IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

MICHAEL GEORGE FORBES

Claimant

and

ROBERT KIDD

Defendant

ORDER WITH REASONS OF H.E. JUSTICE SIR JEREMY COOK

UPON the Judgment of H.E. Justice Sir Jeremy Cooke dated 7 August 2025 (the "Judgment")

AND UPON the Defendant's ("Mr Kidd") Appeal Notice dated 28 August 2025 (the "Permission to Appeal Application") seeking permission to appeal the Judgment

AND UPON the Defendant's Application No. CFI-081-2023/5 dated 28 August 25 seeking to adduce fresh evidence on an appeal (the "Application")

AND UPON the Sixth Witness Statement of Mr Kidd and the First Witness Statement of Mr Lachlan Forbes, both dated 28 August 2025

AND UPON the submissions of the Claimant ("Mr Forbes") dated 18 September 2025 in opposition to the Application

IT IS HEREBY ORDERED THAT:

1. The Permission to Appeal Application is refused.

2. Insofar as this Court is seized of the Application to admit new evidence on appeal, it is refused.

3. The Defendant shall pay the Claimant the costs of the Permission to Appeal, to be the subject of assessment by the Registrar if not agreed.

Issued by:
Delvin Sumo
Assistant Registrar
Date of Issue: 23 September 2025
At: 2pm

SCHEDULE OF REASONS

1. The test for the grant of permission to appeal is not in issue. The question is whether the prospective appeal has a realistic prospect of success or if there is some other compelling reason why the appeal should be heard. Neither test is satisfied here. The prospects of success are not more than fanciful and the appeal is not seriously arguable. No point of public importance is involved on the facts.

2. Mr Kidd also seeks to rely on new evidence not adduced at the trial in the shape of 5 emails dated between 4 January 2017 and 10 July 2017. Whilst it seems that it would be a matter for the Court of Appeal whether to admit such evidence, if permission to appeal was to be given, in my judgment there is no realistic prospect of the Court giving such permission because Mr Kidd cannot satisfy the test for admission of such evidence as set out in *Silva v United Investment Bank [2014] CA 004 (13 November 2014)* by reference to the well-known English authority of *Ladd v Marshall (1954) 1 WLR 1489.* Insofar as the decision whether to allow such new evidence to be admitted lies with me, I refuse the Application.

The Application to admit new evidence

3. Two grounds of appeal are wholly reliant on the application to admit new evidence succeeding, namely Grounds 1 and 2. Ground 4 is also related thereto. In relation to Ground 1, Mr Kidd seeks to adduce an email from Mr Munro to Mr Smylie dated 23 January 2017 and an email from Mr Smylie to Mr Kidd dated 10 July 2017 which are said to support the argument that Sarcogent was providing legal services after 4 January 2017. In relation to Ground 2, Mr Kidd wishes to rely on an email from himself to Mr Smylie dated 9 January 2017, a reply from Mr Smylie on 9 January 2017 and an email from Mr Smylie dated 5 March 2017 which are said to support the argument that Mr Kidd did not by his conduct accept those terms, when he had a duty to speak if he was not accepting them.

4. In order to adduce new evidence, Mr Kidd has to satisfy a Court of three requirements:

(a) that the fresh evidence could not have been obtained with reasonable diligence for use at the trial;

(b) that the new evidence would probably have had an important influence on the result of the case, though it need not be decisive; and

(c) that the new evidence is credible, although not incontrovertible.

5. As the evidence consists of emails which are apparently authentic, no issues arise as to the third requirement, but Mr Kidd cannot satisfy either of the first two requirements.

6. First, there is no basis for any finding that the emails could not have been obtained with reasonable diligence for use at the trial. The initial disclosure given by Mr Kidd was very limited and late disclosure was allowed on his Application when he said that on further searches, he had found materials which supported his case. His sixth witness statement and the supporting witness statement of Mr Lachlan Forbes present no good reason for not conducting the further searches that he says were effected after the Judgment when he was required to do so to give disclosure during the course of the proceedings.

7. Secondly, none of the new emails could have had an important influence on the result of the case.

(a) The email of 23 January 2017 from Mr Munro to Mr Smylie merely confirms a discussion with "your client" to extend the loan. That does not show Sarcogent providing legal services at that time.

(b) The email from Mr Smylie of 10 July 2017 is no more than an offer by Mr Smylie to explain the mumbo jumbo of Scots legal advice given by those acting for Mr Kidd in the litigation as part of the Sarcogent functions of litigation support service. Again, that does not show Sarcogent providing legal services.

(c) The emails of 4 January 2017- 5 March 2017 do not show Mr Kidd objecting to the terms of the Letter of Engagement when he had a duty to speak if he did object. To the contrary, they confirm that he did not raise any objection. Moreover, as appears below and in the Judgment, there was other evidence to show that, by his conduct he accepted the terms of that Letter.

(d) There is therefore no basis for suggesting that these emails could render the Letter of Engagement void or that Mr Kidd is not to be taken as having agreed to its terms.

The Application for Permission to Appeal

8. As Grounds 1 and 2 are contingent on the granting of the Application to admit new evidence in the form of these emails, they cannot succeed without such admission. The Court's findings of duty to speak are clear in paragraph 91 onwards of the Judgment and cannot be gainsaid, particularly in thelight of the exchanges between Mr Kidd and his confederates in July 2017 when a decision was taken to do nothing in response. Mr Kidd allowed Sarcogent to continue to perform litigation support services on that basis and made part payment of a bill for those services in respect of an invoice addressed to him. That was an unequivocal acceptance of the Letter of Engagement by conduct.

9. Ground 3 is based on a pleaded point which was not pursued at trial by Mr Kidd. Mr Kidd's skeleton argument for the trial recited the UAE law experts' joint view that the assignment was valid and no caveat was made to that at any stage in the trial. In opening oral submissions, Mr Forbes' Counsel said that this part of Mr Kidd's case was not being pursued and Counsel for Mr Kidd did not demur. No expert gave evidence of the significance of any metadata in support of such a case. Mr Kidd's opening and closing submissions made no mention of the point and no suggestion was made that the assignment was not executed on 10 April 2019. The point should have been put to Mr Forbes if it was going to be pursued. It was therefore agreed between the parties that the assignment was valid on the basis of the UAE law joint experts' view absent any argument based on metadata to the contrary.

10. Ground 4: The issue of Sarcogent's alleged provision of legal services is discussed at paragraph 93 of the Judgment onwards. On the facts there was no evidence of the provision of legal services by Sarcogent in the person of Mr Smylie under the Letter of Engagement. The Letter of Engagement did not require it, and none were in fact provided under it. The Letter could not therefore be rendered void. The evidence did not even establish whether the two questionable activities referred to at paragraph 97 of the Judgment (the drafting of a loan agreement with Mr Munro) and the sending of a five line email of 24 August 2016 said to contain advice, were carried out by Mr Smylie for Sarcogent or for Davidsons who had the necessary licence, quite apart from those activities being for foreign clients outside Dubai and predating the Letter of Engagement.

11. The evidence did not therefore establish breach of the commercial licence, nor the provision of legal services under the Letter of Engagement. As already found, there was no requirement for legal services to be provided under the Letter of Engagement, no evidence that legal services were provided subsequent after the Letter of Engagement was concluded, let alone the provision of services under it (see also Ground 1 and the emails recently advanced). The Argument based on the licence given to Sarcogent adds nothing to the argument based on the provisions of Exec Council Resolution No. 22 of 2011 and the consequence of a regulatory breach is an administrative penalty, not nullity of a contract. An individual action outside the scope of a licence might render that act invalid but cannot impact on a contract which requires no breach and in the performance of which there is no breach.

12. There is therefore no realistic prospect of success on this ground nor any other compelling reason for an appeal to be heard. On the facts here no point of law of public importance arises for which clarification would be helpful.

13. Ground 5: On the facts as found by the Court, the conduct of Mr Kidd left no doubt that, in the circumstances of the case, it demonstrated consent as required by Article 132 of the Civil Transactions Law - see paragraphs 87-90 of the Judgment. In a civil action, as expressed at paragraphs 16-18, there is no basis for anything other than the civil standard of proof on the balance of probabilities as long as the correct test of finding that a course of conduct occurs in respect of which the circumstances leave no doubt that mutual consent has been demonstrated. The facts here were clear so that the requirements of Articles 132 and 135 were met, as set out in the Judgement. The UAE law experts did not disagree on the subject and the Court's findings of fact conclude the issue.

14. Ground 6: The parties' Counsel were asked to produce an agreed schedule, calculating the sums due on their submissions in respect of principal and interest. Mr Kidd's submissions provided an interest calculation at 9% from 16 February 2018, the date of the Sarcogent invoice and it was agreed, as recorded at paragraph 124 of the Judgment that this was the appropriate rate and date from which interest was to run (the

Settlement with BP had been concluded on 9 January 2018). It was thus agreed that the sum of money was due and should have been paid on 16 February. Mr Forbes was kept out of money owing to him from that moment, in circumstances where it appears that Mr Kidd had no intention of complying with his contractual obligations.

15. For the above reasons, none of the grounds of appeal has any realistic prospect of success and there is no other compelling reason why an appeal should be heard. This was a case which turned on the facts as found and there is no ground for disturbing the findings of fact nor the agreement of the experts and the Parties' Counsel as to their effect.

16. It follows that Mr Kidd must pay the costs of the Applications and the cost of the Appeal, with Mr Forbes costs to be the subject of assessment by the Registrar if not agreed