is invalid and of no effect because it was issued contrary to the provisions of the Decree which impose a stay on all proceedings. That submission is, with respect, entirely contrary to the decision of the Court of Appeal in Lakhan, which is to the effect that the determination of an objection to jurisdiction does not amount to the exercise of jurisdiction so as to give rise to a conflict or dispute with respect to jurisdiction for the purposes of the Decree.

71. In their written submissions the Bestwins Defendants also submit that if the Court lifts the stay order, the freezing orders should also be lifted. However, there is no application with respect to the freezing orders presently before the Court. Now that the stay of proceedings has been lifted, there is nothing to prevent the Bestwins Defendants applying to the Court for orders in relation to the freezing orders granted against those Defendants.

72. The Bestwins Defendants also rely upon the decision of the Abu Dhabi Court in their opposition to the application to lift the stay. I have given above my reasons for rejecting that contention.

73. The Eighteenth Defendant supports the application to lift the stay.

**Application to lift the stay - conclusion**

74. As the Dubai Courts have disclaimed jurisdiction in respect of the matters the subject of the proceedings in the DIFC Courts, the Decree provides no basis for the continuation of the stay of those proceedings and the stay had to be lifted.

**The application for the anti-suit injunction**

75. The application for anti-suit injunction was brought only against the Hadef Defendants. Orders were sought against those Defendants prohibiting them from pursuing their claims in the proceedings which were then pending before the Dubai Courts or any other court or tribunal. An order was also sought in mandatory terms, requiring those Defendants to discontinue their claims in the Dubai Courts.

76. As I have noted, following the dismissal of the proceedings in the Dubai Courts, the Claimants modified their claims so as to seek only prohibitory relief. The orders which I granted are prohibitory only, and expressly exclude any prohibition upon the commencement or pursuit of an appeal from the decision dismissing the proceedings in the Dubai Courts, for reasons which I will explain.

**Jurisdiction to issue an anti-suit injunction**

77. I accept that this Court has jurisdiction to issue an anti-suit injunction both generally, and in terms which would prohibit the commencement or pursuit of proceedings in the Dubai Courts.[15]

**The grounds of the application**

78. The application is brought on two alternative grounds:

(a) to protect a substantive legal or equitable right to have the dispute resolved by the DIFC Courts in the exercise of their exclusive jurisdiction; and

(b) the commencement or pursuit of proceedings in another Court would be vexatious, oppressive or unconscionable.

79. The Hadef Defendants accept, quite properly, that the first ground is sufficiently arguable to justify the grant of an anti-suit injunction.[16] Accordingly, no more needs to be said in relation to the merits of that ground.

80. The Hadef Defendants do not accept that the proceedings which they commenced in the Dubai Courts are vexatious, oppressive or unconscionable, although their concession with respect to the first ground renders the alternative ground somewhat academic. Nevertheless, I accept that the conduct of the Hadef Defendants in commencing the proceedings in the Dubai Courts in the manner in which they did confers jurisdiction upon this Court to restrain them from similar conduct by way of an anti-suit injunction. In short, I respectfully agree with Justice

Cooke's description of that conduct as "an appalling abuse of process".

81. The Hadef Defendants' sole ground of opposition to the grant of the injunctive relief sought is the alleged delay in making the application for that relief. They assert that for this purpose the relevant period of delay should be taken to commence upon the making of the stay order on 1 July 2020, although they expressly accept (quite properly) that the Claimants could not have sought an injunction without first discharging the stay order.[17]

82. As I have rejected the Hadef Defendants' submissions with respect to delay in the bringing of the application to lift the stay of proceedings, and as it is accepted that the lifting of the stay was a necessary prerequisite to the grant of the anti-suit injunction, it follows that the contentions with respect to the delay in the application for injunctive relief must also be rejected.

83. Senior Counsel for the Hadef Defendants made it clear in the course of her oral submissions that her clients' reliance upon delay was nuanced, in that it incorporated considerations relating to the comity of courts and the deference given to foreign courts.[18] Reliance was placed on the decision in *Essar Shipping Ltd v Bank of China Ltd*[19] where Justice Walker observed that lengthy delay in the bringing of an application for an anti-suit injunction might be seen as inappropriate interference with the jurisdiction of a foreign court.[20] Reliance was also placed upon the decision in *Echo Bank Transnational Incorporated v Tanoh*[21] where reference was made to the risk of inconsistent judgments and the dissipation of the resources of the rival court if an application for anti-suit injunction is delayed.[22]

84. There is no reason to doubt these principles. However, considerations of comity will carry less weight when an injunction is sought in order to support an exclusive jurisdiction agreement.[23] But in any case, now that the Dubai Courts have upheld the objection to jurisdiction and dismissed the Hadef Defendants' claims, considerations of comity have no practical application, save in relation to a possible appeal from that decision. Leaving that prospect to one side, there is no prospect of inconsistent judgments, because the Dubai Courts have declined jurisdiction. Further, although the resources of the Dubai Courts and the parties have been deployed in the course of the proceedings in that Court, those resources cannot be said to have been wasted, because they have resulted in the resolution of the question with respect to the jurisdiction of the Dubai Courts. Rather, this is one of those cases in which comity as between courts has been preserved by one court staying its hand until proceedings in the other court have run their course, with the result that any conflict in jurisdiction was averted.

85. I have expressly excepted the possibility of an appeal from the decision of the Dubai Courts at first instance from the preceding observations. Obviously a prohibitory injunction preventing the Hadef Defendants from exercising their right of appeal from the judgment of the Dubai Courts at First Instance would constitute an interference with the jurisdiction of those courts. It would also have the consequence that the parties would have deployed substantial resources into the prosecution and resolution of those proceedings, without having the opportunity to pursue those proceedings to their ultimate conclusion by way of appeal. That is why I have exempted the commencement and pursuit of an appeal against the First Instance decision of the Dubai Courts from the anti-suit injunction which I have ordered. As a result of that exemption, there are no considerations relating to comity as between the two Courts arising from the order which I have made.

86. In their written submissions the Bestwins Defendants also opposed the grant of the anti-suit injunction sought by the Claimants. It is difficult to understand why they have adopted this position, as no injunctive relief is sought against any Defendants other than the Hadef Defendants. In their submission they assert that the Hadef Defendants might use the anti-suit injunction to the detriment of the Bestwins Defendants although the submission is silent as to the manner in which this might occur.

87. The Bestwins submission also draws attention to the possibility of an appeal from the decision of the Dubai Courts and opposes the grant of any injunction which would interfere with the exercise of that right. As I have noted, the order which I made expressly exempts any appeal from the decision of the Dubai Courts from its operation.

88. The Eighteenth Defendant supports the issue of the anti-suit injunction.

**Anti-suit injunction - conclusion**

89. In the circumstances of this case the grounds for the grant of an anti-suit injunction are amply made out. For the reasons I have given, there is no reason why such an injunction should not have been issued, and it was.

**Costs**

90. In the orders allowing each application I also ordered that the Hadef Defendants and the Third Defendant should pay the Claimants' costs of the application to be assessed if not agreed. Those orders were made pursuant to the general principle that costs should follow the event in the absence of good reason to the contrary. I did not order the Bestwins Defendants to contribute to the Claimants' costs, because it was unnecessary for the Claimants to respond to the submissions served on behalf of those Defendants, which therefore had no impact upon the Claimants' costs.

Issued by:
**Ayesha Bin Kalban**
Deputy Registrar
Date of issue: 16 August 2021
At: 12pm