Claim No. CFI 092/2021

IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

(1) SANDRA HOLDING LTD
(2) NURI MUSAED AL SALEH

Respondents/Claimants

and

(1) FAWZI MUSAED AL SALEH
(2) AHMED FAWZI AL SALEH
(3) YASMINE FAWZI AL SALEH
(4) FARAH EL MERABI

Applicants/Defendants

ORDER WITH REASONS OF H.E. JUSTICE LORD ANGUS GLENNIE

UPON the Worldwide Freezing Order of H.E. Justice Sir Jeremy Cooke dated 10 November 2021 and the Order of H.E. Justice Sir Jeremy Cooke dated 30 November 2021 continuing the Worldwide Freezing Order (together the "WFOs")

AND UPON the Judgment of the Court of Appeal in CA-003-2023 dated 6 September 2023 allowing the Appeal in this action and setting aside the WFOs

AND UPON the Applicants'/Defendants' Application No. CFI-092-2021/9 dated 19 March 2024 seeking an inquiry into damages caused by the WFOs ("the Application")

AND UPON reviewing the witness statement of Ahmed Fawzi Al Saleh dated 12 March 2024, submitted on behalf of all Applicants/Defendants

AND UPON reviewing the affidavit of Mr John C La Liberte dated 31 January 2024 and accompanying exhibits

AND UPON reviewing the affidavit of Mr Olivier Binder dated 4 March 2024 and accompanying exhibits

AND UPON reviewing the Affidavit of Service of Olga Valladares dated 8 May 2024 confirming that the Application was served on the First Respondent/First Claimant by personal service on 2 May 2024

AND UPON reviewing the witness statement of Dr Ali Fuhaid Al Majhud Al Admi Advocates & Legal Consultants dated 14 May 2024 confirming that the Application was served on the Second Respondent/Second Claimant by email through Courts of Kuwait

AND UPON the Order of Judicial Officer Maitha Al Shehhi dated 8 May 2024 in CA-003-2023 and 9 May 2024 in CFI-092-2021 removing Trowers & Hamlins LLP as representatives of the Respondents/Claimants

AND UPON the Court Registry notifying the Respondents/Claimants of the hearing of 26 February 2025 using the following email address: nsaleh34@icloud.com

AND UPON the Application Hearing before H.E. Justice Lord Angus Glennie on 26 February 2025, with counsel for the Applicants/Defendants in attendance

AND UPON the Respondents/Claimants failing to appear

AND PURSUANT TO Part 23 of the Rules of the DIFC Courts

IT IS HEREBY ORDERED THAT:

1. There be an inquiry into damages sustained by the Defendants as a result of the WFOs.

2. The Applicants/Defendants shall file their detailed claim setting out damages claimed as part of the inquiry into damages accompanied by any evidence relied upon in support, with references only to previously submitted affidavits/witness statement and evidence, by no later than **4pm on 26 March 2025**.

3. The above-mentioned claim and evidence in support are to be served on the Respondents/Claimants as follows:

(a) Sandra Holdings Ltd by personal service to Sandra Holdings Ltd, c/o Walkers Corporate Limited, 190 Elgin Avenue, George Town, Grand Cayman, Cayman Islands, KYI-9008.

(b) Nuri Musaed Al Saleh by email address through the Courts of Kuwait.

4. The Applicants/Defendants shall file Certificates of Service in respect of service on each Respondent/Claimant

5. The Respondents/Claimants shall file and serve any evidence in reply to the Applicants'/Defendants' claim by no later than 28 days from the date of deemed service.

6. The Registry will liaise with the parties to determine the next hearing date for the assessment of damages.

7. The costs of the Application shall be reserved.

Issued by:
Hayley Norton
Assistant Registrar
Date of issue: 5 March 2025
At: 1pm

SCHEDULE OF REASONS

1. On 10 November 2021 the Claimants (who are the Respondents to this application and are hereafter referred to as the "Claimants/Respondents") obtained from the Court, on an ex parte application, a Worldwide Freezing Order (the "WFO") over the assets of the Respondents (i.e. the Defendants/Applicants). This was continued on 30 November 2021 following a hearing held on 25 November 2021.

2. The WFO contained within it in Schedule B ("Undertakings Given To The court By The Applicant") a Cross-Undertaking in Damages in familiar terms. It read as follows:

> "If the Court later finds that this Order has caused loss to the Respondent [i.e. the Defendants/Applicants], and decides that the Respondent [i.e. the Defendants/Applicants] should be compensated for that loss, the Applicant [i.e. the Claimants/Respondents] will comply with any order the Court may make."

3. On 24 August 2022 the Defendants (who are the Applicants in this application and are hereafter referred to as the "Defendants/Applicants") applied unsuccessfully to set aside the WFO. The Order refusing to set it aside was dated 25 November 2022. The Defendants/Applicants appealed to the Court of Appeal. Their appeal was successful. On 6 September 2023 the Court of Appeal set aside the WFO on the ground, inter alia, that the DIFC Courts had no jurisdiction over the subject matter of the action.

4. Paragraph 6 of the Order made by the Court of Appeal provided that "Any application for an inquiry as to damages relating to the [Claimants/Respondents'] cross-undertaking in damages shall be filed before the Court of First instance".

5. This is that application. The Defendants/Applicants contend that the WFO did cause them loss which should be compensated. They contend that they incurred considerable expense as a result of actions taken by the Claimants/Respondents in an attempt to enforce the WFO in the Courts of France and Massachusetts, USA. The Claimants'/Respondents' actions in those jurisdictions were ultimately unsuccessful, but they gave rise to considerable expense there. The Defendants/Applicants say that they should be compensated for that loss and expense. They have filed evidence in support of that case from a French lawyer and a Massachusetts lawyer, each of whom refers to the work done in response to the actions of the Claimants/Respondents and explains that recovery of legal expenses in those jurisdictions by a successful party is problematic, not to say virtually impossible.

6. The Court has a discretion as to whether to order an inquiry as to damages. Guidance as to how that discretion should be exercised is to be found in the decision of the (English) Court of Appeal in *Yukong Line Limited v Rendsburg Investments Corporation* [2000] EWCA Civ 358, [2001] 2 Lloyd's Rep 113. Where the injunction was wrongly granted, even without fault on the part of the party seeking it, the court will ordinarily order an inquiry as to damages if it appears that loss may have been caused as a result of the order. Where it is held that the court lacked jurisdiction to grant the order in the first place, "it is difficult to envisage any circumstances in which the court would refuse to order an inquiry as to damages upon some evidence of loss." The requirement for some evidence of loss having been suffered is important, since it would be futile to order an inquiry into damages where there is no reasonable supposition that any damage has been suffered. But at this stage, where the court is simply being asked to make an order that there should be an inquiry as to damages, it is not necessary or appropriate to hear detailed argument about the quantum of loss or questions of causation. Such arguments, if any, come at the next stage. It is important to emphasise that ultimately the decision by the court whether to order an inquiry as to damages or not is one for the discretion of the court. The exercise of that discretion might be influenced by factors such as delay or the conduct of the party in response to the grant of the order in the first place. Each case may throw up different questions.

7. I am satisfied that the Defendants/Applicants have shown that an inquiry as to damages is justified and appropriate. They have shown a prima facie case of loss and expense having been suffered or incurred by them as a result of the WFO and the actions taken by the Claimants/Respondents on the strength of it. That is sufficient to justify the making of an order for an inquiry. At that inquiry it will be for the Defendants/Applicants to prove their loss and it will be open to the Claimants/Respondents to challenge that evidence and adduce evidence of their own.

8. I should add that I considered whether any account should be taken of the delay by the Defendants/Applicants in challenging the WFO, a period of some 10 months. It is not clear on the material before me that this had any impact on the damages allegedly suffered by them. But the point will be open to be discussed at the inquiry if there is any merit in it.