THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

In the name of His Highness Sheikh Mohammad Bin Rashid Al Maktoum, Ruler of Dubai

IN THE COURT OF FIRST INSTANCE

BETWEEN

LUTYANS

Appellant/Claimant

and

LITHA

Respondent/Defendant

JUDGMENT OF H.E JUSTICE OMAR AL MUHAIRI

UPON the Judgment of H.E Justice Maha Al Mheiri issued on 04 February 2021

AND UPON the Judgment of Lord Angus Glennie on 20 April 2021

AND UPON the application filed by the Appellant / Applicant on 07 June 2021 to re-open the appeal (the **"Application"**)

AND UPON the Respondent's submissions in opposition filed on 23 June 2021

AND UPON reviewing all the relevant documents on the Court file

AND with reference to Part 44 of the Rules of the DIFC Court ("RDC")

IT IS HEREBY ORDERED:

1. The Application is dismissed.

2. No order as to costs

Issued by:
Nour Hineidi
Registrar
Date of issue: 30 June 2021
At: 10am

SCHEDULE OF REASONS

1. The Applicant made the Application on 7 June 2021 pursuant to RDC r.44.154. This Application arises out of a contract between the parties dated 29 September 2019 for a Membership form. The Applicant's membership application was approved and she paid the Joining Fee and the Annual Subscription; on 16 October she became a member of the Litha ("Respondent" or "Litha"). The application form noted the name of the Applicant's company, identified her relevant membership category as "corporate", and stated that her main reason for applying to join the Litha was "networking". Her membership was for one year, expiring, unless renewed, on 15 October 2020. Given that the facts of the case were helpfully summarised in Justice Lord Angus Glennie's Judgment dated 3 May 2021, the Judge sitting on the appeal court in this matter, I will not reiterate them.

2. The matter was initially heard before SCT Judge Al Mehairi (the "Trial Judge") who dismissed the Applicant's case in her Judgment handed down on February 2021. The Trial Judge held, in summary, that the Claimant's claims all fell within the ambit of an arbitration clause in the "Membership and Litha Rules and Regulations" (the "Litha Rules") to which the Claimant must be taken to have assented on applying to join the Litha and by which she must therefore be taken to have agreed to be bound. On that basis, and in terms of the DIFC Arbitration Law (Article 13(1) of DIFC Law No 1 of 2008 as amended by DIFC Law No 1 of 2013), the Trial Judge dismissed the action for lack of jurisdiction.

3. On 31 Murch 2021 SCT Judge Al Mehairi granted leave to appeal (the "Appeal"). As above, the parties then came before Justice Lord Angus Glennie (the "Appeal Judge") on 20 April 2021 and made submissions in the Appeal case. The Appeal Judge dismissed the Applicant's Appeal on 3 May 2021 (the "Appeal Judgment").

4. The Applicant was not satisfied with the outcome and has sought to make an application under RDC 44.154 to reopen the appeal on the basis that: (a) it would be necessary to do so to avoid a real injustice; (b) the circumstances are exceptional; and (c) that there is no alternative effective remedy.

5. RDC 44.154 states:

"The Court of Appeal or the Court of First Instance will not reopen a final determination of any appeal unless:

(1) it is necessary to do so in order to avoid real injustice;

(2) the circumstances are exceptional and make it appropriate to reopen the appeal; and

(3) there is no alternative effective remedy."

6. A determination under RDC 44.154 must be made by the appeal judge and, once given, that determination is final.

7. Articles 26 and 28 of Law No. 10 of 2004 (the "DIFC Court Law") deal with appeals.

8. My first consideration is whether RDC 44.154 applies to appeals from the Small Claims Court and, as a result, whether the Court has jurisdiction to consider the Application. Article 19(5) of the DIFC Court Law provides: *"Unless DIFC Law specifically provides to the contrary, no appeal shall lie from a decision of the Court of First Instance in relation to an appeal from a tribunal."* The Applicant has sought to argue that RDC 44.154 constitutes such a specific provision and is so entitled to make an application under the same. I do not agree with this interpretation. In my view the Applicant is incorrect and RDC 44.154 is not a specific provision for which the exception under Article 19(5) applies.

9. RDC 44.154 applies to both the Court of Appeal and the Court of First Instance, as stated within the rule itself. Article 28 of the DIFC Court Law specifically deals with appeals to the Court of First Instance. Article 28 (3) states: "no appeal shall lie from the Court of First Instance [decision] under this Article". There is no reference to an exception within this Article. As Articles 26 and 28 of the DIFC Court Law deals with appeals, one would have expected any specific exceptions to be mentioned there, however, there is no reference to RDC 44.154. The Applicant has not brought to my attention any provision, other than RDC 44.154 itself, which she consider would be an exception to Article 19(5).

10. RDC 44.154 is not a DIFC law, it is a Court rule. As confirmed in *Nest Investments Holding Lebanon S.A.L. & Others v Deloitte and Touche (M.E.) [2018] DIFC CA 011* at paragraph 41, the DIFC Court Rules constitute DIFC Regulations, not DIFC Law. RDC 44.154 is, therefore, not an exception under Article 19(5) as it is not a law and the Court does not have jurisdiction to consider the Applicant's application as it relates to an appeal from a tribunal to the Court of First Instance.

11. In my judgment, RDC 44.154 does not apply to appeals in the Court of First Instance from the Small Claims Tribunal and further, no exceptions apply. As a result, this Application is dismissed.

12. Even if, hypothetically speaking, it were the case that this Court does have jurisdiction to consider the Application, then for absolute clarity, I consider that the Application had no merit and I agree with Justice Lord Angus Glennie and fully adopt his Judgment.

13. In summary, RDC 44.154 does not apply to appeals from the Small Claims Court to the Court of First Instance, as there is no primary legislative exception as required under Article 15(9) of the DIFC Court Law. In any event, the Application is without merit and should be dismissed.

14. No order as to costs.