Claim No. CFI 093/2021

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

LAHOMA

Claimant

and

(1) LAGLE
(2) LAIRD

Defendants

REASONS FOR THE ORDER OF THE REGISTRAR NOUR HINEIDI MADE ON 10 MARCH 2022

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1. These are the reasons for my Order made on 10 March 2022 (the **"Order"**).

2. The Claimant filed a request for default judgment on 21 December 2021, which was issued on the same date (the **"Default Judgment"**). There is some contention as to when Mr Lutti, Chief Financial Officer of the First Defendant, became aware of the Claim Form filed by the Claimant.

3. The Claimant has provided evidence in the form of a DHL proof of delivery document dated 20 November 2021 [p. 49 GC1] which lists Mr Lutti as the signatory for the Claim Form documents when it was served upon the First Defendant. Mr Lutti denies having signed for the Claim Form documents on 20 November 2021 and instead contends that he only became aware of the Claim Form on 30 November 2021. While there is a possibility (albeit relatively remote) that the courier who delivered the documents heard and registered the wrong name as the recipient, it is implausible to believe that DHL did not validly effect service upon the First Defendant at all on 20 November 2021. It is therefore likely that Mr Lutti was or ought to have been aware of the Claim Form being served upon the First Defendant on 20 November 2021.

4. Even assuming Mr Luttis submission is correct that he only became aware of the Claim Form on 30 November 2021, by his own admission lawyers were not instructed until 23 December 2021, Mr Lutti offers no reasonable explanation for this considerable delay.

5. This delay resulted in the Default Judgment being issued on 21 December 2021, yet Mr Lutti claims he did not become aware of it until 26 December 2021 when his lawyers filed an Acknowledgment of Service. However, despite being aware of the Default Judgment on this date, the First Defendant did not take any further action until 26 January 2022, by which point a full month had passed.

6. Although RDC r. 14.2 sets out the test for when the Court may set aside a judgment made under RDC Part 13, the Court is given wide discretion in determining whether such judgment should indeed be set aside. Furthermore, pursuant to RDC r. 14.3, when considering whether to set aside a judgment entered under RDC Part 13, the Court must have regard to whether the person seeking to have the judgment set aside made an application to do so promptly. This requirement therefore trumps the test set out in RDC r. 14.2. I do not consider a one month delay for making the application to set aside the default judgment to be *"prompt"* and for this reason issued the Order.

7. I am not persuaded by the explanation given by Mr Lutti that such a lengthy delay can be justified by *"the holiday period and absences from the Defendants' team caused by Covid-19"*. Mr Lutti and his team had been aware of the claim initiated against the Defendants since at least 30 November 2021, if not earlier. No attempt was made by either Defendant to engage and communicate with the Court during this time. By failing to act in a timely manner, the First Defendant has displayed a blatant disregard for the Court's process and procedure and parties cannot be allowed to ignore it as they choose and then later on rely on the DIFC Court Rules when it becomes convenient to them.

8. Consequentially, I do not intend to enter into a detailed consideration of whether the Defendants have a *"real prospect of successfully defending the claim"* as set out in RDC r. 14.2(1), nor do I consider there to be some other good reason why the judgment should be set aside or the Defendant should be allowed to defend the claim (RDC r. 14.2(2)).

Issued by:
Nour Hineidi
Registrar
Date of Issue: 12 April 2022
At: 12.30pm