Claim No. CFI-027-2016

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

(1) NEST INVESTMENTS HOLDING LEBANON S.A.L.

(2) JORDANIAN EXPATRIATES INVESTMENT HOLDING COMPANY

(3) QATAR GENERAL INSURANCE AND REINSURANCE COMPANY P.J.S.C.

(4) GHAZI KAMEL ABDUL RAHMAN ABU NAHL

(5) JAMAL KAMEL ABDUL RAHMAN ABU NAHL

(6) TRUST COMPASS INSURANCE S.A.L.

(7) TRUST INTERNATIONAL INSURANCE COMPANY (CYPRUS) LIMITED

(8) HIS EXCELLENCY SHEIKH NASSER BIN ALI BIN SAUD AL THANI

(9) FADI GHAZI ABU NAHL

(10) HAMAD GHAZI ABU NAHL

(11) KAMEL GHAZI ABU NAHL

Claimants

and

DELOITTE & TOUCHE (M.E.)

Defendant

ORDER WITH REASONS OF JUSTICE ROGER GILES

UPON the Judgment of Justice Roger Giles dated 30 September 2018

AND UPON consideration of the correspondence provided by the parties by way of submissions

IT IS HEREBY ORDERED THAT:

1.Leave is granted to the Claimants to amend the Particulars of Claim to the form of the Re-Amended Particulars of Claim referred to in the letter from the Claimants' solicitors to DTME's solicitors dated 13 October 2018.

2. Subject to Order 3, the Claimants to pay DTME's costs of and arising from the amendments.

3. DTME to pay the Claimants' costs of the amendment application, assessed at $21,000.

Issued by:

Maha Al Mehairi

Judicial Officer

Date of issue: 15 November 2018

Time: 11am

SCHEDULE OF REASONS

1.The reasons issued on 30 September 2018 ("the September judgment") contemplated agreed draft orders. Unfortunately, the parties could not agree on two matters.

The paragraph 319 and Annex 4 reframing

2. In the September judgment I invited consideration of reframing para 319 and Annex 4, lest there be raised as a false issue breaches of duties by DTME as auditor of Tabadul. The Claimants accepted and followed through the reframing.

3. Although it had not originally taken the point, DTME wanted more. It wanted removal from other paragraphs of a number of references to DTME acting as auditor of Tabadul, and insertion of words apparently intended to exclude knowledge of DTME as auditor of Tabadul from the consideration of breaches in DTL's audits of LCB/LCBIH. It submitted that the further amendments were necessary to reflect that the Claimants did not assert breaches of duties by it as auditor of Tabadul, but breaches of duties in the audits of LCB/LCBIH. It relied particularly on the Claimants' submission, as recorded in the September judgment, that the position in relation to the audits of Tabadul would be the same if some other auditor, not DTME, had carried them out.

4. DTME's position is misconceived, and reads too much into the submission last mentioned. The Claimants do not assert breaches of duties by DTME as auditor of Tabadul; hence that submission. But that does not exclude regard to the historical fact that DTME conducted the Tabadul audits, or regard to knowledge which may have come or should have come to DTL, in fact or possibly by attribution in law, from DTME as the actual auditor of Tabadul. Nor does the Claimants' acceptance that the position in relation to the Tabadul audits would be the same if some other auditor, not DTME, had carried them out. The proper regard to these matters is for the trial.

The costs of the amendment application

5. The Claimants accepted that they should pay the costs of and arising from the amendments; the disagreement was over the costs of the amendment application. The Claimants sought costs from 8 Aug 2018, when the dispute over the disputed amendments crystallised. DTME submitted that there should be no order as to costs.

6. The amendment application was issued after the crystallisation of the dispute. The Claimants wholly succeeded on the disputed amendments. I do not accept DTME's assertion that the Claimants' success rested upon a belated concession that the position in relation to the Tabadul audits would be the same if some other auditor had carried them out. That position was inherent in the case which the Claimants explained, by the time the amendment application was issued with sufficient clarity, in the draft Re-Amended Particulars of Claim and accompanying correspondence. The para 319 and Annex 4 reframing which held back an immediate grant of leave to amend was raised by the Court, not by DTME, and DTME's submission that it had maintained that para 319 raised a false issue, if understood to mean the issue raised by the Court, is contrary to the fact. As well, I have not upheld DTME's position that further amendments should be made. DTME should pay the costs of the amendment application.

7. The Claimants assess the costs of pursuing the contested part of the application at $21,000 as at 13 October 2018. They note that the costs would have increased thereafter to some extent, but I do not propose to trouble with a few drops in the ocean of costs in this litigation. DTME made no submission in relation to the assessment, and I act upon it. The costs may and should be set off against costs payable by the Claimants to DTME.

Orders

8. Since the September judgment the draft Re-Amended Particulars of Claim have been revised to remove deleted material and re-number the paragraphs, and also to make some minor uncontentious changes. The current version is that referred to in the letter identified in Order 1.

9. I make the following orders:

10. Grant leave to the Claimants to amend the Particulars of Claim to the form of the Re-Amended Particulars of Claim referred to in the letter from the Claimants' solicitors to DTME's solicitors dated 13 October 2018.

11. Subject to Order 3, the Claimants to pay DTME's costs of and arising from the amendments.

DTME to pay the Claimants' costs of the amendment application, assessed at $21,000.