THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

IDBI BANK LIMITED (DIFC BRANCH)

Claimant

and

(1) FAST TELECOM GENERAL TRADING LLC
(2) FAST TELECOM LOGISTICS FZE (currently named ELEGANCE MOBILE SOLUTIONS LOGISTICS FZE)
(3) FAST LINK MOBILE FZCO (currently named FAST TELECOM LOGISTICS FZE)
(4) MR ALI MOHD SALEM ABU ADAS
(5) MR MOHAMMED JAWDAT AYESH

Defendants

ORDER OF JUSTICE MICHAEL BLACK

UPON the Fifth Defendant's Application No. CFI-090-2021/4 dated 15 December 2023 seeking to strike out the Claimant's Claim and granting Immediate Judgment against the Claimant (the "Fifth Defendant's Application")

AND UPON the Claimant's evidence in answer filed in response to the Fifth Defendant's Application dated 3 January 2023

AND UPON hearing counsel for the Claimant and counsel for the Fifth Defendant at the hearing on 22 March 2023

AND UPON reviewing the relevant documents in the case file

IT IS HEREBY ORDERED THAT:

1. The Fifth Defendant's Application is denied.

2. Costs of and occasioned by the Fifth Defendant's Application are reserved.

Issued by:
Delvin Sumo
Assistant Registrar
Date of issue: 27 March 2023
At: 9am

SCHEDULE OF REASONS

Introduction

1. By an application dated 15 December 2022, the Fifth Defendant, Mohammed Jawdat Ayesh Mustafa Al Barguthi ("Mr Al Barguthi") seeks an order that the Court (a) strike out the Claimant's Claim against the Fifth Defendant under the Court's inherent powers granted under RDC 4.16 or (b) pass an immediate judgment under RDC, Part 24 in favour of the Fifth Defendant by dismissing Claimant's Claim against the Fifth Defendant on the grounds that the Claimant's Claim has no real prospect of succeeding on the Claim, and that the applicant knows of no other compelling reason why the case should be disposed of at the trial, since the Forensic Report issued by the Dubai Police confirms that the Disputed Documents are forged and that Mr. Mohammed Barguthi, the Fifth Defendant, did not sign the (disputed) documents.

2. To put the Fifth Defendant's Aapplication in context, the claim is brought by the Claimant ("IDBI Bank") by a Claim Form issued 4 November 2021 against the First Defendant ("Fast Telecom General Trading LLC") as a lender/grantor of certain loan facilities to the First Defendant, against the Second and Third Defendants (Fast Telecom Logistics FZE and Fast Link Mobile FZCO, currently named Elegance Mobile Solutions Logistics FZE and Fast Telecom Logistics FZE respectively) as corporate guarantors and against the Fourth Defendant, Mr Ali Mohd Salem Abu Adas ("Mr Adas") and Mr Al Barguthi as personal guarantors.

The Facts

3. Mr Al Barguthi's liability is pleaded to arise from a Facilities Agreement dated 4 January 2016 which contained guarantee provisions at section 16, naming him as "Personal Guarantor 1" and bears what appears to be his signature under the rubric "Personal Guarantor 1". He is also shown as one of the co-signatories for the Borrower, Fast Telecom General Trading LLC, and signatory for each of the Corporate Guarantors, although the signatures for the Borrower and Corporate Guarantors appearing to be his are accompanied by what look like the signatures of Mr Adas.

4. Mr Al Barguthi denies that the signature under "Personal Guarantor 1" is his signature and asserts that it has been forged and fabricated by a third party and that he never agreed to guarantee the loan facilities granted by IDBI Bank to the First Defendant.

5. Mr Al Barguthi relies on a letter dated 10 November 2022 from the Dubai Police to this Court stating:

> "The Bur Dubai Police Station presents you with the best regards. We inform you that we received a letter from the General Department of Criminal Evidence on 18/08/2022 regarding the letter of the Complainant called / Muhammad Jawdat Ayesh Al-Barghouti. As a result of the report, it was found that after conducting the technical examinations, it was found that the aforementioned did not make the signature attributed to him in the document subject matter of the Complaint. This is for your kind information and actions."

6. In order to understand the letter, it is necessary to know that Mr Al Barguthi had submitted a criminal complaint against IDBI Bank and the legal representatives of "Fast Telecom" claiming that the respondents had entered a signature and name written in the Facilities Agreement dated 4 January 2016 and falsely attributing it to Mr Al Barguthi in order to obtain from him the personal guarantee stipulated in the agreement. The complaint exhibited a copy of an expert report concerning *"the forged signature of the complainant on the forged agreement"*. Thus, when the letter speaks of the signature *"in the document subject matter of the Complaint"* it is a reference to the Facilities Agreement.

7. In response to Mr Al Barguthi's reliance on the Police letter IDBI Bank denies that Mr Al Barguthi's signature is forged. It draws attention to a number of other associated documents:

> (1) A certified copy of a board resolution of the First Defendant authorising Mr Al Barguthi to open a bank account with IDBI Bank dated 8 August 2015;
>
> (2) An Account Opening Application in October 2015 for the First Defendant signed by Mr Al Barguthi over his photograph with an authorisation to IDBI Bank to act on fax or email instructions signed by Mr Al Barguthi on 8 August 2015, a confidentiality agreement signed by Mr Al Barguthi dated 9 August 2015, General Terms and Conditions signed by Mr Al Barguthi on behalf of the First Defendant;
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> (3) A proof of address for the First Defendant dated 1 December 2015 signed by Mr Al Barguthi;
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> (4) an Asset Pledge dated 4 January 2016 under the Terms of the Facilities Agreement apparently signed by Mr Al Barguthi on behalf of the borrower and corporate guarantors in the presence of the DIFC Registrar of Companies; and
>
> (5) a General Power of Attorney executed by Mr Al Barguthi on or about 11 May 2004 empowering Mr Adas in very wide terms including to:
>
> > "open, operate and close bank accounts, signing on my behalf in all bank transactions, all cheques, deposits cash funds and cheques, draw and transfer the same, to open the documentary credits and transferring the same, covering or uncovered, and to tender the securities required, the attorney has the right to sign the bank facilities, the over-draft drawing, signing the applications for loans, bank facilities and collecting the same in his personal name and/or companies names and/or occupational, commercial & industrial organizations where I am a partner and/or owner."

8. It asserts that Mr Al Barguthi is the 51% shareholder of the First Defendant and did not object when the First Defendant received and used up the funds.

9. It states that with respect to the ongoing forgery criminal case, on 23 December 2022, the Claimant received the call from the Police Station stating that the file has been closed. The Police had asked about the issuance of the Power of Attorney to Mr Adas by Mr Al Barguthi, which had been confirmed. Based on this, the Police decided to close the file and concluded that Mr Adas had signed on behalf of Mr Al Barguthi on the loan facility agreement.

10. The Court is perplexed by this evidence as the signature under "Personal Guarantor 1" does not appear to be that of Mr Adas and one would expect him to use his own signature when signing on behalf of Mr Al Barguthi. The Power of Attorney does not authorise Mr Adas to use Mr Al Bargthi's name but rather to sign *"in his personal name and/or companies names and/or occupational, commercial & industrial organizations"*.

11. Further, there is a letter from the Dubai Police to this Court dated 7 March 2023 stating:

> "With reference to our letter No. 2520/2/50/491511, dated 10/11/2022 regarding the transaction No. 221004317139 - Bur Dubai Police Station. Bur Dubai Police Station extends its warm greetings. Pursuant to your letter dated 16/02/2023 regarding the enquiry of the transaction, we notify you that the investigation is still ongoing in the complaint, for your information and action."

12. The explanation in Mr Al Barguthi's evidence in reply to IDBI Bank's evidence appears to be that Mr Al Barguthi met with the Police on 16 January 2023 and told them that that the Fourth Defendant had stated that he had illicitly signed on the disputed documents on Mr Al Barguthi's behalf. This apparently persuaded the Police that the Complaint should be re-opened to further investigate the actions of the Fourth Defendant signing on behalf of Mr Al Barguthi, imitating his signature instead of following the obvious practice to ascribe his own signature along with mentioning "for and behalf of Mr Al Barguthi as his Attorney".

13. In addition, Mr Al Barguthi deposed:

> (1) In 2013 due to illness, he withdrew from the day-to-day management and operation of the First Defendant. In the period 2016 onwards, he was undergoing medical treatment and in April 2016 he disposed of his shares in the First Defendant and had not been a shareholder since;
>
> (2) The letter from the Police dated 10 November 2022 concluded that the disputed documents were forged; and
>
> (3) None of the documents referred to and relied on by the Claimant in its Claim mentions that the Fourth Defendant signed for and on behalf of Mr Al Barguthi using the alleged Power of Attorney. Mr Al Barguthi suggests that this is clear evidence that the Claimant and the Fourth Defendant have conspired to facilitate this loan without his knowledge nor approval.

14. In particular and most importantly, while the witness statement is a rambling document largely comprising extravagant and unsupported allegations of disreputable conduct on the part of the Claimant, submissions on the facts and legal argument (none of which should appear in a witness a statement and are of no assistance to the Court) it is possible to tease out a denial by Mr Al Barguthi that he signed any of the documents referred to by the Claimant or that he ever had any dealings at all with the Claimant. This was confirmed by his Counsel at the hearing.

The Applicable Legal Principles

15. RDC 4.16 provides:

"The Court may strike out a statement of case if it appears to the Court:

(1) that the statement of case discloses no reasonable grounds for bringing or defending the claim;

(2) that the statement of case is an abuse of the Court's process or is otherwise likely to obstruct the just disposal of the proceedings; or

(3) that there has been a failure to comply with a Rule, Practice Direction or Court order."

16. RDC 24 provides:

"24.1

The Court may give immediate judgment against a claimant or defendant on the whole of a claim, part of a claim or on a particular issue if:

(1) it considers that:

(a) that claimant has no real prospect of succeeding on the claim or issue; or

(b) that defendant has no real prospect of successfully defending the claim or issue;

and

(2) there is no other compelling reason why the case or issue should be disposed of at a trial.

24.2

An application for immediate judgment under Rule 24.1 may be based on:

(1) a point of law (including a question of construction of a document);

(2) the evidence which can reasonably be expected to be available at trial or the lack of it; or (3) a combination of these."

17. In *GFH Capital v Haigh* [2014] DIFC CFI 020, November 10, 2016 Giles J noted [9-10]:

"9. The principles on which the Court acts are well established, and were recently restated by Simon J in *JSC VTB Bank v Skurikhin* [2014] EWHC 271 at [15] -

"The principles which apply have been set out in many cases, are summarised in the editorial comment in the White Book Part 1 at 24.2.3 and have been stated by Lewison J *in Easyair Limited v. Opal Telecom Limited* [2009] EWHC 339 (Ch) at [15], approved subsequently (among others) by Etherton LJ *in A C Ward & Son v. Caitlin (Five) Limited* [2009] EWCA Civ 1098 at [24]. For the purposes of the present application it is sufficient to enumerate 10 points.

(1) The Court must consider whether the defendant has a `realistic' as opposed to a `fanciful' prospect of success, see *Swain v. Hillman* [2001] 2 All ER 91, 92. A claim is `fanciful' if it is entirely without substance, see Lord Hope in *Three Rivers District Council v Bank of England* [2001] UKHL 16 at [95).

(2) A `realistic' prospect of success is one that carries some degree of conviction and not one that is merely arguable, see *ED & F Man Liquid Products v. Patel* [2003] EWCA Civ 472.

(3) The must avoid conducting a `mini-trial' without disclosure and oral evidence: *Swain v Hillman* (above) at p.95. As Lord Hope observed in the *Three Rivers* case, the object of the rule is to deal with cases that are not fit for trial at all.

(4) This does not mean that the Court must take everything that a party says in his witness statement at face value and without analysis. In some cases it may be clear that there is no real substance in factual assertions which are made, particularly if they are contradicted by contemporaneous documents, *see ED & F Man Liquid Products v. Patel* (above) at [10]. Contemporary activity or lack of activity may similarly cast doubt on the substance of factual assertions.

(5) However, the Court should avoid being drawn into an attempt to resolve those conflicts of fact which are normally resolved by a trial process, see *Doncaster* Pharmaceuticals Group Ltd v. Bolton Pharmaceutical Co 100 Ltd [2006] EWCA Civ 661, Mummery LJ at [17].

(6) In reaching its conclusion, the court must take into account not only the evidence actually placed before it on the application for summary judgment, but the evidence that can reasonably be expected to be available at trial: *Royal Brompton Hospital NHS Trust v Hammond (No. 5)* [2001] EWCA Civ 550, [19].

(7) Allegations of fraud may pose particular problems in summary disposal, since they often depend, not simply on facts, but inferences which can properly be drawn from the relevant facts, the surrounding circumstances and a view of the mind of the participants, see for example *JD Wetherspoon v Harris* [2013] EWHC 1088 , Sir Terence Etherton Ch at [14].

(8) .

(9) The overall burden of proof remains on the claimant, .to establish, if it can, the negative proposition that the defendant has no real prospect of success (in the sense mentioned above) and that there is no other reason for a trial, see Henderson J in *Apovodedo v Collins* [2008] EWHC 775 (Ch), at [32].

(10) So far as Part 24.2(b) is concerned, there will be a compelling reason for trial where `there are circumstances that ought to be investigated', see *Miles v Bull* [1969] 1 QB 258 at 266A. In that case Megarry J was satisfied that there were reasons for scrutinising what appeared on its face to be a legitimate transaction; see also *Global Marine Drillships Limited v Landmark Solicitors LLP* [2011] EWHC 2685 (Ch), Henderson J at [55]-[56]."

10. In *Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd* [2006] EWCA Civ 661 (*"Doncaster"*), cited in this passage, Mummery LJ, with whom Longmore LJ and Lewison J agreed, cautioned (at [17]) that a court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to the trial and so affect the outcome of the case."

18. In *Nest Investments Holdings Lebanon S.A.L. and Ors v (1) Deloitte & Touche M.E. (2) Joseph El Fadl* [CFI 027/2016, 12 February 2018] Giles J observed [20] that there is a degree of overlap between RDC 4.16 and RDC 24: RDC 4.16 is apt for an application on the basis that, even if the pleaded grounds are accepted, the claim must fail. That can also be the basis for an application under RDC 24.1, but that rule is apt for an application on the basis of evidence showing that the claim must fail, or of absence of evidence to support it. The overlap suggests, however, a common approach under either rule, subject to questions of fact in an evidence-based application and to RDC 24.1 (2).

19. In *Investment Group Private Limited v Standard Chartered Bank* [CA-002-2018: July 17, 2018] the Court of Appeal noted that while the legal burden of proof for immediate judgment rests with the applicant, the evidential burden of proving that the respondent has a real prospect of successfully defending the claim rests with the respondent. The Court of Appeal said that the case of *Korea National Insurance Corporation v Allianz Global Corporate & Speciality AG* [2007] EWCA Civ 1066 provides some useful guidance as to a party's evidential burden of proof. Lord Justice Moore-Bick opined that, if a party wished to rely on the likelihood that further evidence would be available, it must substantiate the assertion. It is insufficient to simply say that further evidence will or may be available:

"14. In the present case Allianz criticised the judge for having failed to make allowance in its favour for the likelihood that additional evidence relating to various aspects of this defence would be available at trial to cast a more benevolent light on events, but in my view that criticism is unfounded. It is incumbent on a party responding to an application for summary judgment to put forward sufficient evidence to satisfy the court that it has a real prospect of succeeding at trial. If it wishes to rely on the likelihood that further evidence will be available at that stage, it must substantiate that assertion by describing, at least in general terms, the nature of the evidence, its source and its relevance to the issues before the court. The court may then be able to see that there is some substance in the point and that the party in question is not simply playing for time in the hope that something will turn up. It is not sufficient, therefore, for a party simply to say that further evidence will or may be available, especially when that evidence is, or can be expected to be, already within its possession, as is the case here."

20. I am not entirely sure that the *Korea National Insurance Corporation* case supports the broad proposition that the evidential burden of proving that the respondent has a real prospect of successfully defending the claim rests with the respondent. That proposition is hard to reconcile with the statement of Simon J (as he then was) in *JSC VTB Bank* that the overall burden of proof remains on the claimant to establish, if it can, the negative proposition that the defendant has no real prospect of success. It seems to me that *Korea National Insurance Corporation* is authority for a somewhat narrower proposition that if a party wishes to rely on the likelihood that further evidence will be available at trial, it must substantiate that assertion by describing, at least in general terms, the nature of the evidence, its source and its relevance to the issues before the court. The narrower approach seems to have been adopted by the Court of Appeal in the later case of *Saif Saeed Sulaiman Mohammad Al Mazrouei v Bankmed (Sal) Trading In The DIFC Under The Trade Name Bankmed (Dubai)* [2019] DIFC CA 011, 29 December 2019. At [39] the Court of Appeal cited Moore-Bick LJ in Korea National Insurance Corporation where he stated that *"It is incumbent on a party responding to an application for summary judgment to put forward sufficient evidence to satisfy the court that it has a real prospect of succeeding at trial"* observing that what amounts to sufficient evidence will be different from case to case and that sometimes clear pleadings alone will suffice but a respondent must not be complacent.

21. It seems to that when dealing with a defendant's combined strike out and immediate/summary judgment application, the Court should first look at the pleaded case and if the statement of case discloses no reasonable grounds for bringing the claim, the application succeeds without more. If the Court considers the pleaded case does disclose reasonable grounds for bringing the claim on the basis (as was said in *Nest*) the facts as pleaded are accepted, the Court should go on to consider whether the claim has a realistic prospect of success. At that second stage the Court may examine the facts albeit without embarking on a "mini trial". That involves not only looking at the evidence actually placed before the Court on the application for summary judgment, but the evidence that can reasonably be expected to be available at trial. The Court need not take everything that a party says in his witness statement at face value and without analysis, but it should avoid being drawn into an attempt to resolve those conflicts of fact which are normally resolved by a trial process.

This Application

22. Counsel for Mr Al Barguthi submits that there is a single issue before the Court: does the evidence available and likely to be available at trial show that Mr Al Barguthi's signature as a personal guarantor on the Facilities Agreement dated 4 January 2016 was forged and is not his signature, such that he never in fact agreed personally to guarantee the loans to the First Defendant by the Claimant made in the terms of the Facilities Agreement?

23. He proceeds to answer the question in the affirmative. He relies on the letter from the Police dated 10 November 2022 and the letter dated 7 March 2023 stating that the investigation is ongoing.

24. It is said that the 10 November 2022 letter is dispositive of the issue. It is said that this Court is bound by UAE law on the status of the letter. Articles 7 and 8 of Federal Law No. (10) of 1992 "On Evidence in Civil and Commercial Transactions" provide:

> "Article (7)
>
> 1. The formal writing is a document in which a public officer or a person in charge of public service records, in the manner prescribed by law and within the limits of his powers and competence, what has been performed in his presence or statements that have been made to him by the concerned parties.
>
> .
>
> Article (8)
>
> A formal writing, unless it is legally established to be a forgery, has probative force erga omnes as regards matters therein recorded performed by its author within the limits of his duties or in respect of matters performed by the parties in his presence."
>
> ["erga omnes" means "towards everyone"]

25. I do not accept that these provisions are applicable. I consider that Article 50 of the DIFC Court Law, "Application of Evidence", is applicable and states that where proceedings are instituted in the DIFC Court, the rules of evidence to be applied in the proceeding will be the rules that:

> (a) are prescribed in DIFC Law; or
>
> (b) are applied in the courts of England and Wales; or
>
> (c) the DIFC Court considers appropriate to be applied in the circumstances.

26. There are no applicable rules of evidence in the DIFC addressing the status of formal documents. The position under English Law is addressed by section 9 of the Civil Evidence Act 1995:

> (1) A document which is shown to form part of the records of a . public authority may be received in evidence in civil proceedings without further proof.
>
> (2) A document shall be taken to form part of the records of a . public authority if there is produced to the court a certificate to that effect signed by an officer of the business or authority to which the records belong.

27. I do consider that these provisions should be applied in the circumstances of the present case. It is suggested that as a matter of the English rules of evidence the documentary statement by the Dubai Police that Mr Al Barguthi's signature has been forged on the Facilities Agreement can be received in evidence without further proof.

28. I do not agree that the letter is to the effect that Mr Al Barguthi's signature has been forged on the Facilities Agreement. It is important to focus on what the letter actually says. It says that the Police had received a letter from the General Department of Criminal Evidence on 18 August 2022 stating that it was found that Mr Al Barguthi did not make the signature attributed to him in the document the subject matter of the Complaint. I accept this means the Facilities Agreement, but the Police letter is a double hearsay statement about a letter referring to the results of an analysis. I do not consider that it may properly be regarded as part of the public record. I do however accept that the underlying report from the General Department of Criminal Evidence *would* qualify as a record of a public authority and may be received in the present proceedings without further proof.

29. Counsel for IDBI Bank points out that Mr Al Barguthi is relying on one document, the Police letter, which is not proof of forgery. I agree with him, but I have to have regard to the evidence that can reasonably be expected to be available at trial and that (subject to sight of its terms) the underlying report from the General Department of Criminal Evidence may be evidence that Mr Al Barguthi did not make the signature attributed to him in the Facilities Agreement.

30. Apparently, the report will only be accessible if the Court requests a copy from the Dubai Police. Mr Al Barguthi's Counsel applied in the course of argument for the Court to make the request and I will ask the Registrar to do so. I therefore reasonably expect the report to be available at trial. The status of the report will be that it will be received in evidence without further proof.

31. Mr Al Barguthi suggests that such evidence would be incontrovertible. Reliance is placed on the transcript of a CMC in another case involving the First Defendant and a different bank that took place on 28 June 2022. In that case it is apparent that there was a similar allegation that a guarantee apparently given by Mr Al Barguthi was forged. A complaint had been made to the Police and an expert report had been received by this Court from the Dubai Courts which indicated that the guarantee was forged. The case was apparently pending before the Dubai Court of Appeal, the Court of First Instance having found that the guarantee was a forgery in reliance on the expert's report. In that case the Registrar of this Court referred to Article 5(A)(4) of the Judicial Authority Law (Dubai Law No.12 of 2004 as amended) which reads:

> "Notwithstanding Clause (2) of Paragraph (A) of this Article, the Court of First Instance may not hear or determine any civil or commercial claim or action in respect of which a final judgment is rendered by another court."

As judgment had already been rendered by the Dubai Court of First Instance on the forgery issue, the Registrar pointed out that the matter could not be relitigated before the DIFC Courts.

32. The present situation is different, as IDBI Bank observes, the matter is still under investigation by the Police and the file has not been passed to the Public Prosecutor, let alone reached judgment. The report is therefore not incontrovertible, and its conclusions (like any other opinion evidence) could be challenged by contrary expert evidence.

33. The question arises whether there is a realistic prospect that the Claimant will be able to lead expert evidence to challenge the report's conclusions. I expressed surprise that neither party had sought directions at the CMC to adduce expert forensic document examination evidence. In my judgment the Fifth Defendant was wrong to place reliance solely on the letter from the Police and the Claimant ought to have realised that while the burden of proving forgery is undoubtedly on the Fifth Defendant, by not called its own expert it ran the risk of having no answer to the findings of the General Department of Criminal Evidence. This may be an example of the complacency against which the Court of Appeal warned in *Al Mazrouei.* Indeed, Counsel for Mr Al Barguthi submits that that Bank will not now be able to lead expert evidence because the original of the Facilities Agreement is in the hands of the Police and will not be released.

34. It remains to be seen whether the report of the General Department of Criminal Evidence can be obtained before trial and whether the Claimant will be able to lead evidence in rebuttal. For present purposes I am willing to proceed on the basis that while the letter of 10 November 2022 is not dispositive, the likelihood is that the report will be available to the Court, and it will be accepted as *prima facie* evidence that the signature under "Personal Guarantor 1" that purports to be Mr Al Barguthi's signature was not made by him.

35. That is however not an end to the matter. IDBI Bank may or may not be able to prove that Mr Al Barguthi signed the Facilities Agreement personally by rebutting the opinion of the General Department of Criminal Evidence, but there remains the possibility it was signed with his consent and the Bank argues that this may be inferred from the surrounding circumstances:

(1) Mr Al Barguthi had the full knowledge about the transaction and the company in which he holds 51% share had availed itself of, and enjoyed, the loan facilities based on the documents submitted to the Bank. At the time of accepting the facility documents the Claimant had no suspicion about the documents and had duly taken all the compliance procedures and formalities for the disbursal of the loan;

(2) The following three documents are important -

(a) The Asset Pledge Agreement dated 4 January 2016 which bears Mr Al Barguthi's signature and was attested in front of the DIFC Registrar of Companies;

(b) The Personal Undertaking dated 1 December 2015 issued on the letterhead of the Mr Al Barguthi and confirmed the premises from which the First Defendant operated;

(c) The Board Resolution dated 8 August 2015;

(3) The Account Opening form was duly signed and filled in by Mr Al Barguthi on 9 October 2015. Moreover, the passport copy along with the Emirates ID copy of Mr Al Barguthi was duly certified by the Bank's employee on 14 December 2015; and

(4) Another aspect of the case is that Mr Al Barguthi had issued a Power of Attorney dated 11 May 2004 duly attested by Dubai Notary Public to the Fourth Defendant which comprised a varied range of powers including the right (i) to sign bank facilities, and (ii) to sign application for loans, bank facilities for companies where Mr Al Barguthi is a parent. Until now, Mr Al Barguthi has neither disputed the Power of Attorney nor produced any evidence showing that the Power of Attorney was illegal or not validly issued.

36. IDBI Bank raised other points, but I do not find them of assistance, and I agree with Mr Al Barguthi's submission that they are irrelevant to the issue I have to decide.

37. I do however disagree with Mr Al Barguthi's submission that the references to other documents are irrelevant. The Facilities Agreement was dated 4 January 2016. On his own evidence Mr Al Barguthi did not relinquish his shares in the First Defendant until April 2016. He does not appear to have made a complaint to the Police that the signatures on the documents in October and December 2015 are not genuine. I note that Mr Al Barguthi uses the plural of "document" in his witness statement but there is no evidence relating to his signature of any documents save the Facilities Agreement (notwithstanding, as his Counsel pointed out, IDBI Bank has supplied copies of the other documents to the Police). Thus, the Facilities Agreement would appear to be part of a suite of documents whereby the Bank provided funds to a company of which Mr Al Barguthi was at the material time the 51% owner and some of those documents bore what may turn out to be his genuine signatures. Given that Mr Al Barguthi denies having anything to do with IDBI Bank, if it were found that any of the other signatures were his, his credibility would be seriously undermined. It would then be open to a court in the face of disputed forensic evidence of forgery to infer that the signature on the Facilities Agreement was likely to be genuine or, even if it were not affixed by him personally, that he authorised it to be affixed.

38. Against the latter point the Court would have to consider why, if it was Mr Adas who affixed the signature, he simply did not sign in his own name under the Power of Attorney. This is a powerful point, but I do not regard it as so powerful as to render the inferences that might be drawn from a finding that the other signatures were genuine fanciful. There is evidence to support the genuineness of those signatures: the Bank claims that the signature to the Account Opening Form was verified by its Know-Your-Client procedures, it claims that its employees obtained signatures from Mr Al Barguthi at his office (and will presumably lead evidence to that effect) and it notes that the Asset Pledge was signed in the presence of the DIFC Registrar of Companies.

39. Finally, it is suggested in Mr Al Barguthi's witness statement that Mr Adas has stated that he had illicitly signed the disputed documents on Mr Al Barguthi's behalf. No evidence is produced in support of this statement nor is it disclosed when, where or how Mr Adas made this admission. It is not known if Mr Adas accepts that he made such an admission.

40. Counsel for IDBI Bank submits that these are all matters for trial and I agree with him. In particular I bear in mind the words of Sir Terence Etherton Ch in *JD Wetherspoon v Harris* cited above, that allegations of fraud may pose particular problems in summary disposal, since they often depend, not simply on facts, but inferences which can properly be drawn from the relevant facts, the surrounding circumstances and a view of the mind of the participants.

Conclusion

41. In conclusion, this was never a case for strike out under RDC 4.16. As Counsel for the Bank put it, from the Bank's perspective the action was a simple recovery. The Particulars of Claim, while not the most elegant pleading, nevertheless plead a liability of the Fifth Defendant as Personal Guarantor. It is only when the Fifth Defendant defends on the grounds of forgery that it then becomes necessary to examine the prospects of success against the evidence reasonably expected to be available at trial. This is a paradigm Part 24 case, and I am satisfied that on a review of the evidence there is a realistic prospect that IDBI Bank may be able to impugn Mr Al Barguthi's case that he had no relationship with the Bank whatsoever thereby giving rise to an inference that his name was affixed to the Facilities Agreement with his consent. The Fifth Defendant's application must therefore be dismissed.

42. I turn to the costs of the Fifth Defendant's Application. The parties have not served statements of their costs apparently due to technical difficulties in uploading them. Counsel for Mr Al Barguthi suggested that costs should follow the event and there will have to be a detailed assessment. Counsel for the Bank left costs to the discretion of the Court. Notwithstanding that Mr Al Barguthi has failed in this application I am not minded to make an immediate costs order for the following reasons: I think there is a degree of responsibility on both sides for the unsatisfactory state of the evidence in relation to the forgery issue, however if it does eventually turn out that Mr Al Barguthi was the innocent victim of fraud he will no doubt argue that he should not be paying the costs of establishing his innocence; on the other hand, if the Bank is not implicated in any fraudulent dealings they too will be innocent victims. I prefer to leave over any decision on costs until after trial when the picture will be clearer and so the costs of and occasioned by the Fifth Defendant's Application are reserved.