Claim No: CFI 080/2022

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

CHARLES RUSSELL SPEECHLYS LLP

Claimant

and

(1) GRAND VALLEY GENERAL TRADING LLC
(2) MOHAMMED AL SARI
(3) MAS INVESTMENTS LLC
(4) MOHAMMAD MOSA ABD AL ARABIAT
(5) ABDALLA JUMA AL SARI

Defendants

JUDGMENT OF JUSTICE MICHAEL BLACK

Hearing :	**28 March 2023**
Counsel :	**Mr. Stephen Doherty instructed by Charles Russell Speechlys LLP for the Claimant** **Mr. Robert Whitehead instructed by Hamdan Al Shamsi Lawyers & Legal Consultants for the First, Second, Third and Fourth Defendants** **The Fifth Defendant was not present**
Judgment :	**5 April 2023**

UPON the Part 8 Claim Form dated 14 November 2022 and amended on 21 November 2022 (the "Part 8 Claim") seeking declaratory relief

AND UPON the Defendants' Acknowledgment of Service dated 9 December 2022

AND UPON the First, Second, Third and Fourth Defendants' evidence in answer dated 23 December 2022 filed in response to the Claim

AND UPON the Claimant's evidence in reply dated 20 January 2023

AND UPON hearing counsel for the Claimant and counsel for the First, Second, Third and Fourth Defendants at the hearing listed before me on 28 March 2023

IT IS HEREBY ORDERED THAT:

1. It is declared that:

Having regard to the Claimant's regulatory obligations, the Claimant is required to decline to supply the Second, Third and Fourth Defendants with the case files relating to LCIA Arbitration Case No. 184133, LCIA Case No. 204897 and DIFC Court of First Instance Case No. CFI-048-2017 unless and until the UAE Civil and Criminal Claims concerning the true ownership and management of the First Defendant are finally resolved in favour the Second, Third and Fourth Defendants.

2. The Second Declaration sought in the Part 8 Claim is denied.

3. The Second, Third and Fourth Defendants shall pay the Claimant its Part 8 Claim costs, assessed in the sum of AED 160,800.

Issued by:
Hayley Norton
Assistant Registrar
Date of Issue: 5 April 2023
At: xx

SCHEDULE OF REASONS

Introduction

1. This is an unusual claim. The Claimant ("CRS") is a firm of English solicitors and practices as DIFC Practitioners from premises in the DIFC. It is both authorised and regulated by the Solicitors Regulation Authority of England and Wales ("SRA") and registered under DIFC Courts Order No. 1 of 2019 in Respect of Issuing and Conducting Proceedings, Rights of Audience and Registration in Part I and Part II of the DIFC Courts' Register of Legal Practitioners and thereby subject to both the SRA Code of Conduct for Law Firms and DIFC Courts' Order No. 4 of 2019, Mandatory Code of Conduct for Legal Practitioners in the DIFC Courts (the "Mandatory Code").

2. CRS is in the unenviable position that it was instructed on behalf of the First Defendant ("Grand Valley") in respect of two sets of arbitration proceedings seated in Singapore (the "Arbitration Proceedings") and associated DIFC Court proceedings. What appears to be a family dispute has broken out and two different factions claim to control Grand Valley through their nominated General Managers. Who controls Grand Valley is subject to the jurisdiction of, and currently pending before, courts outside the DIFC. The two factions have given conflicting instructions to CRS concerning the conduct of the Arbitration Proceedings. One faction is requesting copies of documents from CRS and the other is instructing CRS not to supply them. In addition, Grand Valley owes CRS considerable sums in outstanding fees.

3. CRS brings these proceedings against the relevant parties under RDC Part 8 seeking the following relief:

(1) The Claimant requires the assistance of the Court in respect of the following issues:

(a) Whether, having regard to the Claimant's legal and regulatory obligations, and the terms of its Engagement, it is permitted, or required, to comply with the instructions issued by the Fourth Defendant, in circumstances where the UAE Civil and Criminal Claims concerning the true ownership and management of the First Defendant have not yet been determined? (the "First Declaration")

(b) Whether, having regard to the Claimant's legal and regulatory obligations, and the terms of its Engagement, it is permitted, or required, to exercise a lien over the First Defendant's documents, in circumstances where outstanding fees owed by the First Defendant to the Claimant remain unpaid? (the "Second Declaration")

(2) The Claimant also seeks its costs of this Claim.

4. The Second, Third and Fourth Defendants comprise one faction, the Fifth Defendant is a representative of the other. The Fifth Defendant has played no part in these proceedings, but the other Defendants oppose CRS's application on the following bases in summary:

(1) The DIFC Courts do not have the jurisdiction to consider the Part 8 Claim, as CRS's Engagement Letters are governed by English Law and subject to the exclusive jurisdiction of the Courts of England, not the DIFC Courts;

(2) This is not a claim where the Part 8 procedure should have been used because it does involve a substantial dispute of fact where there is a live dispute ongoing in the UAE Civil Courts and over which the DIFC Courts have no jurisdiction;

(3) It is not the DIFC Courts' duty to advise and assist the Claimant on whether it can act for the First Defendant and the DIFC Courts are not present to provide advice and guidance to seasoned international law firms such as the Claimant as to whether they are in compliance with their professional duties and obligations; and

(4) The invoices that are referred to by the Claimant are contested in circumstances where the allegations raised by the Claimant are denied and the amounts that are being claimed are incorrect.

The Facts in Detail

5. CRS was retained by Grand Valley under letters of engagement dated 8 November 2020, 23 November 2020 and 31 January 2021 (the "Engagement Letters") entered into in respect of three disputes, namely LCIA Arbitration Case No. 184133 (the "First Arbitration") and LCIA Case No. 204897 (the "Second Arbitration") (together, the "LCIA Arbitrations") and DIFC Court of First Instance Case No. CFI-048-2017 (the "DIFC Court Proceedings") (together the "Engagement").

6. There were express terms of the Engagement:

"(1) Clause 2.1:

Except as explained below, we will maintain our professional and legal obligations of confidentiality in relation to the work we undertake for you and in relation to information, which is confidential to you, is not already in the public domain or known to us and which comes into our possession in the course of undertaking that work.

(2) Clause 7.1:

If any bill is not paid within 30 days after it is delivered or any request for a payment on account is not met, we reserve the right:

7.1.1 to suspend carrying out our services; and/or

7.1.2 to terminate our retainer on written notice to you .

(3) Clause 17.1:

On completion of our work, following payment of all our bills on all matters for you, any original documents or other property we hold which belongs to you will be returned, if you so request.

(4) Clause 18.2:/p>

We will be entitled to retain all your files and documents while there is money owing to us on any matter.

(5) Clause 19.1

Unless our Letter of Engagement states otherwise, our agreement with you will be governed by English Law and will be subject to the exclusive jurisdiction of the Courts of England."

7. Prior to 24 June 2022, IGPL General Trading LLC ("IGPL"), Discovery Investment Group LLC ("Discovery"), Amal Abdalla Juma Al Sari ("Ms Amal") and Eman Abdalla Juma Majid Al Sari ("Ms Eman") were together the 100% shareholders in Grand Valley, whose holdings were described in the Trade License in the following proportions: (a) IGPL - 50%; (b) Discovery - 25%; (c) Ms Amal - 13%; and (d) Ms Eman - 12%.

8. Prior to 24 June 2022, the Fifth Defendant ("Mr Abdalla") was named in the Grand Valley Trade License as the General Manager of Grand Valley.

9. On or about 24 June 2022, Grand Valley's Trade License was amended to record that: (a) The 100% shareholding of the First Defendant had passed from IGPL, Discovery, Ms Amal and Ms Eman to the Third Defendant ("MAS") (the "Share Transfer"); and (b) Mr Abdalla had been replaced by the Fourth Defendant ("Mr Al Arabiat") as the General Manager of the First Defendant (the "Management Transfer").

10. The validity and efficacy of the Share Transfer and the Management Transfer are the subject of a number of claims, applications and complaints before the UAE Civil Courts and criminal authorities (the "UAE Civil and Criminal Claims"), including: (a) Dubai Court of First Instance Case No. 246/2022/20, filed by Al Soor Investments LLC and IGPL Investments LLC, which are controlled by the Second Defendant ("Mr Mohamed", son of Mr Abdalla and brother of Majid Al Sari "Mr Majid"), against, among others, IGPL, Discovery, Ms Amal and Ms Eman and Mr Abdalla; (b) Dubai Court of First Instance Case No. 1621/2022/16, filed by IGPL and Discovery against the Grand Valley, Mr Mohamed and MAS on 18 August 2022; (c) Dubai Court of First Instance (Urgent Matters Division) Case No. 37/2022/66, filed by IGPL and Discovery against Grand Valley and Mr Mohamed on 24 August 2022; and (d) Dubai Court of First Instance Case No. 535/2022/69 and Grievance No. 383/2022, filed by IGPL and Discovery against Grand Valley and Mr Mohamed on 25 August 2022; and (e) Criminal Complaint No. 3867/2022 filed by Mr Majid against Grand Valley, Mr Mohamed and Mr Al Arabiat, and a company known as Island Gate Investment.

11. The UAE proceedings will determine whether the Share Transfer and Management Transfer were valid and effective, and accordingly whether Grand Valley remains under the ownership and management of IGPL, Discovery, Ms Amal and Ms Eman as owners and Mr Abdalla as manager, respectively, or alternatively whether it passed to MAS and Mr Al Arabiat, respectively.

12. The Engagement Letters had been signed by Mr Majid under a Power of Attorney dated 18 December 2018 granted to him by Mr Abdalla.

13. On 22 August 2022 Mr Al Arabiat wrote to CRS, as Manager of Grand Valley, instructing CRS to seek a stay of the Second Arbitration and to provide "us with a copy of the case's full documents and procedures".

14. CRS replied on 12 September 2022 noting that the letter was from Mr Al Arabiat in his capacity as Manager of Grand Valley General Trading LLC but the email attaching the letter was from an Al Soor Investments LLC email address and did not appear to copy Mr Al Arabiat. CRS asked that someone confirm on whose authority this email and its attachment were sent, and in what capacity. CRS also noted that the letter was said to attach "Exhibit (1): GV's official license" but did not do so.

15. On 22 September 2022 Mr Al Arabiat reiterated the instructions.

16. CRS replied on 14 October 2022:

> "We are aware that a dispute has arisen concerning the ownership and control of Grand Valley.
>
> In that context, we understand that proceedings to appoint a judicial receiver/custodian over Grand Valley on an urgent basis are before the UAE Courts (in addition to substantive proceedings to resolve the dispute itself).
>
> We await the outcome of those proceedings. We confirm that this firm will act in accordance with any final and binding judgment issued by the UAE Courts."

17. The response was a legal notice issued from the Dubai Courts in the name of Grand Valley against CRS, Sara Sheffield, a partner in CRS, and Max Davis, a Legal Director. It claimed:

> "First: To submit an application to stay the claim for three months to the arbitration tribunal, as a preliminary step for the settlement which will probably be reached with the opponent in arbitration claim no. 204897-LCIA in the DIFC.
>
> Second: To deliver to the Notifying Party copies of all the documents in the possession of the Notified Parties relating to the aforesaid arbitration claim or relating to the Notifying Party in general.
>
> Third: To deliver to the Notifying Party copies of all the documents in the possession of the Notified Parties relating to provisional attachment no. DIFC CFI 048-2017 relating to the arbitration claim between the Notifying Party and Sunteck Limited.
>
> Fourth: To deliver to the Notifying Party copies of all the documents in the possession of the Notified Parties relating to arbitration claim no. 184133 between the Notifying Party and Sunteck Limited - LCIA-DIFC.
>
> Fifth: In the case of failure of the Notified Parties to comply with the foregoing within five days from the date of this notice, the Notifying Party shall take legal action against the Notified Parties for the significant loss that will be suffered by the Notifying Party as a result of such breach and for the professional breach committed by the Notified Parties in violation of the provisions of the advocates and legal consultants resolutions and regulations in the Emirate of Dubai."

18. I pause to observe that any legal action against CRS or its partners or employees for acting *"in violation of the provisions of the advocates and legal consultants resolutions and regulations in the Emirate of Dubai"* would of necessity have to be in the DIFC given that CRS is a DIFC-regulated entity.

19. CRS replied on 27 October 2022 stating amongst other things:

"First, this firm is a DIFC registered entity and we have complied with the DIFC Courts' Code of Best Legal Professional Practice (the DIFC Code) at all times. The Notice advances no identifiable argument that we are in breach of any such obligations.

.

Furthermore, and as we have previously explained, in circumstances where we are aware that there is an ongoing dispute as to the rightful ownership and control of Grand Valley, our professional obligations, which include clear obligations of confidentiality, prevent us from providing the documents and information requested by you until such time that that dispute is resolved. Once that dispute is resolved, this firm will abide by the determinations of the UAE Courts."

20. On 31 October 2022 Mr Al Arabiat wrote to CRS on behalf of Grand Valley:

"It became evident that our efforts to maintain professional and productive communication with your firm proved futile. Thus, we are writing this letter to officially inform you that we have decided to terminate our current representation agreement immediately, in accordance with the stipulations of DIFC Courts' Code of Best Legal Professional Practice, and the stipulations of DIFC Courts' Order No. 4 of 2019 - Mandatory Code of Conduct for Legal Practitioners in the DIFC Courts.

.

Please send us a copy of my entire case file, as well as an itemized invoice reflecting all fees, including amounts already charged and any amounts you claim, are still owed to our official address within 7 days of receiving this letter."

21. On 8 November 2022 Mr Abdalla wrote to CRS on behalf of Grand Valley:

"We understand that you have recently received instructions (most recently on 31 October 2022) from Mr Mohammad Mosa Abd Al Arabiat purportedly as the appointed general manager of Grand Valley General Trading LLC ("Grand Valley") to inter alia hand over all documents and case files that relate to LCIA Arbitration No. 184133, LCIA Arbitration No. 204897 and DIFC Case No. CFI- 048-2017.

As you are aware, we strongly refute that there has been any valid transfer of the ownership of Grand Valley and have commenced claims in the UAE Courts to confirm this. These court proceedings are still ongoing and no final decision has been issued by the courts yet.

Accordingly, you are requested to not to act on the instructions provided to you by Mr Al Arabiat, which includes refraining entirely from providing copies of the case documents."

22. On 14 November 2022, CRS, Ms Sheffield and Mr Davis received another Legal Notice on behalf of Mr Abdalla on the letterhead of well-known Dubai Advocates and Legal Consultants stating:

"Therefore The Notifying Party notifies you that it is important not to fulfil the requests stated in the legal notice referred to above which is dated 7/10/2022, otherwise the Notifying Party would take all legal actions against the Notified Parties to preserve his rights."

23. Thus, CRS has received threats of legal action from both factions.

CRS's Submissions

24. CRS asserts that this Court has jurisdiction to determine the issues in its Part 8 Claim form on numerous bases - it is a Centre Establishment, the retainer was made and performed in the DIFC and the issues concern DIFC regulatory issues over which the DIFC Courts have jurisdiction - all of which satisfy gateways under Article 5(A)(1) of the Judicial Authority Law. Further it is said that the exclusive jurisdiction clause in the Engagement Letters does not extend to these issues, but even if it does, the Court should override it in the interests of justice and avoiding a multiplicity of proceedings: see *Al Khorafi & Others v Bank Sarasin-Alpen (ME) Limited & Anor* [2011] DIFC CA 003, [119].

25. CRS maintains that its use of Part 8 is justified in that the material facts are not open to dispute, and it is seeking declarations in relation to legal professional obligations that are underpinned but not wholly defined by contractual duties. CRS points to Part C-19 of the Mandatory Code:

"Practitioners shall keep information communicated to them by their client confidential unless such disclosure is authorised by the client, ordered by the Court or required by law. This duty continues even after the Practitioner has ceased to act for the client."

In addition, CRS relies on the DIFC Courts' Code of Best Legal Professional Practice ("Best Practice Code") the Forward to which states:

"It is intended that it should set the standard for professional conduct of all lawyers who operate within the DIFC, whether they are licensed to conduct business in the DIFC or authorised to appear as an advocate before the DIFC Courts..

The Code is not directly applicable in the sense that it has any legal or regulatory status. However, the failure by a DIFC lawyer or a DIFC firm to behave in accordance with the Code is likely to have consequences for that lawyer or firm in the event that such conduct becomes relevant to any case or hearing that comes before the DIFC Courts. The DIFC Courts will view the Code as a benchmark for behaviour and professional standards, against which actual conduct will be measured. In due course, those provisions which affect litigation lawyers will be incorporated into the existing Code of Professional Conduct for Legal Practitioners (Practice Direction No. 2 of 2009) and will become mandatory ."

26. It continues:

"7.4 A Lawyer shall ensure that an agent giving instructions on behalf of a client has the required authority to do so and, in the absence of evidence of such authority, the Lawyer shall, within a reasonable time thereof, confirm the instructions with the client.

7.6 A Lawyer must not act where his client's instructions will involve the Lawyer in a . breach of professional conduct ....

12.1 A Lawyer shall not in any way, directly or indirectly - (d) disclose any confidential information which the Lawyer receives as a result of the retainer; or (e) disclose the contents of the papers recording such instructions, unless with the consent of the client or where required by law or order of court.

12.8 A Lawyer is under a duty to keep his client's business and affairs confidential and to ensure that his staff do the same. It is the responsibility of a Lawyer to ensure compliance, unless the Lawyer is under a legal duty to disclose such information."

27. This means, says CRS, that if the faction represented by Mr Abdalla is found to control Grand Valley, CRS would be acting in breach the professional duty of confidentiality in releasing any documents to the faction represented by Mr Al Arabiat. Indeed, it may also amount to a breach of UAE criminal law: Article 432 of the UAE Penal Code makes the disclosure of secrets, in the conduct of a profession, a criminal offence, unless the disclosure is authorised by the client, or permitted by law.

28. CRS therefore wishes confirmation that its duty is to await the outcome of the UAE proceedings before acting on the instructions of either faction. It relies on a number of English authorities to support its position that the use of declaratory relief as to its professional obligations is justified both procedurally and substantively:

(1) The old House of Lords case of *Russian Commercial & Industrial Bank v British Bank for Foreign Trade Limited [1921] 2 AC 438, 452 per* Lord Sumner establishes that parties may bring a question to the courts to guide their conduct when faced with a real risk of liability in damages:

"For many years it has been accepted practice in cases in the Commercial List to hear and determine claims for a declaration of right, when a real and not a fictitious or academic question is involved and is in being between two parties, in order that they may know what business course to take without having to run the risk of acting and finding themselves liable in damages, when at last the matter is brought before the Court. I believe this practice, as hitherto applied, to be warranted by the rules ."

It is an *a fortiori* case when it is not merely a business question but one of professional conduct ultimately to be determined by the Court and officers of the Court are threatened with personal liability.

(2) In *Financial Services Authority v John Edward Rourke (Trading As J.E.Rourke & Co)* [2002] CP Rep 14 (2001) Neuberger J (as he then was) said, after citing CPR 40.20 which is in the same terms as RDC 36.52 ("The Court may make binding declarations whether or not any other remedy is claimed"):

"Accordingly, so far as the CPR are concerned, the power to make declarations appears to be unfettered. As between the parties in the section, it seems to me that the court can grant a declaration as to their rights, or as to the existence of facts, or as to a principle of law, where those rights, facts, or principles have been established to the court's satisfaction. The court should not, however, grant any declarations merely because the rights, facts or principles have been established and one party asks for a declaration. The court has to consider whether, in all the circumstances, it is appropriate to make such an order.

It seems to me that, when considering whether to grant a declaration or not, the court should take into account justice to the claimant, justice to the defendant, whether the declaration would serve a useful purpose and whether there are any other special reasons why or why not the court should grant the declaration."

(3) Rolls Royce PLC v Unite The Union [2009] EWCA Civ 387 [120] per Wall LJ:

"For the purposes of the present case, I think that the principles in the cases can be summarised as follows: (1) the power of the court to grant declaratory relief is discretionary. (2) There must, in general, be a real and present dispute between the parties before the court as to the existence or extent of a legal right between them. However, the claimant does not need to have a present cause of action against the defendant. (3) Each party must, in general, be affected by the court's determination of the issues concerning the legal right in question. (4) The fact that the claimant is not a party to the relevant contract in respect of which a declaration is sought is not fatal to an application for a declaration, provided that it is directly affected by the issue." (5) The court will be prepared to give declaratory relief in respect of a "friendly action" or where there is an "academic question" if all parties so wish, even on "private law" issues. This may particularly be so if it is a "test case", or it may affect a significant number of other cases, and it is in the public interest to decide the issue concerned. (6) However, the court must be satisfied that all sides of the argument will be fully and properly put. It must therefore ensure that all those affected are either before it or will have their arguments put before the court. (7) In all cases, assuming that the other tests are satisfied, the court must ask: is this the most effective way of resolving the issues raised. In answering that question it must consider the other options of resolving this issue."

29. CRS submits that the present application falls squarely within the criteria for declaratory relief. It is a real question of establishing legal rights. CRS finds itself in an invidious position through no fault of its own. It is in the interest of justice that the position be clarified and a declaration of this Court, clothed as it is with the authority to enforce CRS's professional obligations under DIFC Regulations, is the most effective way of resolving the impasse.

30. Finally, as to the issues concerning the unpaid invoices, CRS accepts that, absent an opt-in to the Court's jurisdiction or disregard of the exclusive jurisdiction, recovery of the sums due is a matter for the English courts, but the terms of the Engagement Letter provide for a lien for unpaid fees, and this is again underscored by the Best Practice Code:

"8.4 On termination of the relationship a Lawyer should, subject to his lien for unpaid fees, deliver to the client all papers and property to which the client is entitled. In the event that a new Lawyer undertakes to protect the original Lawyer's lien for costs, the original Lawyer will not be entitled to exercise his lien but must hand over all papers and other property belonging to his former client to that new Lawyer.

Commentary

Where a lien arises over a client's documents delivered to a Lawyer in his professional capacity for costs due and work performed, such documents can be retained until those costs are paid. The lien does not entitle the Lawyer to sell or dispose of the client's property."

31. CRS suggests that the foregoing indicates that the existence of its lien provides an additional ground for declining to supply the faction represented by Mr Al Arabiat with the requested documents.

The Second, Third and Fourth Defendants' Submissions

32. The Second, Third and Fourth Defendants (the "Defendants") submit that this application is premature, and one cannot ignore the contractual position which means that this is not a matter for the DIFC Courts.

33. They say that the facts are not uncontroversial and are not suitable for Part 8 procedure, but they should be ventilated before the English courts. Furthermore, CRS is an international law firm regulated by the SRA. It should comply with its duties both in the DIFC and under the SRA Code of Conduct, Rule 4.1 of which provides:

"You only act for clients on instructions from the client, or from someone properly authorised to provide instructions on their behalf. If you have reason to suspect that the instructions do not represent your client's wishes, you do not act unless you have satisfied yourself that they do. However, in circumstances where you have legal authority to act notwithstanding that it is not possible to obtain or ascertain the instructions of your client, then you are subject to the overriding obligation to protect your client's best interests."

34. The Defendants refer to Article 19(3) of the draft Charter for the Conduct of Advocates and Legal Consultants In The Emirate of Dubai For 2015 (the "2015 Charter") which states that:

"[s]ubject to legislation in force in the Emirate, an Advocate, Legal Consultant or Firm shall report to the Department in any of the following cases:

3. ... If an Advocate or Legal Consultant for any reason is incapable of performing his duties as a member of the Profession ..."

Therefore, the Claimant being regulated by the Dubai Legal Affairs Department ("LAD"), it is required to report to the LAD in the event where the Claimant for any reason is incapable of performing its duties as a member of the profession, which it is understood the Claimant has failed to do. Any disciplinary complaint would be before the LAD.

35. The Defendants say that the DIFC Courts are an independent judicial body whose function is to determine claims/disputes between respective parties in accordance with the provisions of the Judicial Authority Law and not to reconfirm what is in the Mandatory Code of Conduct. The Defendants go on to make a "floodgates" argument that to allow this application will encourage others to bring theoretical questions before the Courts.

36. The correct procedure according to the Defendants is that there should be a staged approach:

(1) The Claimant should be required to carry out internal procedures and investigations relating to an issue on conduct, and then make a determination based upon such procedures. In this instance, no internal report or evidence to suggest that this has taken place has been seen; and

(2) In circumstances where this did occur, which is not clear, then where the Claimant could not act this should have been dealt with in a timely and proportionate manner, and any such issue should have been brought in the correct forum, which has not occurred in this case.

37. So far as the disputed invoices are concerned, the Defendants say they have requested itemised invoices: the English Court can then deal with the dispute.

38. Counsel for the Defendants sought to downplay the ad *hominem* threats against partners and employees of CRS by saying that they would be addressed by professional indemnity insurers.

Conclusions

39. I have some difficulty understanding the Defendants' current position. Counsel appeared to accept during argument CRS could not realistically be expected to hand over any documents to the Defendant until the courts outside the DIFC had determined who is entitled to control Grand Valley. On the other hand, the Defendants appear still to be pressing for the entire case file as requested in their Letter of Termination dated 31 October 2022.

40. It seems to me the material facts are straightforward and uncomplicated - CRS is receiving conflicting instructions from two groups, each of whom claims to be entitled to issue instructions on behalf of the client.

41. SRA Code of Conduct, Rule 4.1 might indicate that CRS could simply resign but that would not solve the issue as to what CRS should do about the case files and whether, if it hands them over to one side or the other, it may turn out to be acting in breach of its duties of confidentiality.

42. I do not find the suggestion that once the fee dispute is settled by the English courts that will assist. I am not even sure that if CRS were to provide itemised invoices to Mr Al Arabiat they would not risk breaching confidentiality as the narrative on the invoices could well contain confidential and legally privileged information.

43. It seems to me that the Defendants have not suggested any methods whereby CRS's difficulties can be resolved. The reference to Article 19(3) of the 2015 Charter is not helpful. That article self-evidently concerns capacity, not conflicting instructions and duties of confidentiality. I do not

accept the repeated mantra of prematurity - the difficulties are real and imminent.

44. On the other hand, the Defendants do not appear to have done anything to make good their threats since October 2022. Does that mean they are willing to await the outcome of the UAE court proceedings? They have not said they are. Had they done so, I would suspect that CRS might not have felt it necessary to make the current application, but as its counsel said, CRS currently finds itself "in limbo".

45. The real question for the Court is whether in the circumstances it is appropriate to make the declarations sought.

46. I have come to the conclusion that it is right to make a make a declaration in slightly modified terms from those sought at paragraph 1(a) of the "Remedy Sought" section of the Part 8 Claim form, i.e. the First Declaration, on the following grounds:

(1) The threats against CRS, Ms Sheffield and Mr Davis have not been withdrawn. Whether personal threats against Ms Sheffield and Mr Davis should ever have been made is highly questionable and if proceedings of that nature were brought in the DIFC they would likely face an application under RDC 4.16(2). Counsel for the Defendants clearly realised this and quite properly said that had he been instructed from the outset things might have been done differently;

(2) It also seems to be accepted on behalf of the Defendants that CRS cannot release any documents until the other courts have determined the issues of ownership and control of Grand Valley. There would therefore appear to be a confusing inconsistency between that acceptance and the still-extant threats. I assume that if they were not still extant the Defendants would not have contested these proceedings;

(3) CRS, Ms Sheffield and Mr Davis therefore find themselves, to use a clich�, "between a rock and a hard place". They have been threatened with legal proceedings by the Defendants if they do not hand over the files to them and have been threatened with legal proceedings by Mr Abdalla if they do;

(4) The situation falls within the practice approved in *Russian Commercial & Industrial Bank* - the question is real and neither fictitious nor academic. It involves the professional obligations of a law firm and lawyers regulated under the Mandatory Code by this Court whose powers include fining, suspending or removing Practitioners from the Register. CRS, its partners and employees clearly need to know what course of action to follow in order to avoid sanction;

(5) The answer to the question is not just of interest to CRS, its partners and employees, but also to both factions vying for control of Grand Valley and company itself; and

(6) I am satisfied that both sides of the argument have been put before me and that making a declaration is the most effective way of resolving the issues raised - there do not appear to be other available options for resolving this issue. The alternative would simply be to leave CRS, its partners and employees "in limbo".

47. I do however consider that the First Declaration as sought is somewhat too wide. I decline to express a view of the rights and obligations arising from the Letters of Engagement which are governed by English law and subject to the exclusive jurisdiction of the English courts. I am not willing to override the jurisdiction clause as I see no reason to do so. I do not believe it makes any real difference - as counsel for CRS emphasized - what is really under consideration are CRS's regulatory responsibilities "underpinned" by its retainer.

48. In the circumstances, I make the following declaration:

Having regard to the Claimant's regulatory obligations, the Claimant is required to decline to supply the Second, Third and Fourth Defendants with the case files relating to LCIA Arbitration Case No. 184133, LCIA Case No. 204897 and DIFC Court of First Instance Case No. CFI-048-2017 unless and until the UAE Civil and Criminal Claims concerning the true ownership and management of the First Defendant are finally resolved in favour the Second, Third and Fourth Defendants.

49. I will not however make the Second Declaration which appears to me to be unnecessary. Ultimately even if all of the outstanding fees were paid and any possible lien discharged, it would make no difference to the question addressed by the First Declaration. Unless and until the ownership and control of Grand Valley is finally determined CRS cannot release the files to the Second, Third and Fourth Defendants.

50. In any event, whether or not any issues as to the amount of fees can be addressed before resolution of the claims concerning management and control of Grand Valley are finally resolved is far from clear. It seems to me that the very process of assessing the quantum of the fees would be bound to involve the consideration of information confidential to Grand Valley. Counsel for the Defendants suggested that it might be possible to redact the invoices, but I do not consider that to be a realistic suggestion, even in the unlikely event that the assessment were confined to the invoices themselves and if the narratives were redacted, even if challenge were then still possible, the Defendants would be severely disadvantaged in their challenge.

51. Further, unless the parties agree to opt into the jurisdiction of this Court to resolve any issues relating to the disputed fees only the English courts have jurisdiction over those issues. It is a matter for the Second, Third and Fourth Defendants (and possibly Fifth Defendant) to consider whether it is in their best interests for those questions to be decided in Dubai or whether separate proceedings will have to be initiated in England. I gather from counsel's submissions that CRS would be content to have matter decided here.

Costs

52. CRS has succeeded in substantial part in obtaining the relief sought, against the opposition of the Second, Third and Fourth Defendants. I see no reason why costs should not follow the event.

53. CRS failed to obtain the Second Declaration and while it did not figure substantially in submissions at the hearing there were clearly associated costs. Over 250 pages of the exhibit to Ms Sheffield's second witness statement were devoted to the fee issue. I will address the entries in CRS's Statement of Costs for "Work Done on Documents" separately and I am conscious I should avoid making a double-deduction but it seems

appropriate to me to deduct 20% of the overall assessed costs to represent the failure to obtain the Second Declaration.

54. Counsel for CRS submits that any order for costs should be made against Grand Valley, or alternatively costs should be reserved. I am not attracted by either suggestion. As to the former, if at the end of the day Mr Abdallah's faction is found to own and control the company, they will be saddled with costs of having established that the CRS should observe their instructions in the face of opposition by Second, Third and Fourth Defendants. As to latter, reserving costs is not really an option as this is not an interlocutory application but a Part 8 claim and there should be finality.

55. The reality of the situation is that, while one can perhaps understand why the Second, Third and Fourth Defendants want to get their hands on the documents, on any objective view CRS cannot hand them over until after conclusion of the other court proceedings - as their counsel was driven to acknowledge. CRS had to come to Court to clarify the situation because of their stance and they should therefore pay the costs.

56. The Second, Third and Fourth Defendants fare rather better on the assessment of the amount of costs:

(1) their counsel referred me to the English case of *Christopher Ian Robinson v EMW Law LLP* [2018] EWHC 1757 [40]. In that case it was accepted that a solicitor acting for himself was able to recover costs for his own time but not at the rate that his firm would have charged out for his services. A copy of the report was not supplied until after the hearing but I do not consider it necessary to delay this judgment to allow CRS to make further submissions on the point as the Defendants do not make any suggestion as to the rates that should apply. I do however bear in mind that CRS are representing themselves and address the point from a different perspective. The Statement of Costs includes a section "Attendances on Others". I am not told to what that relates and in an application solely concerning the true interpretation of professional duties it is hard to understand what that be. I will therefore deduct the costs claimed under that section in the sum of AED 52,834;

(2) The "Work Done on Documents" section also requires scrutiny. The exhibit to Ms Sheffield's first witness comprised 156 pages. While it might have been slightly shorter that is a counsel of perfection, and I am prepared to accept that the costs of its preparation were reasonably incurred. The exhibit to Ms Sheffield's second witness statement ran to 356 pages and no reference was made to it at the hearing. It was not necessary to exhibit extensive documentation relating to the underlying claims over ownership and control of Grand Valley or verifying the amount of outstanding fees claimed as the existence of those claims is not in dispute and the only facts relevant to these proceedings are that CRS has received conflicting instructions under threat of legal proceedings from both sides - facts amply evidenced by the first exhibit. I am therefore going to reduce the sums claimed under "Work Done on Documents" in proportion to the respective lengths of the exhibits (156 is approximately 44% of 356). The total claimed is AED 112,388, 44% of that figure is AED 49,429; and

(3) In "Disbursements" AED 9,450 is claimed for translations. That figure should also be reduced by the same proportion to AED 4,158. There is also a claim of AED 5,900 for notary fees and travel time to the notary's offices. I cannot see how those fees arise in the present case.

57. I therefore assess the Claimant Statement of Costs as follows:

(1) Attendance on Opponents - AED 22,758;

(2) Attendances on Others - nil;

(3) Other Work, not Covered Above - AED 20,378;

(4) Work Done on Documents - AED 49,429;

(5) Attendances at Hearing - AED 20,520;22;

(6) Expenses/Disbursements - AED 60,372;

(7) Total without Court fees - AED 173,457; and

(8) Court Fees - AED 22,035.

58. The figure of AED 173,457 falls to be reduced by 20% for the reasons stated at paragraph 53 above to AED 138,766. The Court fees do not fall to be reduced because they are fixed costs. The total recoverable by CRS is therefore AED 160,800.

Disposition

59. It is declared that having regard to the Claimant's regulatory obligations, the Claimant is required to decline to supply the Second, Third and Fourth Defendants with the case files relating to LCIA Arbitration Case No. 184133, LCIA Case No. 204897 and DIFC Court of First Instance Case No. CFI-048-2017 unless and until the UAE Civil and Criminal Claims concerning the true ownership and management of the First Defendant are finally resolved in favour the Second, Third and Fourth Defendants.

60. The Second, Third and Fourth Defendants shall pay the costs of the Claimant of this Part 8 Claim assessed in the sum of AED 160,800.