Claim No: CFI 046/2023
ENF 022/2023
ENF 023/2023

IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

GTC TRADING SA

Claimant

and

(1) HAZEM ABDOLSHAHID MAHMOUDI RASHED
(2) H.M.R INVESTMENT HOLDING LIMITED

Defendants

REASONS FOR THE ORDERS OF JUSTICE SIR JEREMY COOKE DATED 30 MAY 2024

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1. These are the reasons underlying my orders made on 28 May 2024

The Application for an Adjournment

2. There is an extensive history to these proceedings which, for present purposes, can be taken as commencing with a judgment in onshore Dubai in 2016 which was upheld by the Court of Appeal on 31 October 2018 and by the Court of Cassation on 24 February 2019 and which led to the current enforcement proceedings in the DIFC. On 23 January 2019 the First Defendant transferred 32 Units in City Walk Dubai to the Second Defendant, in order to frustrate enforcement of the judgement against him. On 3 February 2023, the DIFC Court issued an order recognising and enforcing the onshore Dubai Judgement and granting a worldwide freezing order, with ancillary orders for disclosure of assets, and an interim charging order over the First Defendant's shares in the Second Defendant. Neither Defendant appeared on the Return Date on 16 March 2023 when the freezing order was continued and the interim charging order over the shares was made final. On 6 July 2023, the Claimant issued a Part 8 Claim for the sale of the First Defendant's shares in the Second Defendant.

3. On 25 September 2023 the First Defendant applied to set aside the enforcement order, the worldwide freezing order and the charging order. On 27 October 2023 the Claimants applied for the First and Second Defendants to be committed for contempt for failure to comply with the disclosure orders contained in the freezing order issued on 3 February 2023. On 9 November 2023, the First Defendant applied for a stay or vacation of the contempt proceedings pending the hearing of his application to set aside the orders made in February/March 2023. That application was dismissed on paper and a finding of contempt against both Defendants was made on 22 November 2023, with an order for committal issued on 28 November 2023, with all questions of sanctions being left over until the determination of the First Defendant's set aside application. Following a hearing on 15 December 2023, where the Defendants were represented by Mr Stephen Doherty, the setaside applications were dismissed with reasons given on 19 December 2023.

4. On 22 December 2023 the Defendants applied for permission to appeal and a stay of enforcement pending appeal, with grounds of appeal and a skeleton argument settled by Mr Doherty of Counsel. On 18 January 2024, the application for a stay of enforcement pending appeal was dismissed and the Court made an order for the sale of the First Defendant's shares in the Second Defendant.

5. Pursuant to the DIFC Court Orders, the First Defendant's shares in the Second Defendant were registered in the name of an Agent for Sale and the sole director and secretary were removed from office with both positions filled by a nominee of the Agent for sale. Ms Mansour, who holds a power of attorney for the First Defendant was removed as company secretary.

6. On 11 April 2024, the Claimant filed an application with the Court for sanctions to be imposed on the First Defendant in respect of his continued contempt and that this should be heard at the hearing listed for 28 May 2024, when the Defendants' application for permission to appeal was due to be heard. This was opposed by the Defendants with a Witness Statement from Ms Mansour on 23 April 2024. On 26 April 2024, the Court granted the Claimant's application that sanctions be determined at the hearing listed for 28 May 2024.

7. On 8 May 2024, the solicitors acting for the Defendants, Charles Russell Speechlys applied to come off the record and on 13 May 2024 that application was granted. On 23 May 2024 the Defendants applied for a stay of all proceedings and enforcement on the basis that they were without legal representation. In a second witness statement of Mr Mansour dated 22 May 2024 in support, she referred to herself as the company secretary of the Second Defendant (which was no longer the case), stated that she had been working closely with the First Defendant since 2011 and maintained a close relationship with his family in addition. She said she was acting as his power of attorney in representing him before the lawyers of Dubai Court and DIFC Court since the initiation of the case. She said she was authorised to conduct his business, personal and family affairs on a day-to-day basis. I was told by Counsel for the Claimants, on instructions, that she was thought to be the First Defendant's wife. She referred to the application of the Defendant's former solicitors to come off the record, to the order made by the Court and to an email sent on 14 May 2024 to the Registry requesting a stay to afford the Defendants the opportunity to obtain further representation and that she had been told that an application should be filed to that effect. No explanation was given for the withdrawal of the Charles Russell Speechlys and no evidence was given of any attempts to find other lawyers who could act. Charles Russell Speechlys were the third set of lawyers to represent the Defendants in this litigation. The inference that the Defendants had failed to pay the fees of their own lawyers in the circumstances is irresistible.

8. In response to the application of 23 May, the Claimants responded on Friday 24 May and the Defendant replied on Monday 27 May. In circumstances where Counsel had already drafted extensive grounds of appeal and a skeleton argument it was plainly not impossible to find solicitors who could represent the Defendants, with Counsel already booked for the hearing and for the hearing to go ahead, had the Defendants had any desire to do so. They had prior warning of the solicitors' intention to come off the record and could easily have taken steps to ensure alternative representation and were able to pay to do so, even if they were not prepared to pay Charles Russell Speechlys. It appeared to the Court that the Defendants had engineered the situation in the hope of obtaining an adjournment. The Court therefore refused the application for an adjournment and issued an order that day without giving reasons.

9. On the date of the hearing, 28 May 2024, Ms Malik appeared for the Defendants, having notified the Court of her intention to do so, saying that she had been instructed the previous evening, whilst telling the Court that she had previously been contacted at an earlier date, without being formally instructed by the Defendants. She told the Court that she was not in a position to present argument on the application for permission to appeal and was only present to seek an adjournment in reliance upon the Overriding Objective in RDC 1.6, submitting that significant sums of money were involved, there was a point of public importance, there was an outstanding application to the JJC and proper representation was necessary for difficult points of law and issues on the facts to be argued. She accepted that it was unusual for an applicant for permission to appeal to seek an adjournment of its own application in circumstances where extensive grounds of appeal and a detailed skeleton argument had been filed and where no explanation was offered of any kind for the withdrawal of solicitors and the failure to obtain other legal representation to pursue the application.

10. The same reasons applied to the refusal on paper as applied to the application made by Ms Malik today which I refused.

10.1. The Defendants remain in unpurged contempt of court by reason of their failure to comply with the disclosure orders made on 3 February 2023. There can be no excuse for this failure regardless of the merits or otherwise of the application made to set aside the orders for recognition and enforcement and the worldwide and charging order on that date, which were in fact dismissed in December 2023 and are now the subject of the application for permission to appeal.

10.2. Despite that unpurged contempt, I was prepared to determine the application of the Defendants in December 2023 in relation to the jurisdictional issues raised. Having determined that and being prepared to determine the application for permission to appeal, in the circumstances, I could see no good reason why I should entertain the application for an adjournment or stay.

10.3. Whilst the First Defendant has suffered from significant illness, he has throughout been, on Mr Mansour's evidence, represented by her, so that there could be no difficulty in instructing lawyers nor in paying fees. In the course of a year and quarter, there has been ample opportunity for compliance with the disclosure orders.

10.4. The First and Second Defendant's failure to give disclosure of assets, as ordered by the Court is part and parcel of an attempt to avoid enforcement of the onshore Dubai Judgement, which, together with interest, is now in excess of AED 90 million. Disclosure of such assets within the DIFC (and elsewhere) would facilitate enforcement, regardless of the issue of the validity of enforcement against the First Defendant's shares in the Second Defendant and it is obvious that it is for that reason that disclosure has not been made.

10.5. In the absence of any explanation for the withdrawal of Charles Russell Speechlys or any evidence as to attempts to obtain legal representation in time for the pursuit of the application for permission to appeal at the hearing, given the previous involvement of Mr Doherty of Counsel, it is clear to me that the Defendants have sought to play fast and loose with the system in order to stall or stymie these proceedings.

10.6. Had the Defendants wished to pursue their own application for permission to appeal, I am clear that they could readily have done so and have the assets available for payment of lawyers as required. Past evidence shows that the First and/or Second Defendants own properties in onshore Dubai at City Walk, Polo Residences and Al Fattan which, on their own evidence, have value well in excess of the judgement sum of interest.

Permission to appeal

11. Ms Malik who represented the Defendants, having applied for an adjournment withdrew from Court on that application being refused. No one therefore attended to pursue the application for permission to appeal and I therefore dismissed it.

12. Had it been necessary to consider the merits of the application, I would have refused it in any event on the basis of the extensive skeleton arguments filed by the Parties. While some new arguments were put forward in the skeleton argument filed for the Defendants, they did not change the view which I had formed when dismissing the application to set aside in December 2023.

13. There is plainly room for argument about the effect of the decisions of the onshore Dubai Court, the translations thereof and their meaning, and the effect of Federal Decree Law No. 32 of 2021 and the terms of Article 20, particularly in relation to shares in private company as opposed to shares in listed companies, a point now made express in the Defendants' application.

14. Nonetheless, the essential point is that a monetary judgement was given in onshore Dubai and this Court recognised that in an order for ratification and enforcement of that money judgment. There was no necessity for assets to be within the jurisdiction for such ratification. That DIFC Order has a life of its own (see the *DNB Bank* decision of the Court of Appeal referred to in my judgment in December) and it is for the DIFC Court to execute it in accordance with its own procedures. It is nothing to the point whether the onshore Dubai Court could enforce its own judgement against the First Defendant's shares in the Second Defendant as a matter of its domestic law, nor whether its request to this Court to execute its own judgment was in any way restricted. What matters is what this Court can do with its own judgement by way of execution of its own monetary judgment. The fact that the onshore Dubai Court found that the transfer of assets from the First Defendant to the Second Defendant was effected in order to evade enforcement of the judgement reinforces the need for execution on the shares of the First Defendant in the Second Defendant, even though the onshore Court considered it had no jurisdiction over the shares and no action has been taken in the DIFC to have that transfer of assets to the Second Defendant set aside.

15. It is clear that the terms of the Execution Letter cannot be limited to "cash" or its equivalent, whatever the position with regard to shares in the Second Defendant. If the First Defendant has assets within the jurisdiction of the DIFC Court, they are open to execution here and it is presumably for this reason that the Defendants have failed to give disclosure of any assets here, or any assets in on shore Dubai or in another jurisdiction to which the DIFC judgment could be "exported".

16. Reference should be made to the Judgment of this Court and to the Claimant's skeleton argument since my conclusion would be that the Defendants had no realistic prospects of success in pursuit of their appeal, even if some points raised were indeed arguable.

Contempt

17. The continuing flagrant contempt of the Court is self-evident and remains unpurged.

18. There is no excuse advanced for the failure to disclose assets in accordance with the disclosure orders nor to purge that contempt despite being given the opportunity to do so.

18.1. It is clear on the evidence seen by this Court that the Defendants have substantial assets both in this jurisdiction and in onshore Dubai, including the City Walk Units, the Polo Units, and property in Al Fattan. The shares in the Second Defendant are said, by the Defendants to be worth one third as much again as the Judgment sum plus interest (with the City Walk Units registered in its name). The other properties in the name of the First Defendant or other companies of his, must be worth considerable sums of similar amount,

18.2. The revenue generated from those units registered in the name of the Second Defendant, which should not now be available to the First Defendant but appears from evidence before the Court still to be flowing to him or his order, and the revenue from other property owned by him and or his creature companies, is considerable, apparently running into the low millions of dollars per annum. Until disclosure is given, the Court cannot know the full picture.

19. It is in these circumstances that the Court considers the following orders to be appropriate:

19.1. Unless the First Defendant purges his contempt and complies with the orders for disclosure within seven days of the date of this Order, he shall pay a fine of USD 500,000 forthwith upon the expiry of those seven days.

19.2. The First Defendant shall comply with the Enforcement Order and satisfy the judgement debt within 21 days of the date of this Order on further penalty of contempt.

Costs

20. In all the circumstances, it is appropriate that the First Defendant should forthwith pay the Claimant's costs on the indemnity basis which I summary assess at AED 213,000.

Issued by:
Hayley Norton
Assistant Registrar
Date of issue: 30 May 2024
At: 4pm