Claim No: CFI 013/2010 Claim No: CA 004/2011 THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF APPEAL

BEFORE:

CHIEF JUSTICE MICHAEL HWANG

JUSTICE SIR JOHN CHADWICK

H.E. JUSTICE OMAR AL MUHAIRI

BETWEEN

SHAHAB HAIDER

(liquidator of Orion Holdings Overseas Limited and liquidator of Diwan Capital Limited)

Claimant

and

ERNST & YOUNG MIDDLE EAST

Defendant

AMENDED REASONS FOR DECISION OF CHIEF JUSTICE MICHAEL HWANG

1. On 23 January 2012, the Respondent applied to the Court of Appeal pursuant to RDC 44.182 requesting the Court to reopen its Judgment delivered on 7 December 2011.

2. On 30 January 2012, acting as a single Judge pursuant to RDC 44.187, and after considering the submissions of the Respondent, I dismissed the application.

3. On 12 April 2012, the Parties filed Submissions on Costs of the proceedings in the Court of Appeal and on 30 April 2012, the Court of Appeal awarded costs against the Respondent.

4. I now give the reasons for my decision of 30 January 2012.

5. The reasons for the decision of the Court of Appeal are set out in its Judgment of 7 December 2011. As is customary in hearings before a common law court, there were exchanges between Bench and Bar at the hearing of the appeal on 18 September, in the course of which members of the Court expressed tentative views on the merits of the case. It is well established that preliminary views expressed in open Court are not binding on the Court after it has reserved judgment, and it then turns its mind to a more thorough review of the papers and the arguments presented by the parties. Even oral Orders made in open Court can be varied by the Court before that oral Order is perfected by a written Order. Accordingly, the fact that a written judgment might differ in some respects, even significantly, from views expressed by the Court in passing during the course of counsel's arguments should not be a matter of great surprise, in the present case, at the hearing, there was not even an Order made (as I was careful to indicate at page 203 of the Transcript). What we did was to indicate our then intention to make an order in favour of the Liquidator for possession upon certain terms which needed to be worked out by the parties. We, therefore, asked counsel for the Liquidator to prepare a draft of the Order which he thought would reflect the views of the Court as to the Order to be made. He was then to consult counsel for Ernst & Young as to whether the draft was acceptable. If not, the Court would then settle the Order of Court.

6. What the Court did at the close of the hearing of the Appeal was to give the parties an opportunity to agree upon the terms of the Order as to the scope of document disclosure in this particular case. If the parties had reached agreement on the terms of the Order, the Judgment of 7

December 2011 would not have been issued. However, the parties were unable to agree the terms of the draft Order, and reported as such to the Registry on 3 November 2012, each party submitting its own draft Order. The reasons for the failure to agree are irrelevant, because there was no obligation on either party to come to an agreement. The parties would have known that, if they did not agree on the terms of the draft Order, those terms would be settled by the Court, and the reasons for the Order would be explained in a full judgment in view of the importance of the issues argued before the Court.



7. When the parties advised of their inability to reach agreement, the Court then proceeded further to deliberate on the matter, in the course of which its views developed from the preliminary views formed at the end of the hearing. The final views of the Court in this case were, therefore, crystallized in its judgment of 7 December 2011 The Court found that it needed to give a clear legal interpretation of Article 96 of the Insolvency Law, which would set an important precedent for simitar cases in the future in the DIFC, and thereby give guidance to the accounting profession and other interested parties in the DIFC. Accordingly, Orders were made on 22 January 2012 (in respect of Diwan Capital Limited) and on 24 January 2012 (in respect of Orion Holdings Overseas Limited) to issue final Orders of Court substantially in the form of the drafts submitted by the Liquidator.



8. The Court having issued its judgment in favour of the Applicant, it was therefore to be expected that the normal rule that costs follow the event would apply, and that the Respondent would be ordered to pay all related costs of this Appeal. There were no special circumstances to displace this presumptive rule, and accordingly costs were awarded against the Respondent.



Issued by

Mark Beer

Deputy Registrar

Date of Issue: 27 August 2012

At: 5.30pm