Claim No. CFI 042/2019

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

(1) MARIN
(2) MARITA

Claimants/Applicants

and

MARKKU

Defendant/Respondent

ORDER WITH REASONS OF JUSTICE SIR RICHARD FIELD

UPON considering the Perfected Ex Tempore Judgment herein dated 28 October 2020 and the Reserved Judgment herein dated 28 October 2020 ruling on the Defendant's application to strike out the Claimant's claim for breach of fiduciary

AND UPON considering the written submissions of the parties on the question of costs

AND UPON the Rules of the DIFC Court (**"RDC"**)

IT IS HEREBY ORDERED THAT:

1. The Defendant shall pay 90% of the Claimants' costs in respect of the Claimant's application to enforce the disclosure provisions contained in the *ex parte* order of the Court dated 8 October 2019 (the **"Disclosure Order"**).

2. The Defendant will pay the Claimants' costs of: (i) the Claimants' application to join into the proceedings Mistan Investment Limited (**"Mistan"**) as a co-claimant, including the costs of the ancilliary application for permission to adduce the expert report of Mr Matt filed in response to the Defendant's own "memorandum" on BVI law; and (ii) resisting the Defendant's application for immediate judgment on the Claimant's claim.

3. The costs hereby awarded will be assessed by the Registrar on the standard basis, it not agreed.

Issued by:
Nour Hineidi
Registrar
Date of issue: 5 January 2021
Time: 12pm

SCHEDULE OF REASONS

1. On 5 and 6 October 2020 the Court heard the following applications brought by the Claimant for: (i) compliance with the aforesaid disclosure order; and (ii) the joinder of MistanInvestment Limited ("Mistan") to the proceedings as a co-claimant. The Court also heard the Defendant's application for immediate judgment on the Claimants' claim.

2. The Claimant also successfully proposed at the hearing that draft Amended Particulars of Claim be served following compliance with the disclosure order.

3. As is well-known, RDC 38.7 (1) provides that the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party. It is also equally well-known that the fact that a party has substantially succeeded in a matter, but not in every respect, will generally not result in a departure from the general rule contained in RDC 38.7.

4. In the event, the Claimant succeeded on its application to enforce the disclosure order, this being an application that was strongly resisted by the Defendant. I reject the following submissions advanced by the Defendant that the Claimant should not have their costs, or at least all of their costs, of this application: (i) the Claimant had not asked for disclosure of the computer logs until they served their skeleton argument; (ii) disclosure of native format documents was not ordered; (iii) the Claimants made no reference to the February disclosure in their skeleton argument; (iv) there will be very little additional disclosure resulting from the order that the Defendant must interrogate the mobile phones used by individuals involved in the communications that led to the diversion of USD 658,000 in order to investigate whether any of those communications are relevant to the matters in issue and should be disclosed to the Claimants; and (v) the Claimants did not persuade the Court there and then to order a Document Production Statement.

5. However, I do think the Claimants should suffer a reduction of 10% from what would otherwise be their costs entitlement on this application to reflect the Defendant's success in persuading the Court to order a "lawyers only" confidentiality club rather than a club that included a lay representative of the Claimants, as contended for by the Claimants.

6. Turning to the Defendant's application for immediate judgment on the Claimants' claim, the Claimant was wholly successful in resisting this application and there exist no reasons for not awarding the Claimants their full costs of this application. In particular, I reject the submission that the costs should have been reserved until it was known whether fraud was going to be pleaded in light of the disclosure ordered by the Court. I say this because the Defendant should have recognized that at the stage the proceedings had reached on 5 and 6 October 2020 without the full disclosure that the Defendant should have provided, there was a sufficient basis for the apprehension pleaded by the Claimants that they had been the victim of a fraud.

7. The Claimants' application to join Mistaninto the proceedings as a co-claimant was also wholly successful and in my view they should have the costs of that application and the related application for permission to serve the expert report of Mr Matt filed in response to the Defendant's own "memorandum" on BVI law.

8. Finally, given the substantial nature of the applications heard by the Court, the Claimants' costs ought not to be summarily assessed but instead should be assessed by the Registrar on the standard basis, if not agreed.