Claim No: CFI 008/2015

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

BOCIMAR INTERNATIONAL N.V.

Claimant

and

EMIRATES TRADING AGENCY LLC

Defendant

ORDER OF JUDICIAL OFFICER MAHA AL MEHAIRI

UPON reviewing the Defendant's Application Notice CFI-008-2015/8 and supporting documents dated 13 February 2017 (the "First Application") seeking the legal representative of the Claimant, Gateley UK LLP (DMCC Branch), to pay wasted costs incurred by the Defendant in respect of its application CFI-008-2015/6 and otherwise the Defendant's costs in dealing with the Claimant's examination proceedings scheduled to be heard on 6 February 2017 (the "Hearing")

AND UPON reviewing the Claimant's Application Notice CFI-008-2015/7 and supporting documents dated 2 February 2017 (the "Second Application") seeking that the Hearing in respect of the Committal Orders issued 17 January 2017 by H.E. Justice Shamlan Al Sawalehi be adjourned, such application having been received four days before the date of the hearing

AND PURSUANT to Rule 38.83 of the Rules of the DIFC Courts ("RDC") and Practice Direction No. 4 of 2014 `DIFC Courts' Wasted Costs Orders'

AND UPON considering the parties' conduct during the course of the proceedings

AND UPON reviewing the relevant documents on the case file

IT IS HEREBY ORDERED THAT:

1. The legal representative of the Claimant, Gateley UK LLP (DMCC Branch), shall be liable for the costs of the First Application and Hearing as Wasted Costs, to be assessed by the Registrar if not agreed, occasioned as a result of their conduct in the proceedings.

2. Liberty to apply.

Issued by:

Maha AlMehairi

Judicial Officer

Date of issue: 6 March 2017

At: 11am

REASONS

1. The Claimant filed a Part 50 application requesting a date for an examination hearing against Mr Bartholomew Kamya and Mr Dani Baroudi (the "Witnesses"). The Registrar Mark Beer issued examination orders dated 17 July 2016, 6 October 2016 and 24 November 2016, (respectively the "Examination Orders") which the Witnesses failed to attend. On 17 January 2017 the Court issued Contempt Orders (the "Contempt Orders") against the Witnesses of H.E. Justice Shamlan Al Sawalehi, listing a hearing on 6 February 2017 (the "Contempt hearing").

2. On 11 January 2017, the Defendant filed Application Notice CFI-008-2015/5 (the "Defendant's First Application") seeking permission to stay the case pending the determination of the Joint Judicial Committee ("JJC"). The Defendant filed another Application Notice CFI-008-2015/6 (the "Defendant's Second Application") dated 31 January 2017, seeking to: set aside the Contempt Orders, vacate the Contempt hearing in respect of the Contempt Orders, and set aside the Examination Orders and the Orders of the Registrar Mark Beer for alternative service dated 18 August 2016 and 27 September 2016 and any other orders for alternative service in respect of the Examination Orders and/or the Contempt Orders.

3. On 2 February 2017, the Claimant filed Application Notice CFI 008-2015/7 (the "Claimant's Application"), just four days before the Contempt Hearing, requesting that the Contempt Hearing be adjourned, on the basis that: (i) there is an alleged 'lacuna' in the RDC in regards to service of

orders; (ii) the Defendant's legal representative of record Clyde & Co LLP were not sent a copy of the Suspended Contempt Orders by the Court; and (iii) due to the first two reasons, it would be in the interests of justice if the Contempt Hearing was adjourned.

4. On 5 February 2017, the DIFC Courts Registry sent directions in reply to the Claimant's Application to vacate the Contempt Hearing and suggested new hearing dates for the relisting.

5. On 13 February 2017, the Defendant filed and served on the Claimant Application Notice CFI-008-2015/8 (the "Defendant's Third Application") requesting that pursuant to Rule 38.7 and 38.83 of the Rules of DIFC Courts ("RDC"), the legal representative of the Claimant, Gateley UK LLP (DMCC Branch), pay wasted costs incurred by the Defendant in respect of the Defendant's Second Application and otherwise the Defendant's costs in dealing with the Claimant's examination proceedings.

6. On 28 February 2017, the Registry sent an Order out to the parties rejecting the Defendant's First and Second Applications with no order as to costs.

7. Upon reviewing the Reasons for the Claimant's First Application filed on 2 February 2017, just four days before the Contempt Hearing, the Court sees that there was no legal basis for the request and under Part 50 of the RDC. The Rules are clear in respect of service and procedure of orders, there is no such lacuna, and there was no requirement for the Court to serve the legal representatives of the Defendant, and unless otherwise ordered by the Court, service upon the Witnesses should be by means of personal service.

8. The Court considers the Claimant's Application to be an admission that they have erred, and have failed to understand the RDC. The witness statement of Ms Fareya Azfar, filed in support of the Claimant's Application, affirms that the Witnesses have not officially received the notice of the Contempt Hearing, and concedes that the Claimant had not notified the Witnesses of the Contempt Orders or the Contempt Hearing. It also provides that the Claimant's legal representatives misunderstood the requirements for due service under the RDC. Ms Azfar states that the Court sent copies of the Contempt Orders to the Defendant's legal representatives, which is demonstrably wrong according to the RDC.

9. The Court refers to Practice Direction No. 4 of 2014 which provides, as relevant:

> "5. It is appropriate for the Court to make a wasted costs order against a legal representative, only if
>
> (a) the legal representative has acted improperly, unreasonably or negligently;
>
> (b) the legal representatives conduct has caused a party to incur unnecessary costs, or has meant that costs incurred by a party prior to the improper, unreasonable or negligent act or omission have been wasted;
>
> (c) it is just in all the circumstances to order the legal representative to compensate that party for the whole or part of those costs."

10.The Court submits that the conduct of the Claimant's legal representatives in respect of the Contempt hearing falls within all of the above circumstances and, as such, the legal representative of the Claimant, Gateley UK LLP (DMCC Branch), shall be liable for the costs of the Defendant's Third Application and the Contempt Hearing as Wasted Costs, to be assessed by the Registrar if not agreed, occasioned as a result of their conduct in the proceedings.