Claim No. CFI 068/2024

IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

STEVEN IVANKOVICH

Claimant

and

(1) KJM MARINE LLC
(2) MOHAMMAD SALEH MOOSA HASSAN AJ JASMI
(3) KJI MARINA BOATS MANUFACTURING LLC

Defendants

and

(1) KJM MARINE LLC
(2) KJI MARINA BOATS MANUFACTURING LLC

Part 20 Claimants

and

(1) STEVEN IVANKOVICH
(2) NEIRAH

Part 20 Defendants

ORDER WITH REASONS OF H.E. JUSTICE SAPNA JHANGIANI

PENAL NOTICE

IF YOU KJM MARINE LLC DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND YOUR DIRECTORS MAY BE REFERRED TO THE ATTORNEY GENERAL OF DUBAI, FINED OR HAVE THEIR ASSETS SEIZED OR THE COMPANY MAY BE FINED OR HAVE ITS ASSETS SEIZED

ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS THE RESPONDENT TO BREACH THE TERMS OF THIS ORDER MAY ALSO BEHELD TO BE IN CONTEMPT OF COURT AND MAY BE REFERRED TO THE ATTORNEY GENERAL OF DUBAI, FINED OR HAVE THEIR ASSETS SEIZED

UPON the Claimant's Application No. CFI-068-2024/2 for an anti-suit injunction dated 24 February 2025

AND UPON hearing counsel for the Claimant and counsel for the First Defendant at the Application Hearing before H.E. Justice Sapna Jhangiani on 17 March 2025

AND UPON the Claimant offering the undertakings set out in Schedule 1 to this Order, which undertakings the Court accepted

IT IS HEREBY ORDERED THAT:

Interpretation

1. In this Order, the "Dubai Claim" means the proceedings commenced by the First Defendant before the Dubai Courts Commercial Plenary; and

2. Where the First Defendant is ordered not to do something, it must not do it itself or by its directors, officers, partners, employees or agents or in any other way.

Interim anti-suit injunction

3. Until judgment is given in these proceedings, or further order, the First Defendant must not pursue, assist in or procure the pursuit of the Dubai Claim against the Claimant, to the extent that the Dubai Claim is pursued against the Claimant.

Costs

4. The First Defendant shall pay the Claimant's costs of the application on the indemnity basis. The parties may file brief submissions on costs, of no greater than 5 pages in length, by no later than **4pm on Monday, 7 April 2025.**

Issued by:
Hayley Norton
Assistant Registrar
Date of issue: 26 March 2025
At: 12pm

SCHEDULE OF REASONS

A. Background

1. The Claimant, Mr Steven Ivankovich, and the First Defendant ("KJM") entered into a Joint Venture Agreement dated 20 March 2023 (the "JVA") to collaborate for *"creating premium leisure maritime vessels for global distribution manufactured in Dubai"* through a company to be formed in Dubai, which was the Third Defendant ("KJI"). The JVA is governed by English law.

2. The Claimant is a US national, and the First and Third Defendants are companies incorporated in onshore Dubai. The Second Defendant is an officer of the First and Third Defendants.

3. In the JVA, the Claimant and KJM are each described as a "Venturer". The JVA included the following exclusive jurisdiction clause at clause N(a):

> "Each Venturer consents to the exclusive jurisdiction of the DIFC Court for the resolution of any such dispute between the Venturers or arising out of, related to or connected with this Agreement or the Joint Venture."

4. On 19 July 2023, the Claimant and the First and Second Defendants entered into a written memorandum of association to form the Third Defendant as a limited liability company in accordance with the provisions of the Commercial Companies Law (Federal Decree No. 32 of 2021) (the "MOA").

5. The MOA is governed by the laws of Dubai, and provides at Article 21 for disputes to be referred to the "Dubai Courts".

6. On 9 and 10 October 2023, Neirah ("Neirah") issued three purchase orders addressed to KJM numbered 220336, 220326 and 220327 for the purchase of 20 "Arrow 320" luxury yachts, and related items (the "Purchase Orders"). KJM contends that the Purchase Orders were issued to KJM because KJI did not have a bank account. [1]

7. The Defendants contend that Neirah is wholly beneficially owned by the Claimant, which is denied by the Claimant.

8. The Defendants contend that on or around November 2023, Glencoe Family Dwelling LLC ("Glencoe"), a company beneficially owned by the Claimant, transferred to KJI the sum of USD 250K pursuant to the Purchase Orders, and KJI proceeded to manufacture the vessels and items pursuant to the Purchase Orders.

9. The Claimant denies that this sum of USD 250,000 was paid pursuant to the Purchase Orders, and contends that there is no connection between Glencoe and Neirah. The Claimant asserts that he has no legal or beneficial interest in Glencoe. Further, that he was not involved in the transaction between KJM and Neirah relating to the Purchase Orders.

These DIFC Proceedings

10. KJM purported to terminate the JVA by way of a notice dated 10 September 2024 from its solicitors to the Claimant. One of the grounds of termination was that the Claimant issued the three Purchase Orders, under which USD 2,179,870 remained outstanding, and the Claimant's non-payment constituted an event of default under the JVA, and a repudiatory breach of the JVA, because the Claimant's obligation to pay under the Purchase Orders comprised an obligation to make "Additional Contributions" as a Venturer.[2]

11. KJM does not allege an express choice of law in the contract said to give rise to the Purchase Orders. DIFC Law would apply by default under Article 10 of the Law Relating to the Application of DIFC Law.

12. The Claimant denies that the termination was valid, and contends that the JVA is still in force.

13. The Claimant initiated these proceedings before the DIFC Courts on 26 September 2024. The claim seeks a declaration that the termination was invalid, and a number of remedies relating to the corporate governance of the Third Defendant, which are not relevant for present purposes.

14. In relation to the Purchase Orders, the Claimant's case is that there is no contract between him and KJM in relation to the Purchase Orders, and his alleged non-payment of the Orders therefore could not give rise to a ground to terminate the JVA. Further, his alleged non-payment could not be a repudiatory breach of the JVA, because the JVA imposed no obligations on him in relation to the Orders.

15. In the Particulars of Claim at [64] and [65], the Claimant contends as follows in relation to the jurisdiction of the DIFC Court over its claims:

> "64. The DIFC Court has jurisdiction over the claims under the JVA under Article 5(A)(2) of the Judicial Authority Law (Dubai Law No. 12 of 2004, as amended). Clause N(a) of the JVA is on its true construction an agreement by the Claimant and First Defendant to opt in to the jurisdiction of the DIFC Court.
>
> 65. The DIFC Court has jurisdiction over the claims under the MoA and under Dubai law:
>
> 65.1. Under Article 5(A)(2) of the Judicial Authority Law. Clause 21 of the MoA is on its true construction an agreement by the Claimant, the First Defendant, the Second Defendant and the Third Defendant to opt in to the jurisdiction of the DIFC Court. On its proper construction, the reference to "Dubai Courts" in the said Clause 21 includes the DIFC Courts; and/or

65.2. Under Article 5(A)(1)(e) and RDC r.20.7 on the basis that it is desirable that the claims under the MoA and Dubai law be tried in the DIFC Court alongside the claim under the JVA."

16. In the Defence and Counterclaim dated 15 November 2024, the Defendants:

(a) admit paragraphs [64] and [65] of the Particulars of Claim relating to the jurisdiction of the DIFC Courts, as set out above;

(b) deny that the Claimant is entitled to the relief he seeks; and

(c) pursue a Counterclaim against the Claimant.

17. The Counterclaim includes the following:

"54. Steven, by (i) causing Neirah to issue the purchase orders identified at paragraph 20 above; and (ii) by causing Glencoe Family LLC to transfer a deposit of US$250,000 to KJM pursuant to those purchase orders entered (by himself and/or jointly with Neirah) into a binding contract with KJM, alternatively KJI for the manufacture and/or supply of the items as stated in the purchase orders, to be sold onwards by Steven pursuant to his obligations under the JVA.

55. By reason of the foregoing Steven and/or Neirah owe to KJM and/or KJI the sums of:

55.1 The sum outstanding pursuant to the purchase orders;

55.2 Alternatively, the value of the executed work already carried out by KJM, alternatively KJI, pursuant to the purchase orders;

55.3 Further and/or alternatively, the profit that KJM would have earned if Steven had performed his obligations fully and marketed and sold the 20 boats in USA pursuant to his obligations under the JVA."

18. By way of relief, the First and/or Third Defendants claim the sums due under the Purchase Orders as a debt from Steven, alternatively as damages, and seek the same relief against Neirah in the alternative. [3]

The First Defendant's Part 20 Application

19. On 20 December 2024, KJM applied to this Court under Part 20 RDC for Neirah to be added as a party to these proceedings on the following basis set out in its application notice, supported by witness statement:

"The addition of Neirah as a party is desirable from an effective case management perspective, so that the Court may resolve all matters in dispute in the proceedings efficiently.

These are the following issues that involve Neirah and the existing parties:

(i) The contract between [KJM and KJI] and (i) the Claimant; and/or (ii) Neirah which underlies the counterclaim;

(ii) Neirah's issue of the Purchase Orders;

(iii) Whether outstanding amounts owed to the First and Third Defendants under the Purchase Orders are for Neirah's account.

These issues are connected to the matters in dispute. It is therefore desirable to add Neirah as a new party so that the court can resolve these issues effectively."

20. KJM's Part 20 Application was heard at the Case Management Conference on 24 February 2025 ("CMC"). In its skeleton argument for that hearing, the Defendants submitted as follows:

28.1 "It is "desirable" to add Neirah as a party to this litigation, because a material aspect of this litigation is the claims under the Purchase Orders that Neirah issued. At trial, the court will need to determine whether the liabilities arising from these POs are the responsibility of Mr Ivankovich or Neirah. It is right and proper for Neirah to be a party in the trial, in circumstances where (in the alternative) KJM/JVCo seek relief against it.

28.2 The factual matrix of the claim against Neirah substantially overlaps with the claim against Mr Ivankovich. The same POs are being debated, and the issues should be resolved in a single set of proceedings."

21. Further, that:

".based on the pleadings, the resolution of the dispute relating to the Purchase Orders.requires Neirah to be joined. Otherwise, there would need to be separate litigation against Neirah. That would not only be inefficient, but would risk inconsistent outcomes based on the factual findings in the respective proceedings."

22. By the time of the CMC, the Claimant was aware of the non-DIFC Dubai Court claim (the "Dubai Claim") and had issued this application for an Anti-Suit Injunction ("ASI") earlier that day (although I was not aware of it prior to the CMC). At the CMC, the Defendants pursued their application to add Neirah to these proceedings, and did not mention that KJM was already pursuing the Dubai Claim against Mr Ivankovich and Neirah. The Claimant indicated that it was neutral in respect of the Defendants' application.

23. At the CMC, I raised my concern that, if Neirah were to be added to these proceedings, the Court would need to be satisfied that the claim form was properly served by any method permitted by the law of the place in which it is to be served, pursuant to RDC 9.54.

24. The Defendant's application was granted, and by way of a Case Management Order dated 26 February 2025, directions were handed down for the Defendants to serve Neirah with the relevant documents for these proceedings, and to file a witness statement and certificate of service identifying the steps taken to serve Neirah.

The Claimant's Present Application for an Anti-Suit Injunction

25. By way of application notice dated 24 February 2025, the Claimant seeks an anti-suit injunction against KJM on the basis that it has brought proceedings in the non-DIFC Dubai Courts which are vexatious, oppressive and unconscionable and which, on KJM's own case, are in breach of an exclusive jurisdiction agreement in favour of the DIFC Courts.

26. The draft order sought by the Claimant is both prohibitory and mandatory. It prohibits KJM from pursuing the Dubai Claim, and also orders it to immediately take all steps necessary to discontinue the Dubai Claim. It also seeks to prohibit the pursuit of any other proceedings in any other dispute resolution forum in relation to the "Dispute" (as defined) between the Claimant and KJM relating to the Purchase Orders. It is stated to be an "interim anti-suit injunction" but, as pointed out by KJM, would be final in effect.

The Dubai Claim

27. The Dubai Claim was commenced on 20 November 2024 by KJM, the First Defendant in these proceedings, against Neirah as the First Defendant, and Mr Steven Ivankovich (the Claimant in these proceedings) as Second Defendant. The Dubai Claim was registered on 20 November 2024, 5 days after the Defence and Counterclaim was filed in these proceedings.

28. The three Purchase Orders form the basis of the Dubai Claim, and it is alleged that Neirah issued the Purchase Orders to KJM, and that there is a contract between Neirah and KJM. Unlike in the DIFC proceedings, KJM's case is that the Purchase Orders are governed by Dubai law, and that KJM (rather than KJI) undertook the works under the Purchase Orders.

29. KJM claims that Mr Ivankovich undertook the commercial activities of Neirah in relation the Purchase Orders, since Neirah is a US-based entity with no physical presence in the UAE. This includes entering into the Purchase Orders, negotiating change orders in relation to the Purchase Orders, and making payment of USD 250,000 through Glencoe.

30. KJM asserts that Mr Ivankovich is jointly and severally liable as Neirah's representative for settling the outstanding debt owed by Neirah pursuant to the Article 336 of the UAE Commercial Companies Law (Federal Law No. 32 of 2021), which treats the liabilities of a company that is not registered in the UAE (such as Neirah) as if they were the personal liabilities of the company's representative ("Article 336").

31. KJM asserts that the "Defendants" (i.e. Mr Ivankovich and Neirah) made payment of USD 250,000, and the total executed works exceed the value of that payment. KJM seeks damages for the value of the work carried out by it.

32. In addition, KJM seeks the profit it would have made on the sale of the yachts to Neirah.

33. The remedies sought in the Dubai proceedings are different from those sought in these proceedings. For example, in these proceedings, KJM seeks the profit it would have made under the JVA on the sale of the yachts.

34. Neither the JVA nor these DIFC proceedings are mentioned in the Dubai Claim. The Claimant asserts that this is a deliberate strategy on the part of KJM, to avoid the remit of the exclusive jurisdiction clause in the JVA in favour of the DIFC Courts. The Claimant contends that this is why the Dubai Claim does not assert that the joint venture company, KJI, manufactured the vessels - as asserted in these DIFC proceedings - but contends that KJM manufactured them.

35. There is a dispute between Mr Ivankovich and KJM as to whether he was properly notified of the Dubai proceedings. The Claimant contends that KJM chose not to inform Mr Ivankovich and his lawyers about the Dubai Claim until 3 February 2025 *"in the hope of obtaining a quick judgment whilst these DIFC proceedings were on foot"*. At any rate, Mr Ivankovich is now apprised of the Dubai Claim, which has prompted the present application.

36. There have been several hearings in the Dubai Claim, and a hearing is scheduled for 27 March 2025. Mr Ivankovich contends that the Dubai proceedings have already been completed. In his second witness statement of 6 March, Mr Crosse on behalf of KJM denied [4] that the Dubai Claim is completed, but accepted[5] that it was at least possible that a judgment may be issued at the 27 March hearing on the merits of the case. On 11 March, the Claimant filed an application in the Dubai Courts to ask it to reopen proceedings for the purpose of allowing him to challenge the Dubai Court's jurisdiction, on the basis that the matter is already being litigated in the DIFC Court.[6]

B. Applicable Principles for the Grant of an Anti-Suit Injunction

37. I address first the Court's power to issue final or interim injunctions.

38. Under Article 24D of DIFC Law No. 2 of 2025 (pertaining to the DIFC Courts), this Court has the power to make orders as to the conduct of any proceedings before the Court that it considers "appropriate", including injunctions. Under Article 24E the Court has a number of powers, including the power to *"make any other order necessary for the proper administration of justice"*. DIFC Law No. 2 of 2025 provides at Article 43B that any conflicting provision in any other legislation shall be repealed.

39. DIFC Law No. 7 of 2005 (Law of Damages and Remedies) provides at Article 38(1) that this Court may grant an injunction in all cases in which it appears to the Court to be "just and convenient" to do so. The question arises as to whether this test differs from the test of "appropriate" in DIFC Law No. 2 of 2025, such that it constitutes a conflicting provision. In *Bocimar International NV v Emirates Trading Agency LLC* [2015] DIFC CFI 008 (28 January 2016), Deputy Chief Justice John Chadwick expressed the view that the test of "appropriate" did not differ in any material respect from the test of "just and convenient" (at least in that case). I consider it highly unlikely that applying these different tests would lead to a different outcome.

40. Article 36 of DIFC Law No. 7 of 2005 (Law of Damages and Remedies) provides for the grant of interim injunctions, whether or not there has been a claim for a final remedy. The Court's power to issue interim remedies, including interim injunctions, is enshrined in RDC 25.1.

41. In relation to the applicable principles for the grant of an anti-suit injunction by this Court, there was broad agreement between the Parties.

42. As held by H.E. Justice Wayne Martin (as he was then) in *Emirates NBD v KBBO CPG* [2020] DIFC CFI 045 (16 Aug 2021, Martin J) (*"Emirates NBD"*) at [77], 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 non-DIFC Dubai Courts. As set out in that case, the applicable principles, derived from English law, are that an anti-suit injunction may be granted:

(a) to protect a substantive legal or equitable right not to be sued in an alternative forum because the alternative proceedings are commenced in breach of a jurisdiction or arbitration agreement (the "Contractual Ground"); or

(b) where the alternative proceedings are vexatious, oppressive or unconscionable (the "Non-Contractual Ground").

43. The grant of an anti-suit injunction is discretionary. [7]

44. An applicant for an interim anti-suit injunction must establish a breach of a jurisdiction agreement or vexatious, oppressive or unconscionable conduct to *"a high degree of probability": Sabbagh v Khoury* [2018] EWHC 1330 (Comm) at [21].

45. The applicable principles under English law with respect to an anti-suit injunction to restrain foreign proceedings were elucidated by the Court of Appeal in *Deutsche Bank AG v Highland Crusader Offshore Partners LP* [2010] 1 WLR 1023 by Toulson LJ (with whom the Court agreed) at [50], and may provide useful guidance (albeit that the proceedings in the non-DIFC Dubai Courts are not "foreign", and the current context is therefore different):

"(1) Under English law the court may restrain a defendant over whom it has personal jurisdiction from instituting or continuing proceedings in a foreign court when it is necessary in the interests of justice to do.

(2) It is too narrow to say that such an injunction may be granted only on grounds of vexation or oppression, but, where a matter is justiciable in an English and a foreign court, the party seeking an anti-suit injunction must generally show that proceeding before the foreign court is or would be vexatious or oppressive.

(3) The courts have refrained from attempting a comprehensive definition of vexation or oppression, but in order to establish that proceeding in a foreign court is or would be vexatious or oppressive on grounds of forum non conveniens, it is generally necessary to show that (a) England is clearly the more appropriate forum ("the natural forum"), and (b) justice requires that the claimant in the foreign court should be restrained from proceeding there.

(4) If the English court considers England to be the natural forum and can see no legitimate personal or juridical advantage in the claimant in the foreign proceedings being allowed to pursue them, it does not automatically follow that an anti-suit injunction should be granted. For that would be to overlook the important restraining influence of considerations of comity.

(5) An anti-suit injunction always requires caution because by definition it involves interference with the process or potential process of a foreign court. An injunction to enforce an exclusive jurisdiction clause governed by English law is not regarded as a breach of comity, because it merely requires a party to honour his contract. In other cases, the principle of comity requires the court to recognise that, in deciding questions of weight to be attached to different factors, different judges operating under different legal systems with different legal policies may legitimately arrive at different answers, without occasioning a breach of customary international law or manifest injustice, and that in such circumstances it is not for an English court to arrogate to itself the decision how a foreign court should determine the matter. The stronger the connection of the foreign court with the parties and the subject matter of the dispute, the stronger the argument against intervention.

(6) The prosecution of parallel proceedings in different jurisdictions is undesirable but not necessarily vexatious or oppressive.

(7) A non-exclusive jurisdiction agreement precludes either party from later arguing that the forum identified is not an appropriate forum on grounds foreseeable at the time of the agreement, for the parties must be taken to have been aware of such matters at the time of the agreement. For that reason an application to stay on forum non conveniens grounds an action brought in England pursuant to an English non-exclusive jurisdiction clause will ordinarily fail unless the factors relied upon were unforeseeable at the time of the agreement. It does not follow that an alternative forum is necessarily inappropriate or inferior.

(8) The decision whether or not to grant an anti-suit injunction involves an exercise of discretion and the principles governing it contain an element of flexibility."

46. In relation to the Non-Contractual Ground, the Parties agree that it will be necessary to show in this case that (a) the DIFC Court is the natural forum; and (b) even if the DIFC Court is the natural forum, justice requires the First Defendant to be restrained from proceeding in the non-DIFC Dubai Courts because the Dubai Claim is oppressive, vexatious or unconscionable.

47. I accept the Claimant's submission that where a party commences two claims in relation to the same subject matter in two different jurisdictions, such conduct is likely to be viewed as vexatious, oppressive and unconscionable unless there is a legitimate purpose for bringing two claims.[8] Further, that commencing proceedings in one forum and then bringing the same proceedings somewhere else is the paradigm of vexatious, oppressive and unconscionable conduct, relying on the English Court of Appeal in *Star Reefers Pool v JFC Group* [2012] 1 Lloyds Rep 376 at [30] that:

"It has been recognised that the unconscionability of the foreign claimant is often to be found, mainly or substantially, in the very reason that he

has first submitted to English jurisdiction as the forum where the parties' dispute will be resolved and then sought vexatiously to extricate himself from the consequences of that submission, or oppressively to prolong or multiply the litigation by commencing further proceedings abroad."

48. I accept the general proposition relied upon by the Defendant that it is not unreasonable or oppressive to pursue claims which arise in respect of different causes of action that do not exist in the original jurisdiction (based on *Oceanconnect UK Ltd v Angara Maritime Ltd* [2011] 1 Lloyd's Rep. 399).

C. The Parties' Arguments

49. The Claimant argues that the Dubai Claim against him and Neirah is essentially the same claim: in both actions, the allegation is that he was acting as Neirah's representative; that he placed the Purchase Orders and made part payment; and that as a result he is liable as a contracting party.

50. Further:

(a) Relief in one claim would satisfy the other. If KJM recovered under the DIFC proceedings and the Dubai Claim, that would be double recovery.

(b) The core facts are the same in both claims, and KJM will be relying on the same matters and evidence.

(c) KJM positively invoked jurisdiction of the DIFC Court when it issued its counterclaim against both the Claimant and Neirah.

51. KJM relies upon Article 6(a) of Decree No. 29 of 2024 (concerning the Judicial Committee for Resolving Conflicts of Jurisdiction between the Dubai International Financial Centre Courts and Judicial Entities in the Emirate of Dubai) ("Decree 29"), which provides in translation as follows:

"In case of a conflict of jurisdiction between the DIFC Courts and any Judicial Entity, in which neither or both of them relinquish jurisdiction over a claim or an application, or in which they deliver conflicting judgements on the same, litigants may submit an application to the Judicial Committee to determine the competent judicial entity having jurisdiction over the claim, or to determine the enforceable judgement."

52. KJM submits that Decree 29 is the sole basis on which jurisdiction disputes between the DIFC and non-DIFC Dubai Courts are now resolved. Further, that the Claimant could submit an application to the Judicial Committee established by Decree 29 (known as the Conflicts of Jurisdiction Tribunal ("CJT")), and under Article 7 of Decree 29, there would be a stay pending the determination of any such application. The First Defendant points out that in *Emirates NBD*, Justice Wayne Martin (as he then was) only issued an anti-suit injunction **after** the Dubai Court had declined jurisdiction in favour of the DIFC Court.

53. KJM argues that it is highly material for me to consider that Steven has applied to reopen the Dubai Claim to challenge the Dubai Court's jurisdiction on the basis that the matter is already being litigated in the DIFC Court.

54. KJM contends that the DIFC is plainly not the natural forum for the Dubai Claim for the following reasons:

(a) **The parties to the Dubai Claim are different**: KJM is the Claimant in the Dubai Claim against Neirah and Mr Ivankovich. The First and Second Defendants in these proceedings are not parties, and Neirah is not yet a party to these proceedings, having not been served.

(b) **The cause of action in the Dubai Claim is different**: Although KJM concedes that there is some overlap, it submits that the primary basis for Mr Ivankovich's liability in the Dubai Claim is Article 336, and that this is a legitimate and significant advantage which is not available in these proceedings.

(c) **There are further legitimate advantages in the Dubai Claim:**

(i) The Dubai Claim can be immediately enforced against assets of Mr Ivankovich in Dubai without additional procedural steps.

(ii) Whilst the Claimant argues that it is *"abusive"* to claim different relief in the Dubai Claim as *"there is a real risk that inconsistent remedies could be granted"*, KJM submits that the fact of different remedies is a legitimate advantage which it would be unjust to deprive it of.

(iii) Neirah has not yet been served with the Part 20 claim in these proceedings (despite attempts being made by a process server to effect service in Michigan at Neirah's registered address). It has not authorised solicitors to accept service of the Part 20 claim and, absent service, the claim against it will not proceed.[9] KJM submits that it has a legitimate advantage in pursuing the Dubai Claim against Neirah, because Neirah has been notified of the Dubai Claim according to the procedural rules of the non-DIFC Dubai Courts.

(d) **The factual scope of the Dubai Claim is different:** KJM argues that the parties are closely connected with non-DIFC Dubai (more so than with the DIFC) because:

(i) KJM is registered in non-DIFC Dubai (which is where Steven has a registered address);

(ii) The Purchase Orders were made in onshore Dubai and for the production and supply for yacht and vessel components in Dubai;

(iii) Steven's liability arises under mandatory provisions of UAE law; and

(iv) The relevant documents and witnesses are likely to be located in non-DIFC Dubai.

55. KJM's case that the Dubai Claim is not vexatious, oppressive or unconscionable turns on the following facts:

(a) it concerns a different cause of action against Mr Ivankovich (i.e. Article 336); and

(b) it does not concern the same parties as these proceedings.

56. KJM also points out that Mr Ivankovich's lawyers do not act for Neirah. Neirah has not made this application; has not served evidence; and its position is unknown. It cannot be assumed that Neirah objects to the Dubai Claim; in fact it must be assumed that it is content with the Dubai Claim, because it has not said otherwise.

D. My Decision

57. Firstly, I reject KJM's argument that Decree 29 is the sole procedure for resolving jurisdictional issues between the DIFC and Dubai Courts. In the recent case of *Nael v Niamh Bank* [2024] DIFC CA 015 (9 Jan 2025), the Court of Appeal (Martin CJ, Black J and Moran J) dismissed this argument, stating at [37(f)]:

> "If Decree 29 were the sole permissible procedure for resolving conflicts of jurisdiction it would also mean that the DIFC Courts would be precluded from making anti-suit or anti-enforcement injunctions".

58. I note that in *Emirates NBD*, Justice Wayne Martin issued an anti-suit injunction notwithstanding that there was a pending application to the Joint Judicial Committee (the predecessor to the CJT under Decree 29).

59. I turn to consider whether either the Contractual or Non-Contractual Ground for an anti-suit injunction is made out. If either ground is made out, I will need to consider whether to exercise my discretion to award an anti-suit injunction.

60. I address the Non-Contractual Ground first. To my mind, there can be no doubt that the DIFC is the natural forum for the matters included in the Dubai Claim, and that the Dubai Claim is vexatious, oppressive and unconscionable. I take into account the following factors:

(a) KJM positively invoked this Court's jurisdiction over its counterclaim against both Mr Ivankovich and Neirah, and then proceeded to pursue claims against these same parties, involving the same subject matter, in the Dubai Claim.

(b) If KJM were to succeed in both sets of claims, there would be double recovery. Relief in one would exclude relief in the other.

(c) KJM obtained an order to join Neirah to these proceedings under RDC Part 20. The premise on which that order was obtained was that it was desirable for there to be one forum for the Defendants' claims against Neirah. It was misleading for KJM to present this premise to the Court in light of the Dubai Claim which it had commenced.

(d) KJM contends that there is no reason why it cannot pursue both sets of proceedings in parallel, and contends that it obtains legitimate advantages in pursuing the Dubai Claim. However, I see very little merit in KJM's arguments that:

(i) it may only pursue the Article 336 claim against Mr Ivankovich in the Dubai Claim;

(ii) it will be easier to enforce the Dubai Claim against Mr Ivankovich;

(iii) the Dubai Claim has more connection with non-DIFC Dubai; and

(iv) it should not be deprived of its opportunity to seek different remedies in the Dubai Claim.

(e) There is no reason why KJM's claims for relief in the Dubai Claim (including the Article 336 claim under Dubai law) cannot be pursued in these proceedings, and KJM's arguments about the greater convenience and procedural enforceability of pursuing the Dubai Claim in Dubai (having already commenced its counterclaim in these proceedings) are not persuasive.

(f) I see no legitimate purpose in Mr Ivankovich and Neirah being put to the expense and inconvenience of litigating the same (or highly similar) claims in two sets of Dubai proceedings, with the risk of inconsistent outcomes. The Defendants have already agreed that issues of Dubai law arising under the MOA may be heard in these proceedings. This Court can hear and determine all the connected issues between the parties that arise under multiple systems of law, including the dispute arising under the JVA, over which it has exclusive jurisdiction.

(g) KJM asserts that it has been difficult to serve Neirah in these proceedings, whereas Neirah has already been notified of the Dubai Claim through newspaper advertisement under the procedural rules of the non-DIFC Dubai Courts, and it therefore has a legitimate advantage in pursuing the Dubai Claim. I reject the submission that KJM has a legitimate advantage in the Dubai Claim as alleged, such as to militate against a finding that the Dubai Claim is vexatious, oppressive and unconscionable.

61. As held in the *South Carolina* case [1987[AC 24 at 41[10] by Lord Brandon of Oakbrook, what is unconscionable cannot be defined exhaustively, but includes conduct *"which interferes with the due process of the court"*. I find that KJM's conduct in pursuing the Dubai Claim interferes with the due process of this Court, and is moreover an abuse of this Court's process, by using the processes of this Court for a purpose, or in a way, that is significantly different from its ordinary and proper use.[11]

62. I turn to consider the Contractual Ground. The exclusive jurisdiction clause in the JVA provides for any dispute between the Venturers that *"arises out of"*, is "related to", or *"connected with"* the JVA or the *"joint venture"* to be submitted to the exclusive jurisdiction of the DIFC Courts.

63. The case put by KJM before this Court is that the Purchase Orders arise out of the JVA and the joint venture, such that sums alleged to be owed by the Claimant under the Purchase Orders constitute "Additional Contributions" under the JVA, and the Claimant's failure to pay those sums led to the lawful termination of the JVA by KJM. On KJM's case, therefore, the Purchase Orders are inextricably linked to the termination of the JVA. On that basis, all matters relating to the Purchase Orders are "related to", or "connected with" the JVA or the joint venture, and should be

determined within these DIFC proceedings. Indeed, this was the basis upon which the Defendants successfully applied to have Neirah joined to these proceedings.

64. However, KJM's case against Mr Ivankovich and Neirah in the Dubai Claim has been framed differently, with no connection asserted between the Purchase Orders and the joint venture, and no reference to the JVA whatsoever. One might infer that this is deliberately so. Because of the inconsistent position adopted by KJM in the Dubai Claim and in these DIFC proceedings, it is difficult to conclude that the pursuit of the Dubai Claim is in breach of the exclusive jurisdiction clause in the JVA.

65. I turn to consider whether I should exercise my discretion to order the Anti-Suit Injunction applied for by the Claimant on the basis of the Non-Contractual Ground.

66. I must take into account Mr Ivankovich's application in the Dubai Claim to reopen proceedings for the purpose of allowing him to challenge the Dubai Court's jurisdiction.

67. Further, a powerful point made by KJM is that Mr Ivankovich has no standing to enjoin KJM from pursuing a legitimate action against Neirah in the Dubai Claim. The Claimant through his Counsel has indicated "some sympathy" with this position, stating that the Claimant would accept an anti-suit injunction restraining KJM from pursuing the Dubai Claim against Mr Ivankovich but not Neirah, as long as KJM undertook not to seek to enforce any judgment obtained against Neirah against Mr Ivankovich. No such undertaking was offered by KJM.

68. Under Article 24E of DIFC Law No. 2 of 2025, I have the power to make any order *"necessary for the proper administration of justice"*. The First Defendant denies that this power extends to issuing an anti-suit injunction to restrain the Dubai Claim against Neirah in the present circumstances.

69. I have formed the assessment above that KJM's conduct in pursuing the Dubai Claim is vexatious, oppressive and unconscionable, based on the facts available to me. Whilst I have formed the view that KJM's pursuit of the Dubai Claim is vexatious and oppressive against both the Claimant and Neirah, Mr Brown KC on behalf of KJM is absolutely right that Neirah have not made this application for an anti-suit injunction; have not objected to the Dubai Claim; and have not appeared before me in relation to this application to set out what their position is. Indeed, KJM have indicated that Neirah have not yet been served with these proceedings.

70. Whilst this Court's powers are wide, those powers must be exercised appropriately and, in the context of an application for an anti-suit injunction, with the requisite caution.

71. I do not consider it appropriate to issue an anti-suit injunction restraining the Dubai Claim insofar as it is pursued against Neirah.

72. The question arises as to whether I should issue an anti-suit injunction to prevent KJM from pursuing the Dubai Claim against Mr Ivankovich.

73. I am mindful that, while Mr Ivankovich has applied to reopen the Dubai Claim for the purpose of allowing him to challenge the Dubai Court's jurisdiction, he has not yet currently raised an objection to jurisdiction before the non-DIFC Dubai Court.

74. Taking all the circumstances into account, I am satisfied that it is appropriate to issue an anti-suit injunction to restrain the Dubai Claim against Mr Ivankovich on a prohibitory and interim basis, pending final judgment in these DIFC proceedings, or further order. I do not see it as necessary to restrain KJM from pursuing other proceedings in any other dispute resolution forum in relation to the "Dispute" (as defined) between the Claimant and KJM relating to the Purchase Orders.

75. Given that the Claimant has succeeded in his application for anti-suit injunctive relief, and taking into account all the relevant circumstances, including my finding that KJM's conduct is an abuse of this Court's process, I award the Claimant his costs of this application on an indemnity basis.

76. The parties may file brief submissions on costs, of no greater than 5 pages in length, by no later than **4pm on Monday, 7 April 2025**

SCHEDULE 1

THE CLAIMANT'S UNDERTAKINGS

If the Court later finds that this Order has caused loss to the First Defendant and decides that the First Defendant should be compensated for that loss, the Claimant will comply with any order the Court may make.