Claim No. TCD 003/2020

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

(1) NEST INVESTMENTS HOLDING LEBANON S.A.L.
(2) JORDANIAN EXPATRIATES INVESTMENT HOLDING COMPANY
(4) GHAZI KAMEL ABDUL RAHMAN ABU NAHL
(5) JAMAL KAMEL ABDUL RAHMAN ABU NAHL
(6) TRUST COMPASS INSURANCE S.A.L.
(7) TRUST INTERNATIONAL INSURANCE COMPANY (CYPRUS) LIMITED
(8) HIS EXCELLENCY SHEIKH NASSER BIN ALI BIN SAUD AL THANI
(9) FADI GHAZI ABU NAHL
(10) HAMAD GHAZI ABU NAHL
(11) KAMEL GHAZI ABU NAHL

Claimants

and

(1) DELOITTE & TOUCHE (M.E.)
(2) JOSEPH EL FADL

Defendant

ORDER WITH REASONS OF CHIEF JUSTICE ZAKI AZMI

UPON reading the judgment of Justice Sir Richard Field dated 13 June 2021 (the **"Judgment"**)

AND UPON reading the Order of Justice Sir Richard Field dated 13 September 2021 granting permission to appeal on the first ground but refusing permission to appeal on the second ground

AND UPON reviewing the Claimant's Second Appeal Notice filed on 6 October 2021 applying for permission to appeal on the second ground (the "Permission Application")

AND UPON reading the Defendants' written submissions in opposition to the Second Permission Application dated 25 October 2021

IT IS HEREBY ORDERED THAT:

1. The Second Permission Application is granted.

2. Costs of Second Permission Application are costs in the case.

Issued by:
Nour Hineidi
Registrar
Date of Issue: 16 November 2021
At: 1.00pm

SCHEDULE OF REASONS

1. The Appellant sought permission to appeal from the decision of the learned Judge of the Court of First Instance. The Judge had granted permission to appeal on Ground (1) but he turned down permission to appeal on Ground (2).

2. The claim by the Claimants against the Defendants was basically that the Defendants had lost all their monies, as deposited in the Bank which had been audited by the Defendants. The Bank was wound up because all its assets were seized by the American authorities on grounds of money laundering. The Claimant therefore alleged that the Defendants should have advised the Bank of its money laundering activities when they audited the Bank. In failing to do so they must now compensate the Claimants for the losses.

3. Three issues were to be determined by the Court of the First Instance. They are:

(1) whether the Claimant's loss is recoverable as a matter of Lebanese law;

(2) whether DIFC or Lebanese law applied to the question of limitation and whether the Claimant's claims are time-barred under whichever system of law applied to the question of limitation; and

(3) whether various documents are admissible as evidence of the findings and/or the matters stated there.

4. The Claimants are not raising any challenge to the Judge's determination of issue (1) and (3)(as above) in Ground (2). Basically, the Judge held

that the claims were time-barred. As regards to Ground (1), where the Judge had granted permission to appeal, he held the reason for granting the permission to appeal was that he was of the view that there is a compelling reason why an appeal on that issue should be heard i.e. it is appropriate for the Court of Appeal to express its views whether in his finding on foreign law, the judge had properly conducted an evaluation exercise on the issues raised at the trial.

5. The Appellants submitted in their skeleton submission that the reason for which the Judge had granted permission for Ground (1), which is that it is appropriate for the Court of Appeal to express its views on that issue, should equally apply to Ground (2). I quite agree with that submission.

6. This case involves the jurisdiction of Lebanon (as well as Cyprus where the auditors were registered) and the various other issues involving foreign law. In my opinion, the Court of Appeal should be given an opportunity to determine those laws as precedencies, there being important points of law that could determine the finality of this claim. Amongst the issues raised was whether the claim against the auditor must be brought under Article 178 which is subject to a 5-year limitation period, or if it can be brought under any other ground where the limitation period is 10 years. The Judge held that Article 178 was an exhaustive provision. He held the provision was plain and obvious as to the interpretation of the term "supervisory default" in Article 178 LCC. To me these are also matters that should examined and determined by the Court of Appeal. Apart from these matters, which are sufficient for me to grant the permission to appeal, there are other issues that were raised in the submission of the Claimants which also should be decided by the Court of Appeal.

7. The principles relating to granting an application for permission to appeal are well established. The learned judge had set out all the principles correctly in his Judgment and I do not propose to restate them here.

8. For these reasons, I grant permission to appeal on Ground (2).

9. Costs of this Permission Application are costs in the case.