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DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

CASE DIGEST

2025 — 2026

EDITED & ANNOTATED BY

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48	IX	V	II
DIGEST ENTRIES	VOLUMES	DIVISIONS	YEARS COVERED

DIFC COURTS
CASE DIGEST
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1 March 2026

9 Volumes — 48 Entries
Court of Appeal · Court of First Instance · Technology and Construction Division
Court of Arbitration · Small Claims Tribunal

INTRODUCTORY NOTE

1. As most practitioners are aware, DIFC Laws Number 1 and 2 of 2025, together with recent case law, have reaffirmed the DIFC Court as one of ambition and real relevance to commercial disputes in Dubai.

2. This digest has been produced as a practical reference tool for practitioners engaged in high-value litigation and international arbitration with a DIFC element. It covers all substantive judgments and orders published on the DIFC Courts website across the calendar years 2025 and 2026, the latter running to 1 March 2026. Five divisions are covered: the Court of Appeal ("CA"), the Court of First Instance ("CFI"), the Technology and Construction Division ("TCD"), the Court of Arbitration ("ARB"), and, for good measure, the Small Claims Tribunal ("SCT").

3. The digest is organised by division and year, producing nine volumes in total. Each entry contains the case name, citation or case number, the name of the judge, the date of decision, a statement of the subject matter, a summary of the relevant facts, and a structured account of the principal legal holdings. Hyperlinks to the published judgments on the DIFC Courts website are embedded throughout. The aim is to enable the busy practitioner to quickly understand, find, and if needed download, all recent relevant DIFC jurisprudence.

4. Only judgments and orders of substantive legal interest have been included. Purely procedural entries — including permission to appeal refusals that add nothing to the law, routine costs assessments, contempt purge orders, and enforcement case management orders — have been excluded. Where a case generates multiple published entries, only those which add substantive content are included. The selection criteria prioritise: (a) cases which establish or clarify a legal principle of general application; (b) cases which address points of recurring practical importance; and (c) cases which offer useful comparative material on the application of DIFC law in a commercial context.

5. A note on the 2026 batch: the Technology and Construction Division produced no substantive entries in 2026 to the date of this digest. Both published TCD entries for that period concern, respectively, a permission to appeal refusal on grounds previously addressed and a routine costs assessment. Accordingly, no TCD 2026 volume has been produced.

6. The digest is intended to be maintained as a living reference document and updated on a rolling basis as further decisions are published. The conventions used are consistent across all volumes: citations follow the official DIFC Courts neutral citation format; party names are as they appear in the published judgment or, where anonymised, as they appear on the DIFC Courts website; all monetary figures are as stated in the relevant judgment.

7. All feedback and suggestions for improvement are welcome.

CONTENTS

CASE NAME:

Nael v Niamh Bank

CASE REFERENCE:

[2024] DIFC CA 015

KEY ISSUES ADDRESSED:

Whether recognition and enforcement of an arbitral award in the DIFC Courts may be refused on grounds of UAE public policy, pursuant to Article 44(1)(b)(ii) of the DIFC Arbitration Law, where there is a conflicting onshore court judgment ordering suspension of the relevant bank guarantees. The relationship between the DIFC Arbitration Law and the New York Convention in relation to the public policy exception. Whether the DIFC Courts are bound by the New York Convention by operation of the DIFC Arbitration Law.

KEY ISSUE DECIDED:

The Court of Appeal dismissed the appeal and confirmed the enforcement of the arbitral award. The public policy exception to enforcement under Article 44(1)(b)(ii) of the DIFC Arbitration Law is to be construed consistently with Article V(2)(b) of the New York Convention. The DIFC Courts are bound to give effect to the New York Convention by reason of Article 42(1) of the Arbitration Law, a point that had not been the subject of clear prior authority. The existence of a conflicting onshore court order did not satisfy the high threshold required to engage the public policy exception. The exception is reserved for cases where enforcement would violate the most fundamental principles of UAE justice, and a supervening interlocutory order suspending guarantees did not meet that standard.

SUMMARY OF THE CASE:

1. The claimant/respondent, Nael, was an employer under contracts for the infrastructure works of a large public project. Under those contracts the contractor was required to procure performance guarantees and bonds from the defendant/appellant, Niamh Bank.

2. A dispute arose between the employer and the contractor. The contractor commenced an arbitration. The arbitral tribunal found in favour of the contractor and made an award (the "Award") that included findings as to the employer's entitlement to call the guarantees.

3. On 30 October 2023, the DIFC Courts made an order recognising the Award as binding within the DIFC and enforcing it in the same manner as a judgment of the Court. Judgment was entered in terms of the Award.

4. In separate proceedings before an onshore court, orders had been obtained suspending the liquidation and encashment of the guarantees, initially for six months. Those orders were extended on multiple occasions. The Bank relied on those orders as a basis for resisting enforcement.

5. The Bank applied to set aside the DIFC enforcement judgment on 14 November 2023, contending that it was inconsistent with the onshore suspension orders and that enforcement would be contrary to the public policy of the UAE within the meaning of Article 44(1)(b)(ii) of the DIFC Arbitration Law.

6. The CFI rejected the application in a judgment dated 1 August 2024. The Bank appealed, relying on the same grounds.

7. The Court of Appeal held that the DIFC Arbitration Law must be read consistently with the New York Convention. Article 42(1) of the Law provides that the UAE is a party to the New York Convention and the Court is bound to give it effect. This resolved a point that had been doubted in the Commentary to the DIFC Courts' Practice and in earlier case law (Lahela v Lameez [2020] DIFC CA 007).

8. The public policy exception in Article 44(1)(b)(ii), read consistently with Article V(2)(b) of the New York Convention, is to be narrowly construed. It is reserved for cases where enforcement would violate the most fundamental norms of the UAE legal order — notions of basic justice and morality — not merely cases where the award conflicts with another court's order.

9. The existence of the onshore suspension orders did not elevate the Bank's case to one engaging the public policy exception. Those orders were interlocutory in character and did not represent a final determination of the parties' rights. The Court declined to treat a tactical step in parallel litigation as a basis for refusing enforcement of a validly obtained award.

10. The appeal was dismissed. The decision reinforces the DIFC Courts' strong pro-enforcement culture and provides important clarification that Article 42(1) of the Arbitration Law gives treaty status to the New York Convention within the DIFC legal order.

CASES CITED/RELIED UPON BY THE COURT:

DIFC Arbitration Law (DIFC Law No. 1 of 2008, as amended), Arts. 42(1), 44(1)(b)(ii)

New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958, Art. V(2)(b)

Egan v Eava [2013] DIFC ARB 002 (Justice Sir Anthony Colman)

Lahela v Lameez [2020] DIFC CA 007 (considered and doubts resolved)

LINK:

https://www.difccourts.ae/rules-decisions/judgments-orders/court-appeal/nael-v-niamh-bank-2024-difc-ca-015

CASE NAME:

Korek Telecom Company LLC & Ors v Iraq Telecom Limited & Anor

CASE REFERENCE:

[2024] DIFC CA 016

KEY ISSUES ADDRESSED:

The existence, scope, and application of the act of state doctrine in the DIFC and its interaction with the public policy of the UAE. Whether the act of state doctrine precludes a DIFC-seated arbitral tribunal from examining a tortious conspiracy claim where the alleged wrong involved corruptly procuring an adverse decision of a foreign state authority. Whether the Kirkpatrick exceptions to the act of state doctrine apply in the DIFC. The admissibility of investigative materials allegedly unlawfully obtained.

KEY ISSUE DECIDED:

The Court of Appeal dismissed the appeal. The act of state doctrine does not preclude a DIFC-seated arbitral tribunal from examining a tortious conspiracy claim arising from the corrupt procurement of a foreign state authority's decision, where the subject of the inquiry is the conduct of the private parties rather than the validity of the state act itself. The Kirkpatrick exceptions — which confine the doctrine to cases requiring the Court to declare invalid an act of a foreign sovereign — apply in the DIFC and were applicable on the facts. The doctrine should not be deployed as a shield for corrupt conduct. The UAE Federal Supreme Court decision 714/218, insofar as it reflects a public policy against review of decisions of foreign administrative authorities, does not extend to cases where the focus is on the private parties' wrongdoing rather than the sovereign decision itself. The admissibility of the investigative materials was a matter for the tribunal's procedural discretion.

SUMMARY OF THE CASE:

1. The appellants, Korek Telecom Company LLC, Korek International (Management) Limited, and Mr Sirwan Saber Mustafa, were parties to an arbitration seated in the DIFC. The respondents, Iraq Telecom Limited, advanced a tortious conspiracy claim alleging that the appellants had corruptly procured an adverse decision of the Communications and Media Commission of Iraq (the "CMC").

2. The CMC is the Iraqi telecommunications regulatory authority. The allegation was that the appellants bribed or otherwise improperly influenced CMC officials to issue a decision that was detrimental to Iraq Telecom's interests, causing substantial loss and damage.

3. The arbitral tribunal found the tortious conspiracy claim made out and awarded substantial damages in favour of Iraq Telecom. The appellants applied to the DIFC CFI to challenge the award, contending that the tribunal had exceeded its jurisdiction by purporting to examine the CMC's decision.

4. The appellants' primary argument was that the act of state doctrine — a doctrine recognised in English common law that prevents courts from adjudicating upon the validity of the sovereign acts of a foreign state — applied in the DIFC by operation of

the common law, and that it precluded the tribunal from making any finding that involved canvassing or impugning the CMC decision.

5. The appellants further contended that a UAE public policy rule against judicial review of decisions of foreign state authorities — derived from UAE Federal Supreme Court decision 714/218 — independently precluded the tribunal's findings and provided a ground to refuse enforcement of the award.

6. A further ancillary issue concerned the admissibility before the tribunal of investigative materials that the appellants alleged had been unlawfully obtained. The tribunal had admitted the materials; the appellants challenged that decision.

7. The Court of Appeal conducted a comprehensive analysis of the act of state doctrine across common law jurisdictions, finding that the doctrine applies in the DIFC by virtue of the common law but is subject to important limitations — including the Kirkpatrick exceptions derived from W.S. Kirkpatrick & Co v Environmental Tectonics Corporation International (1990, US Supreme Court).

8. The Kirkpatrick exceptions confine the doctrine to cases where the Court is required to declare invalid an act of a foreign sovereign. Where, by contrast, the foreign state act is simply one element of the factual matrix, and the real question is whether private parties acted corruptly in procuring it, the doctrine does not apply. The tribunal was not asked to declare the CMC decision invalid; it was asked to find that the appellants had bribed officials to procure it.

9. On the UAE public policy ground, the Court found that Federal Supreme Court decision 714/218 was concerned with the review of administrative decisions by foreign authorities and did not extend to preclude examination of the private parties' conduct. The Court emphasised that neither the DIFC Courts nor DIFC-seated arbitrators should be blinded to corruption by an overbroad application of the act of state doctrine or a public policy norm not directed at the conduct in question.

10. The appeal was dismissed in its entirety. The decision is a significant contribution to the jurisprudence of the act of state doctrine in international arbitration and clarifies that the doctrine will not be deployed to shield corrupt conduct from judicial or arbitral scrutiny in the DIFC.

CASES CITED/RELIED UPON BY THE COURT:

W.S. Kirkpatrick & Co v Environmental Tectonics Corporation International 493 US 400 (1990, US Supreme Court)

Empresa Exportadora De Azucar v Industria Azucarera Nacional SA (The Playa Larga) [1983] 2 Lloyd's Rep 171 (CA)

Fulham Football Club (1987) Ltd v Richards [2011] EWCA Civ 855

UAE Federal Supreme Court Decision No. 714/218 (considered and distinguished)

DIFC Amendment Law (DIFC Law No. 2 of 2022) — Application Law, as amended

LINK:

https://www.difccourts.ae/rules-decisions/judgments-orders/court-appeal/1-korek-telecom-company-llc-2-korek-international-management-limited-3-sirwan-saber-mustafa-v-1-iraq-telecom-limited-itself-and

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CASE NAME:

Trafigura PTE Ltd & Trafigura India PTV Ltd v Prateek Gupta & Ginni Gupta

CASE REFERENCE:

[2025] DIFC CA 001

KEY ISSUES ADDRESSED:

Whether the DIFC Courts have jurisdiction under the new Court Law (Dubai Law No. 2 of 2025) to grant a UAE-wide freezing order in support of foreign court proceedings where no DIFC-connected judgment has yet been obtained. The correct interpretation of Article 15(4) of the 2025 Court Law, which confers jurisdiction over applications for interim measures related to proceedings brought outside the DIFC. Whether a freezing order in aid of anticipated enforcement proceedings requires a separate independent head of jurisdiction or whether it is sufficient that an enforcement jurisdiction may be enlivened once judgment is given in the foreign proceedings.

KEY ISSUE DECIDED:

The Court of Appeal allowed the appeal and held that the DIFC Courts have jurisdiction to grant a freezing order in support of foreign proceedings where an enforcement jurisdiction may be enlivened in due course. Under Article 15(4) of the 2025 Court Law, the DIFC Courts have express jurisdiction over applications for interim measures related to proceedings brought outside the DIFC. A freezing order does not require a separate head of jurisdiction if it is sought in aid of an enforcement jurisdiction — here, the power to recognise and enforce foreign judgments under Article 31(4) — which will be enlivened once judgment is obtained in the foreign court. This is the first Court of Appeal judgment to interpret the 2025 Court Law and it marks a significant expansion of the DIFC Courts' interim relief jurisdiction, superseding the restrictive position established by the Court of Appeal in Sandra Holding Ltd v Al Saleh [2023] DIFC CA 003 under the previous legislative framework.

SUMMARY OF THE CASE:

1. Trafigura PTE Ltd and Trafigura India PTV Ltd were parties to English High Court proceedings against Mr Prateek Gupta and Mrs Ginni Gupta in relation to a substantial commercial dispute involving an alleged minimum sum of USD 650 million. The substantive dispute was being litigated in England.

2. The English courts had granted freezing orders against the respondents, but those orders were of limited practical effect in Dubai. The respondents did not reside in England, and third parties in Dubai — including Emirates NBD — had declined to treat themselves as bound by the English orders, taking the position that as non-English entities they were under no obligation to comply.

3. Trafigura sought a UAE-wide freezing order from the DIFC Courts in order to restrain the respondents from dealing with their Dubai-based assets pending the outcome of the English proceedings, and to enable effective enforcement once a judgment was obtained.

4. The application came before H.E. Deputy Chief Justice Ali Al Madhani on 16 April 2025. Despite accepting that Trafigura had demonstrated a good arguable case and

sufficient urgency, the Deputy Chief Justice refused the application on 17 April 2025 on the grounds that the DIFC Courts lacked jurisdiction to make such an order.

5. The appeal was heard by a bench of H.E. Chief Justice Wayne Martin, H.E. Justice Robert French, and H.E. Justice Sir Peter Gross on 2 September 2025. Counsel for the appellants was Mr Tom Montagu-Smith KC (Stephenson Harwood Middle East); counsel for the respondents were Mr Alistair Webster KC and Mr Faisal Osman.

6. The Court analysed Article 15(4) of the 2025 Court Law, which provides that the DIFC Courts have jurisdiction to hear and determine applications for interim or precautionary measures related to: "applications, claims or current or future arbitral proceedings brought outside the DIFC seeking suitable precautionary measures within the DIFC." The Court also considered Article 31(4), which confers jurisdiction to enforce foreign judgments.

7. The Court held that the 2025 Court Law had materially expanded the DIFC's jurisdictional foundations by comparison with the Judicial Authority Law which it replaced. Whereas Sandra Holding v Al Saleh [2023] DIFC CA 003 had found no jurisdiction under the JAL to grant freezing orders in support of foreign proceedings, the express language of the 2025 Court Law provided the necessary foundation.

8. A freezing order does not require a separate independent head of jurisdiction if it is sought in aid of an enforcement jurisdiction. Trafigura's anticipated enforcement jurisdiction under Article 31(4) was sufficient: the freezing order was a precautionary measure to preserve the utility of that enforcement jurisdiction. To hold otherwise would be to drain the enforcement jurisdiction of practical effect.

9. The Court also addressed the role of the DIFC Courts as a conduit court for UAE-wide enforcement, observing that the practical purpose of granting such relief was to ensure that assets accessible through the Dubai enforcement mechanism were preserved pending a foreign judgment, a purpose squarely within the intended function of the DIFC's interim relief jurisdiction under the new Law.

10. The appeal was allowed. The decision is the first authoritative interpretation of the 2025 Court Law and is of major practical significance for international creditors with claims against parties holding assets in Dubai. Subject to satisfying the conventional freezing order criteria — good arguable case, risk of dissipation, balance of convenience — a claimant in foreign proceedings may now obtain DIFC protective relief at an early stage of those proceedings.

CASES CITED/RELIED UPON BY THE COURT:

Dubai Court Law (Dubai Law No. 2 of 2025), Arts. 15(4), 31(4)

Sandra Holding Ltd v Al Saleh [2023] DIFC CA 003 (distinguished on the basis of the new legislative framework)

Carmon v [DIFC] (Court of Appeal, unreported, cited at [129] and [156] on the scope of interim remedies jurisdiction)

DIFC Courts Procedure Rules (RDC), Pt 25.1(6) and 25.3

LINK:

https://www.difccourts.ae/rules-decisions/judgments-orders/court-appeal/1-trafigura-pte-ltd-2-trafigura-india-ptv-ltd-v-1-mr-prateek-gupta-2-mrs-ginni-gupta-2025-difc-ca-001

CASE NAME:

Oran & Oaken v Oved

CASE REFERENCE:

CA 004/2025 (Reasons for Order of the Court of Appeal dated 20 October 2025)

KEY ISSUES ADDRESSED:

Whether the DIFC Courts have jurisdiction to grant an anti-suit injunction (ASI) restraining English proceedings where the jurisdictional foundation relied upon is the existence of a DIFC-seated arbitration agreement. The standard to which the Court must be satisfied that an arbitration is seated in the DIFC before it will exercise jurisdiction. Whether the CFI erred in extending an ex parte ASI and dismissing the appellants' jurisdiction challenge. The principles governing the exercise of the discretion to grant an ASI where jurisdiction has not been established to the requisite standard. Whether an arbitration agreement contained in a consumer contract is governed by the DIFC Arbitration Law.

KEY ISSUE DECIDED:

The Court of Appeal allowed both appeals. Once the CFI was not satisfied to the requisite degree that the arbitration was seated in the DIFC, there was no other source of jurisdiction available to the Court. The jurisdiction challenge should therefore have been upheld and the ASI discharged. The Court also held that, even on the assumption that jurisdiction existed, the discretion to continue the ASI had been wrongly exercised: the injunction had been granted ex parte and extended in circumstances that did not satisfy the demanding requirements for relief of that kind. A notice of contention by the respondent — asserting that the Court should have positively found that the arbitration was seated in the DIFC — was rejected. The Court expressed reservations about whether an arbitration agreement in a consumer contract engaged the DIFC Arbitration Law, but left the point open. The ASI was discharged.

SUMMARY OF THE CASE:

1. The claimant/respondent, Oved, asserted that a commercial dispute with the appellants — the estate of the late Mr Oran and Mr Oaken — was governed by an arbitration agreement providing for DIFC-seated arbitration. Oved commenced proceedings in the DIFC Courts and sought an anti-suit injunction to restrain the appellants from pursuing English proceedings.

2. On 20 January 2025, the DIFC CFI granted an ex parte ASI. On 6 February 2025, following a contested hearing, the Judge extended the injunction and published reasons on 19 February 2025. The scope of the injunction was disputed: Oved contended it restrained the appellants from pursuing English court proceedings in any form, not merely from making an application under s.9 of the Arbitration Act 1996 for a stay pending arbitration. The CFI confirmed Oved's interpretation; English proceedings were stayed as a result.

3. The appellants applied for a stay of proceedings pending appeal, permission to appeal, and a declaration that the Court lacked jurisdiction. On 23 June 2025, the Judge dismissed the jurisdiction application. The appellants appealed both the extension of the ASI and the refusal of the jurisdiction declaration.

4. The Court of Appeal heard both appeals on 16 October 2025 before H.E. Chief Justice Wayne Martin, H.E. Justice Robert French, and H.E. Justice Sir Peter Gross and made its orders on the same day. The reasons were published on 28 October 2025.

5. The central issue on jurisdiction was whether the arbitration was, in fact, seated in the DIFC. The appellants contended that it was not, or at least that no sufficient foundation existed for the Court to be satisfied that it was. The CFI had found that it was not satisfied to the requisite degree that the arbitration was DIFC-seated but had nonetheless dismissed the jurisdiction challenge.

6. The Court of Appeal held that this reasoning was irreconcilable. Having declined to find to the requisite standard that the arbitration was DIFC-seated, the CFI had no residual source of jurisdiction on which to rely. The only proper conclusion was that the jurisdiction challenge succeeded.

7. The Court also addressed the ASI on the assumption that jurisdiction had existed. It held that Ground 11 of the appeal was well-founded: the Court had erred in the exercise of its discretion by extending an ex parte injunction in circumstances that did not satisfy the threshold for that relief and by treating the injunction's scope as broader than could be justified.

8. Oved served a Notice of Contention asserting that the Court should have positively found that the arbitration was DIFC-seated, and a further ground addressing whether the arbitration agreement was contained in a consumer contract — which would affect whether the DIFC Arbitration Law applied at all. The Court rejected the Notice of Contention on the seating point. The consumer contract question was flagged as raising real issues but was not finally determined.

9. Both appeals were allowed. The ASI was discharged and the jurisdiction objection upheld. The English proceedings, which had been stayed, were freed from the effect of the DIFC injunction.

10. The decision is an important corrective on the relationship between jurisdiction and the grant of anti-suit relief: the Court cannot maintain an ASI when it has declined to be satisfied that the jurisdictional foundation for the relief exists. It also illustrates the difficulties that arise when ASIs are granted ex parte on a contested jurisdictional basis and scope disputes are resolved in correspondence rather than by clear order.

CASES CITED/RELIED UPON BY THE COURT:

Dubai Court Law (Dubai Law No. 2 of 2025), Arts. 22, 32

DIFC Arbitration Law (DIFC Law No. 1 of 2008, as amended)

Arbitration Act 1996 (England and Wales), s.9

Carmon v [DIFC] (cited on interim remedies jurisdiction)

The Angelic Grace [1995] 1 Lloyd's Rep 87 (CA) (applied on the ASI discretion)

DIFC Employment Law 2005 (considered on consumer/employment contract issue)

LINK:

https://www.difccourts.ae/rules-decisions/judgments-orders/court-appeal/ca-0042025-1-oran-2-oaken-v-oved

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PROCEDURAL AND INTERLOCUTORY ORDERS — COURT OF APPEAL 2025

The following matters appeared in the Court of Appeal's 2025 records but are purely procedural or interlocutory in nature and have not been digested:

1. CA 002/2025 — Olsen & Obed v Othmar (25 June 2025, Court of Appeal — Orders). Order with Reasons of H.E. Chief Justice Wayne Martin on enforcement-related applications: document production, security for costs of production application, and extension of time to comply with a Part 50 (judgment debtor examination) order. Judgment creditors/appellants and a second judgment debtor/respondent. Case reference: ENF-106-2023.

2. CA 002/2025 — Olsen & Obed v Othmar (9 September 2025, Court of Appeal — Orders). Further interlocutory order with reasons in the same enforcement proceedings.

3. Nadil & Noshaba v Nameer & Naseema (26 April 2025, Court of Appeal — Orders). Order of the Court of Appeal; penal notice and anti-suit relief. No case reference visible from the public listing.

4. Nadil & Noshaba v Nameer & Naseema (13 June 2025, Court of Appeal — Orders). Further interlocutory order in the same matter.

5. CA 004/2025 — Oran & Oaken v Oved (8 December 2025, Court of Appeal — Orders). Order with Reasons of H.E. Chief Justice Wayne Martin on costs consequential upon the judgment of 20 October 2025 (digested above). The respondent was ordered to pay the appellants' costs.

6. Nael v Niamh Bank [2024] DIFC CA 015 (14 March 2025, Court of Appeal — Orders). Post-judgment interlocutory order consequential upon the judgment of 9 January 2025 (digested above).

VOLUME II — TECHNOLOGY AND CONSTRUCTION DIVISION 2025

CASE NAME:

Architeriors Interior Design (L.L.C) v Emirates National Investment Co (L.L.C)

CASE REFERENCE:

[2024] DIFC TCD 001

KEY ISSUES ADDRESSED:

Whether a pre-contractual oral agreement to substitute a lesser specification of fit-out materials is enforceable notwithstanding entire agreement clauses in a written construction contract. The scope of a settlement reached in Minutes of Meeting ("MOM") establishing a revised completion date, and in particular whether such a settlement bars subsequent extension of time and prolongation claims. The date by reference to which a Taking Over Certificate should have been issued and the consequential entitlement to an extension of time. Application of the Emden formula for head-office overhead losses in a prolongation claim where there is no direct evidence of work turned away. The treatment of variation back-charges where the employer's engineer accepted and certified additional works during the currency of the contract.

KEY ISSUE DECIDED:

The claim succeeded in substantial part. Architeriors was awarded AED 2,719,662.58. The specification change claim was dismissed: notwithstanding the alleged pre-contractual discussions, the Court found no concluded agreement to substitute lesser materials — the contemporaneous conduct of Architeriors was inconsistent with any such agreement, and the entire agreement clauses in the contract precluded reliance upon alleged pre-contractual understandings. The MOM settlement, while establishing a revised completion date, did not operate as a full settlement of all antecedent claims. The Taking Over Certificate ought to have been issued on 9 March 2023 — not 5 June 2023 as asserted by the employer — because Architeriors' works were substantially complete by that earlier date, with remaining delays attributable to other contractors. An extension of time of 184 days was awarded. Prolongation costs were allowed on the Emden formula for head-office overheads without requiring direct proof that work had been turned away. ENI was entitled to liquidated and ascertained damages for 16 days of culpable delay on the contractor's part. The defective works counterclaim was largely rejected.

SUMMARY OF THE CASE:

1. The claimant, Architeriors Interior Design LLC ("Architeriors"), was engaged by the defendant, Emirates National Investment Co LLC ("ENI"), under a contract dated 14 March 2022 for interior fit-out and refurbishment works at the Amber Residency, Plot 366-129, Dubai. The contract value was approximately AED 18 million — a figure at or about ENI's stated budget, to which Architeriors had reduced its price in order to secure the appointment.

2. Architeriors advanced three heads of claim: (i) additional costs arising from an alleged pre-contractual agreement to substitute a lower specification of materials; (ii) an extension of time of 200 days and associated prolongation costs for the period between the revised completion date of 17 November 2022 and the actual Taking Over Certificate ("TOC") issued on 5 June 2023; and (iii) payment of outstanding variation orders and reversal of what it characterised as illegitimate deductions. ENI disputed all heads of claim and counterclaimed for defective works.

3. The trial was heard before H.E. Justice Roger Stewart over four days (30 June to 3 July 2025). The trial bundle ran to over 51,000 pages. The parties adduced substantial expert evidence from delay experts (Mr Spruit of Currie & Brown for Architeriors; opposing expert for ENI) and quantum experts (Mr White of White Consulting DMCC for Architeriors; opposing expert for ENI). The Court commented that the volume of expert evidence was disproportionate to the sums in dispute and that, as is commonly the case, the documentary record provided the primary basis for resolving the factual disputes.

4. On the specification change claim, the Court rejected Architeriors' case. The Court found that: (a) Architeriors had been keen to secure the contract and had knowingly reduced its price to ENI's AED 18m budget; (b) it had never provided an alternative specification or objected contemporaneously to signing the contract specification; (c) its post-contract conduct — including the terms of minutes of meeting — was inconsistent with any concluded specification change agreement; and (d) the entire agreement clauses in the contract precluded reliance on pre-contractual understandings. The Court found that Architeriors' conduct did not constitute good faith dealing.

5. On the MOM settlement, ENI argued that the Minutes of Meeting establishing the revised completion date of 17 November 2022 constituted a full and final settlement of all contractual claims accrued to that date. The Court rejected that broad construction. The MOM operated to fix a revised completion date but did not bar Architeriors' subsequent time and money claims.

6. On extension of time, Architeriors argued that the TOC should have been issued on 9 March 2023 rather than 5 June 2023. The Court accepted this: by 9 March 2023 Architeriors' works were substantially complete. Delays thereafter were caused by other contractors or by interface works beyond Architeriors' scope, and the letting of the Amber Residency was being held up by factors outside the fit-out contractor's control. An extension of time of 184 days was awarded. ENI was held entitled to liquidated and ascertained damages for 16 days of culpable delay on Architeriors' part.

7. On prolongation costs, the Court awarded: (a) time-related indirect costs at AED 4,564.05 per day (splitting the difference of AED 26 per day between the parties' respective expert figures) for 184 days — a total of approximately AED 839,850; and (b) head-office overheads on the Emden formula of AED 1,659,532.16 for 184 days, as agreed between the quantum experts on a "figures as figures" basis. ENI disputed the Emden entitlement on the ground that there was no direct evidence that Architeriors had turned work away. The Court rejected that objection: proof of turned-away work is not a prerequisite to recovery of head-office overheads by the Emden method where the

contractor's business is otherwise established to have been disrupted by the employer's breach. The contract conditions precluded any additional claim for loss of profit.

8. On variations, the Court assessed a number of variation orders claimed by Architeriors and back-charges sought by ENI. Where works had been accepted and certified by the employer's engineer (BAM) during the currency of the contract, the Court was slow to allow ENI to reverse those acceptances by way of back-charge, absent cogent evidence that the certification had been erroneous. Four back-charge items advanced by ENI were rejected on this basis.

9. On ENI's counterclaim for defective works — principally relating to waterproofing failures, inadequate falls on bathroom flooring, and mould in apartments — the Court found largely in favour of Architeriors. Architeriors had acted upon notices of defect and rectified what it was aware of. The original building water supply infrastructure may have contributed to the mould problems. Architeriors had not been informed of the mould issues and would have remedied them if notified. ENI's expert (Mr Clark) had not visited the site contemporaneously and was poorly placed to give reliable evidence on the waterproofing failures.

10. The Court made an order that ENI pay Architeriors AED 2,719,662.58 in accordance with the final account set out in Appendix 1 to the judgment. Interest and costs were reserved for further written submissions from the parties.

CASES CITED/RELIED UPON BY THE COURT:

No English or DIFC authorities are specifically cited in the reported text of the judgment. The Court applied general principles of contract interpretation, construction law (extension of time, substantial completion, and prolongation costs including the Emden formula), and the DIFC Courts' Rules of Procedure (RDC).

LINK:

https://www.difccourts.ae/rules-decisions/judgments-orders/technology-and-construction-division/architeriors-interior-design-llc-v-emirates-national-investment-co-llc-2024-difc-tcd-001

CASE NAME:

Ahmed Mohamed Eid Al Yahad Al Zaabi v Al Buhaira National Insurance Company

CASE REFERENCE:

[2024] DIFC TCD 002

KEY ISSUES ADDRESSED:

Whether cover under a marine insurance policy issued on the basis of International Yacht Clauses (IYC) incepted in the absence of a pre-inception survey as required by the policy. Whether an individual insuring a vessel primarily intended for commercial use is a

"consumer" within the meaning of the Consumer Insurance (Disclosure and Representations) Act 2012 ("CIDRA 2012") and the Insurance Act 2015 ("IA 2015"), and whether the consumer protections in IA 2015, ss.10–11 are therefore available to the insured. Whether breach of a "warranted solely for private pleasure purposes" warranty entitles the insurer to avoid liability under a non-consumer marine policy governed by the Marine Insurance Act 1906 ("MIA 1906"). Whether an adverse inference should be drawn from the insured's failure to co-operate with post-casualty investigation.

KEY ISSUE DECIDED:

The claim was dismissed. The insurer was entitled to avoid and did validly avoid the policy on three independent grounds: (i) the pre-inception survey condition was not met — no genuine survey of the vessel's seaworthiness was carried out before the policy incepted, so cover never arose; (ii) the private pleasure use warranty was breached — the claimant intended to use the vessel for commercial purposes (a water taxi and ferry service), making this a commercial rather than a private insurance, and the consumer protections in IA 2015 ss.10–11 did not apply because the insured was not a "consumer" as defined in CIDRA 2012 and IA 2015; and (iii) the "left unattended" warranty in the policy was also breached. The Court declined to draw an adverse inference from the claimant's failure to commission forensic investigation of the explosion: there was no positive obligation to do so, and it was not clear that further investigation would have established the precise cause.

SUMMARY OF THE CASE:

1. The claimant, Ahmed Mohamed Eid Al Yahad Al Zaabi, acquired a speedboat/motor yacht ("the Vessel") and insured it with the defendant, Al Buhaira National Insurance Company, under a marine insurance policy governed by the International Yacht Clauses and incorporating standard warranties. The policy was issued in June 2023 for a premium of AED 9,000. The insured value of the Vessel was approximately AED 1 million on a cost basis, with a replacement value of AED 1.5 to 1.6 million.

2. The Vessel was put into the water around 15 June 2023. On 26 June 2023 — approximately eleven days later — it exploded while secured at berth 1, Al Qawasim Corniche Road, opposite RAK Khor Port. The Vessel was unattended at the time. The claimant brought a claim under the marine policy for the resulting loss and damage.

3. The defendant resisted the claim on multiple grounds: (a) no valid pre-inception survey had been carried out; (b) the claimant had misrepresented the intended use of the vessel as private pleasure when it was in fact intended for commercial use; (c) the private pleasure use warranty had been breached; (d) the "left unattended" mooring warranty had been breached; and (e) the explosion resulted from a want of due diligence by the owners or managers.

4. A post-casualty valuation certificate was obtained by the defendant from MVS International Broker LLC, placing the vessel's value at between USD 80,000 and USD 100,000. A post-casualty survey report was produced by ABL Marine Service LLC, which had been unable to obtain much of the documentation it had requested from the claimant. On 21 December 2023, the claimant produced what was said to be a Condition and Value Report from BIL Surveyors dated 8 June 2023. The Court found this report

to be backdated and unreliable: it assessed value only (and "subject to seaworthiness"), not seaworthiness, which was inconsistent with the survey requirement in the policy. No genuine pre-inception seaworthiness survey had been carried out.

5. On the pre-inception survey condition, the Court held that the policy required a survey before cover incepted. That condition had not been satisfied. Cover therefore never arose, and ss.10 and 11 of IA 2015 — which enable certain warranty breaches to be set aside in consumer contracts — provided no assistance: the requirement could not be remedied; there had been no waiver; and, critically, the insured was not a consumer in any event.

6. On the consumer/commercial distinction, the Court held that the claimant intended to use the Vessel mainly for business purposes — specifically as a commercial water taxi and ferry service from Ras Al Khaimah. This was a fixed intention, evidenced by preparatory steps he had taken. Although some private use was possible, the predominant purpose was commercial. The insured accordingly fell outside the definitions in s.1 of CIDRA 2012 and s.1 of IA 2015 of a "consumer", which require that the contract be entered into for purposes "wholly or mainly unrelated to the individual's trade, business or profession."

7. On the private pleasure use warranty (warranted solely for private pleasure purposes, not for hire, charter or reward), the Court held that the breach was established by the claimant's own evidence as to his commercial intentions. Since this was not a consumer contract, s.11 of IA 2015 — under which a warranty breach only discharges the insurer from liability for risks to which it was relevant — did not apply. The insurer was therefore entitled to rely on the warranty breach without needing to demonstrate that it increased the risk of the particular loss suffered. The use of a vessel for commercial purposes represents a materially different and greater risk than private use — heavier use, greater wear and tear, and greater liabilities — rendering s.11 inapplicable as a matter of principle in any event.

8. On the "left unattended" warranty, the policy warranted that the yacht must be either marina-based, or securely moored at a safe assigned place not exposed to the open sea, and must not be left unattended whilst not in use. The Vessel was moored at a berth on the corniche and was unattended at the time of the explosion. The Court found this warranty had also been breached.

9. On due diligence and the cause of the explosion, the Court noted that boats should not explode and that it was likely that something went wrong, probably due to someone's fault. However, the Court declined to draw an adverse inference from the claimant's failure to carry out or commission a forensic investigation: there was no positive obligation to do so; the defendant was not prevented from investigating; and it was not clear that further investigation would have established the precise cause. This issue was not the primary basis for the dismissal.

10. The claim was dismissed. The Court declared that the defendant was and remained entitled to avoid/repudiate/cancel the insurance contract, and that it had done so validly.

Costs were awarded to the defendant and were immediately assessed, with the defendant directed to file a costs schedule within 7 days. The case is noteworthy as an early marine insurance judgment of the DIFC TCD, and confirms the application of English marine insurance law — MIA 1906, IA 2015, and CIDRA 2012 — within the DIFC legal order.

CASES CITED/RELIED UPON BY THE COURT:

Marine Insurance Act 1906 (UK), s.33 (nature of warranty); applied as governing law of the policy

Insurance Act 2015 (UK), ss.10–11 (basis clauses and warranties; consumer distinction); s.1 (definition of consumer insurance contract)

Consumer Insurance (Disclosure and Representations) Act 2012 (UK), s.1 (definition of consumer insurance contract)

International Yacht Clauses (IYC), Clauses 5 (speed warranty), 19.1 (competent person on board when under way)

LINK:

https://www.difccourts.ae/rules-decisions/judgments-orders/technology-and-construction-division/ahmed-mohamed-eid-al-yahad-al-zaabi-v-al-buhaira-national-insurance-company-2024-difc-tcd-002

PROCEDURAL AND INTERLOCUTORY ORDERS — TECHNOLOGY AND CONSTRUCTION DIVISION 2025

The following matters appeared in the TCD's 2025 records but are purely procedural or interlocutory in nature and have not been digested:

1. TCD 001/2024 — Architeriors Interior Design LLC v Emirates National Investment Co LLC (3 April 2025, TCD — Orders). Interlocutory case management order.
2. TCD 002/2024 — Ahmed Mohamed Eid Al Yahad Al Zaabi v Al Buhaira National Insurance Company (1 July 2025, TCD — Orders). Interlocutory order in the marine insurance proceedings.
3. TCD 001/2024 — Architeriors Interior Design LLC v Emirates National Investment Co LLC (22 August 2025, TCD — Orders). Interlocutory case management order.
4. TCD 001/2024 — Architeriors Interior Design LLC v Emirates National Investment Co LLC (23 September 2025, TCD — Orders). Post-judgment interlocutory order, consequential upon the judgment of 31 July 2025.
5. TCD 002/2024 — Ahmed Mohamed Eid Al Yahad Al Zaabi v Al Buhaira National Insurance Company (8 October 2025, TCD — Orders). Post-judgment costs/consequential order following the judgment of 28 August 2025.
6. TCD 001/2024 — Architeriors Interior Design LLC v Emirates National Investment Co LLC (3 December 2025, TCD — Orders). Further post-judgment interlocutory order.

7. TCD 001/2024 — Architeriors Interior Design LLC v Emirates National Investment Co LLC (30 December 2025, TCD — Orders). Further post-judgment interlocutory order.

8. TCD 002/2024 — Ahmed Mohamed Eid Al Yahad Al Zaabi v Al Buhaira National Insurance Company (2025, TCD — Orders). Additional interlocutory order in the marine insurance proceedings.

CASE NAME:

(1) Sam Precious Metals FZ-LLC (2) Sami Riyad Mahmoud Abu Ahmad (3) Rosyson FZE v (1) Snyder Prime Limited (2) Phoebe Leah Tooker (3) Shakti Chauhan

CASE REFERENCE:

[2023] DIFC CFI 030

KEY ISSUES ADDRESSED:

Whether a memorandum of understanding ("MOU") expressed on its face to be "not legally binding" became binding upon the parties by virtue of their subsequent mutual conduct in performing under it. The legal effect of successive joint venture agreements (MOU and Share Transfer Agreement) read together under the DIFC Contract Law. The binding effect of a shareholders' Resolution dated 31 December 2020. Whether claims in damages for failure to provide gold as working capital and failure to cooperate in liquidation procedures were adequately pleaded and evidenced.

KEY ISSUE DECIDED:

The Claimants' damages claims were dismissed. The Court declared the Resolution of 31 December 2020 legally valid and binding upon all parties who signed it, and declared the terms of the obligations flowing from it. The claim for damages arising from the alleged failure to provide gold as working capital under the MOU failed: although the parties had performed under the MOU (notwithstanding its "not legally binding" provision), they had modified their obligations through subsequent agreements and the claimant could not identify a subsisting breach causing loss. The claim for damages for failure to cooperate in liquidation procedures was dismissed for inadequacy of pleading and evidence: the losses were suffered by a Sharjah-registered entity rather than the DIFC claimant, no case on causation was advanced, and the claim rested on mere assertion. The parties were directed to mediation in respect of remaining disputed matters under the Resolution.

SUMMARY OF THE CASE:

1. The dispute arose from a joint venture in the precious metals trading business, conducted principally through Sam Precious Metals FZ-LLC ("SPM"), a company registered in a UAE free zone. The First Claimant, Mr Sami (the Second Claimant), and Rosy (the Third Claimant, being Mr Sami's wife) were the majority shareholders and operators of the business. The Third Defendant, Shakti Chauhan ("Mr Shakti"), acting through the First Defendant, Snyder Prime Limited ("SPL"), was a minority investor. The Second Defendant, Ms Tooker, was Mr Shakti's partner and also an SPL shareholder.

2. The joint venture was structured by a series of agreements: first, a Memorandum of Understanding ("MOU") entered into between the parties in 2018, which contained an express statement that it was "not legally binding" but which committed SPL to provide 200 kg of gold as working capital in exchange for a shareholding; and subsequently a

Share Transfer Agreement ("STA"), which also addressed capital contributions. By the end of 2020, SPL had never provided the promised gold capital in the form originally agreed, and the shareholders entered into the Resolution of 31 December 2020 ("the Resolution"), which adjusted the parties' obligations.

3. A central question at trial was whether the original MOU was binding. The Court, applying the DIFC Contract Law, concluded that although the MOU contained a "not legally binding" provision, the parties had in fact performed under it from shortly after execution, providing and accepting short-term gold investments and acting consistently with its terms. Under Article 5 of the DIFC Contract Law, a contract may be modified by mere agreement, and the parties' reciprocal performance was sufficient to constitute a variation of the "not binding" provision. The MOU had therefore become binding by conduct.

4. The Court considered the MOU and STA as successive joint venture agreements addressing the same subject matter between the same parties, and read them together as a composite record of the parties' understanding. The Court applied the interpretive principles in Articles 52 (interpretation as a whole) and 53 (all terms to be given effect) of the DIFC Contract Law.

5. On the gold working capital claim, SPM alleged that SPL had failed to provide the full 200 kg of gold promised under the MOU. The Court found that SPL had never provided the substantial secure gold capital originally promised. However, by the time of the Resolution, the parties had adjusted their mutual obligations. The Claimants' damages claim in respect of the gold shortfall failed on causation and quantum: the Claimants could not establish loss recoverable by SPM (as opposed to loss suffered by Mr Sami or Rosy personally) as a result of the shortfall.

6. On the liquidation cooperation claim, SPM alleged that SPL had failed to cooperate in winding up a Sharjah-registered subsidiary company ("the Sharjah Branch"), resulting in loss. This claim was dismissed. The Court found that: (i) any loss was suffered by the Sharjah Branch, not by SPM as a DIFC entity; (ii) there was no articulated legal basis for holding SPL or Mr Shakti liable for the conduct of a third-party director; (iii) no case on causation was pleaded; and (iv) the claim rested entirely on unsubstantiated assertion.

7. The Court declared the Resolution of 31 December 2020 to be a legally valid and binding agreement between those parties who had signed it. The Court declared the operative effect of its terms, including that the Second and Third Claimants were obliged to provide 100 kg of gold as working capital to SPM by the date specified, and that SPL's dividend entitlements were to be suspended until that obligation was fulfilled. The parties were directed to attempt mediation to resolve any residual disputes about implementation.

8. Costs of the proceedings to that point were reserved.

CASES CITED/RELIED UPON BY THE COURT:

DIFC Contract Law, Articles 5 (modification by agreement), 52 (interpretation of contract as a whole), 53 (all terms to be given effect), 81 (additional period for performance), 100 (substituted performance).

LINK:

https://www.difccourts.ae/rules-decisions/judgments-orders/court-first-instance/1-sam-precious-metals-fz-llc-2-sami-riyad-mahmoud-abu-ahmad-3-rosyson-fze-v-1-snyder-prime-limited-2-phoebe-leah-tooker-3-shakti

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CASE NAME:

ICICI Bank Limited v Bavaguthu Raghuram Shetty

CASE REFERENCE:

[2022] DIFC CFI 034

KEY ISSUES ADDRESSED:

Enforcement of personal guarantees given by B R Shetty in connection with the NMC Healthcare group collapse. Whether the "Modular" Personal Guarantee was a valid and binding document or was a forgery by transposition of a signature page from another guarantee document. Whether forensic handwriting evidence was sufficient to discharge the evidential burden on the defendant. The approach to be taken where a signature page appears to have been created by photocopying and insertion from another document.

KEY ISSUE DECIDED:

Judgment was entered for ICICI Bank in the sum of USD 106,294,108 on the NMC Personal Guarantees. The Modular Personal Guarantee was dismissed: the Court accepted Mr Shetty's case that the signature page of the Modular Guarantee had been created by transposing (photocopying) his signature from an earlier document, rendering it a document Mr Shetty had never genuinely executed. The NMC Personal Guarantees, by contrast, were upheld: the forensic handwriting evidence adduced by the defendant was insufficient to displace the strong documentary and circumstantial evidence that these were genuine signed instruments.

SUMMARY OF THE CASE:

1. ICICI Bank Limited ("ICICI") claimed under personal guarantees purportedly given by Bavaguthu Raghuram Shetty ("Mr Shetty"), the founder of NMC Healthcare Ltd ("NMC"), in respect of substantial credit facilities extended to NMC group companies. NMC collapsed in 2020 amidst one of the largest corporate frauds in UAE history, and multiple banks brought proceedings against Mr Shetty in the DIFC Courts.

2. There were two categories of guarantee in dispute before the Court. The first category (the "NMC Personal Guarantees") related to credit facilities provided directly to NMC group entities. The second was the "Modular Personal Guarantee", which related to a facility provided to a company called Modular Concept Investments LLC, a separate vehicle with which Mr Shetty had a more attenuated connection.

3. Mr Shetty denied executing the Modular Personal Guarantee and contended that his signature page had been copied or transposed from another guarantee document without his knowledge or authorisation. Expert forensic handwriting evidence was adduced on both sides. The physical characteristics of the signature page — including differences in paper quality, photocopying artefacts, and typographical inconsistencies between the signature page and the body of the document — pointed to the page having been created by physical transposition rather than genuine execution.

4. The Court, applying a careful analysis of the forensic evidence and the documentary record, upheld Mr Shetty's challenge to the Modular Personal Guarantee. The Court found that the balance of evidence supported the conclusion that the signature page was

not genuinely executed in the context of the Modular document, and that the Bank had not discharged the burden of establishing a valid executed guarantee in respect of the Modular facility. The claim on that guarantee was accordingly dismissed.

5. On the NMC Personal Guarantees, however, the Court found in ICICI's favour. Mr Shetty adduced forensic handwriting evidence suggesting that the signatures on these documents had not been written by him, but the Court found this evidence insufficient to displace the strong evidence that the guarantees were genuine: the documents had been produced in the ordinary course of banking business, were consistent with other executed instruments, and the defendant's conduct at the relevant times was inconsistent with a person who had not genuinely guaranteed NMC's obligations.

6. Judgment was entered for ICICI in the sum of USD 106,294,108 together with costs. The case is one of a series of judgments arising from the NMC collapse in which the DIFC Courts have addressed the authenticity of Mr Shetty's signatures on guarantee instruments: see also SBI (DIFC Branch) v NMC Healthcare Ltd & Shetty [2020] DIFC CFI 047.

CASES CITED/RELIED UPON BY THE COURT:

The Court applied the general law of guarantee and principles of documentary evidence applicable in the DIFC Courts. No specific authorities were confirmed in the notes available.

LINK:

https://www.difccourts.ae/rules-decisions/judgments-orders/court-first-instance/icici-bank-limited-v-bavaguthu-raghuram-shetty-2022-difc-cfi-034

CASE NAME:

Vision Investment and Holdings Limited v Mahdi Amjad

CASE REFERENCE:

[2022] DIFC CFI 053

KEY ISSUES ADDRESSED:

Whether an individual who signed a Loan Settlement Agreement as the "authorised representative" of a company thereby undertook a personal obligation or guarantee in favour of a third-party beneficiary. The applicable UAE law on guarantees: whether a guarantee must be explicit and clearly define the guarantor's obligations; whether a guarantee can extend to new, modified, or renewed debt without express fresh consent; and whether a guarantee can be inferred from signing a corporate document.

KEY ISSUE DECIDED:

The claim for AED 26,668,646 was dismissed in its entirety. The Court held that neither Vision Investment and Holdings Limited ("Vision") nor the Defendant, Mahdi Amjad ("Mr Amjad"), was a party to the Loan Settlement Agreement or its Addendum. Mr Amjad had signed those documents only as the authorised representative of Town Square Investment LLC ("Town Square"), not in a personal capacity. Under UAE law, a guarantee is not presumed: it must be explicit, clearly defining the guarantor's obligations, and cannot be interpreted so as to expand its scope. No personal obligation arose from Mr Amjad's corporate signature. Subsidiary claims in unjust enrichment and breach of good faith also failed, as Vision had no enforceable right to assert against Mr Amjad.

SUMMARY OF THE CASE:

1. Vision claimed AED 26,668,646 plus interest at 10%, together with ancillary remedies, in respect of a unit in a development at the Palm Jumeirah. The claim arose from a "Loan Settlement Agreement" dated 12 April 2018 and an "Addendum to Amendment of Loan Settlement Contract" dated 28 June 2018, both drafted in Arabic and both governed by UAE law.

2. The agreements were concluded between Mr Al Tabari (as First Party) and Town Square (as Second Party). Mr Amjad had signed both documents, but only as the authorised signatory of Town Square. Vision was not a party to either instrument. Vision's claim was based on what it characterised as a "personal undertaking" contained within one of the documents, on which it sought to rely as creating an enforceable personal guarantee by Mr Amjad in its favour.

3. The Court identified several insuperable obstacles to Vision's claim. First, neither Vision nor Mr Amjad was a party to the Loan Settlement Agreement or Addendum. Vision had no privity of contract with Mr Amjad under either instrument.

4. Secondly, Mr Amjad's signature on the documents was made expressly in his capacity as the authorised representative of Town Square, not in a personal capacity. This precluded any inference that he had personally assumed liability.

5. Thirdly, the Court noted the applicable UAE law on guarantees: relying on the UAE Civil Code and jurisprudence of the Dubai Court of Cassation, the Court held that a guarantee under UAE law is not presumed. It must be explicit, clearly defining the guarantor's obligations, and cannot be interpreted in a manner that expands its scope concerning either the debtor or the secured debt. A guarantee cannot be perpetual or indefinite, nor can it extend to a new, modified, or renewed debt unless the guarantor expressly consents to a new guarantee for a new debt. The document relied upon by Vision did not satisfy these requirements.

6. Fourthly, even if any guarantee had originally existed, it would not have extended to the obligations the subject of this claim, which related to different or modified facilities from those originally secured, without fresh express consent.

7. The claims in unjust enrichment and breach of good faith were also rejected: in circumstances where Vision had no enforceable right, those subsidiary bases of claim could not succeed.

8. The claim was dismissed with the Defendant given liberty to apply for assessment of costs.

CASES CITED/RELIED UPON BY THE COURT:

Dubai Court of Cassation judgments on the nature of guarantees under UAE law (cited in the judgment for the proposition that a guarantee is not presumed and must be explicit).

LINK:

https://www.difccourts.ae/rules-decisions/judgments-orders/court-first-instance/vision-investment-and-holdings-limited-v-mahdi-amjad-2022-difc-cfi-053

CASE NAME:

Alawwal Capital JSC v Rasmala Investment Bank Limited

CASE REFERENCE:

[2023] DIFC CFI 038

KEY ISSUES ADDRESSED:

Misrepresentation in the marketing of a Shariah-compliant trade finance fund. The circumstances in which a court will draw an adverse inference against a party who fails to produce relevant documents or call available witnesses. Whether the terms of the investment product were consistent with the representations made during the marketing process.

KEY ISSUE DECIDED:

The Claimant succeeded in part. The Court found that certain representations made to Alawwal Capital in the marketing of the Rasmala Trade Finance Fund were false or misleading, and awarded damages. The Court provided important guidance on the circumstances in which an adverse inference will be drawn from a party's failure to produce relevant documents or call witnesses who might have spoken to contested issues: such an inference will be drawn where the party is in a position to produce the material, where there is no credible explanation for non-production, and where the missing material would be expected to bear upon a live dispute.

SUMMARY OF THE CASE:

1. Alawwal Capital JSC ("Alawwal") was an investor that subscribed to the Rasmala Trade Finance Fund ("the Fund"), a Shariah-compliant trade finance product managed by Rasmala Investment Bank Limited ("Rasmala"). Alawwal alleged that Rasmala had made material misrepresentations in marketing the Fund, including as to the nature of the underlying assets, the risk profile, the expected returns, and the safeguards in place to protect capital.

2. The trial was heard before H.E. Justice Sir Jeremy Cooke. The central factual dispute was whether the marketing materials and representations made during the pre-investment process accurately described the Fund and its investment strategy.

3. The Court found in Alawwal's favour on the misrepresentation claims to a material extent. It concluded that the representations that had been made went beyond what was warranted by the actual characteristics of the Fund, and that Alawwal had invested in reliance upon those representations.

4. A significant element of the judgment concerned the drawing of adverse inferences from Rasmala's failure to produce certain relevant documents and its failure to call witnesses who had been directly involved in the marketing process. The Court affirmed that the DIFC Courts will draw an adverse inference from non-production where: (i) the party is in a position to produce the relevant material; (ii) there is no credible explanation offered for its absence; and (iii) the missing evidence would be expected to be material to the issues in dispute. In such circumstances, the Court is entitled to infer that the undisclosed material would have been adverse to the party failing to produce it.

5. Damages were awarded to Alawwal commensurate with the loss suffered as a result of the actionable misrepresentations. Certain aspects of the claim were not established and were dismissed.

CASES CITED/RELIED UPON BY THE COURT:

The Court applied DIFC Contract Law provisions on misrepresentation and general principles of evidence applicable in the DIFC Courts regarding adverse inferences from non-production of documents.

LINK:

https://www.difccourts.ae/rules-decisions/judgments-orders/court-first-instance/alawwal-capital-jsc-v-rasmala-investment-bank-limited-2023-difc-cfi-038

CASE NAME:

Khaled Salem Musabeh Humaid al Mheiri v (1) Mr Mohammad Ezelddine el Araj (2) Mr John Cameron

CASE REFERENCE:

[2021] DIFC CFI 057

KEY ISSUES ADDRESSED:

Whether the Claimant's claim against the Second Defendant under a personal indemnity agreement was time-barred under Article 1092 of the UAE Civil Code, which provides for discharge of a guarantor's obligation in certain circumstances. Whether Article 1092 applies to commercial suretyships as well as personal/civil guarantees, or whether commercial suretyships are instead governed by the UAE Commercial Transactions Law (Federal Decree-Law No. 50/2022). When the cause of action for enforcement of a guarantee or indemnity accrues for limitation purposes.

KEY ISSUE DECIDED:

The Claim against the Second Defendant, Mr Cameron, was dismissed on the ground that it was time-barred. The Court held that the obligation under the indemnity agreement fell due at the latest in March 2019, when the Qatar National Bank ("QNB") notified the Claimant of an Event of Default. The claim was not brought until May 2021 — more than two years after the obligation had crystallised. Article 1092 of the UAE Civil Code, which operates as a discharge provision for guarantors in such circumstances, applied to extinguish the Claimant's right to claim against Mr Cameron. The Claimant's argument that Article 1092 does not apply to commercial suretyships was rejected on the facts and law as applied to this transaction.

SUMMARY OF THE CASE:

1. The Claimant, Khaled Al Mheiri, a Dubai businessman with connections to entities within the Qatari investment and financial sectors, brought proceedings against two defendants arising from a complex series of transactions involving HSBC loans taken by entities called GSS and Odyssey. Those loans were personally guaranteed by, among others, associates of the Claimant including members of the Qatari financial community. The Claimant assisted in facilitating the restructuring of those loans and in particular arranged for the repayment of a USD 25 million (approximately AED 92 million) facility from QNB.

2. In connection with the QNB loan repayment, the Second Defendant, Mr John Cameron, entered into an indemnity agreement ("the D2 Indemnity Agreement") under which he agreed to indemnify the Claimant in respect of any liability the Claimant incurred as a result of the QNB facility. Mr Cameron also provided a security cheque in the amount of AED 92 million.

3. When QNB notified the Claimant of an Event of Default in March 2019, the obligation under the D2 Indemnity Agreement fell due. The Claimant did not, however, issue proceedings against Mr Cameron until May 2021, more than two years later.

4. Mr Cameron's primary defence was limitation under Article 1092 of the UAE Civil Code. Article 1092 provides that a guarantor is discharged from liability if, following maturity of the guaranteed obligation, the creditor does not proceed against the debtor within a defined period (characterised as a duty to pursue the principal debtor with diligence). The Claimant argued that Article 1092 applied only to personal/civil guarantees and not to commercial suretyships, relying on a decision of the Dubai Court of Cassation (Commercial Appeal No. 30 of 2025) holding that commercial suretyships were governed by Article 70 of the Commercial Code (Federal Decree-Law No. 50/2022) rather than Article 1092 Civil Code.

5. The Court, applying UAE law, rejected the Claimant's argument and upheld the limitation defence. It found that, whatever the ultimate resolution of the boundary between Article 1092 and the Commercial Code, the relevant obligation in this case had become due in March 2019 and the claim had not been brought until May 2021 — more than two years later — in circumstances where Mr Cameron had not been notified and no steps had been taken to enforce the indemnity. The claim against Mr Cameron was accordingly dismissed.

6. The Court was not required to determine Mr Cameron's alternative defence of misrepresentation (he alleged that he had signed the D2 Indemnity Agreement in ignorance of the other security and guarantees in place), given that the limitation defence was dispositive.

CASES CITED/RELIED UPON BY THE COURT:

UAE Civil Code, Article 1092 (discharge of guarantor).

Dubai Court of Cassation Cases Nos. 2000/168 and 2008/202 (personal and commercial guarantees under UAE law).

Dubai Court of Cassation, Commercial Appeal No. 30 of 2025 (scope of Article 70, Federal Decree-Law No. 50/2022 (Commercial Transactions Law)).

LINK:

https://www.difccourts.ae/rules-decisions/judgments-orders/court-first-instance/khaled-salem-musabeh-humaid-al-mheiri-v-1-mr-mohammad-ezelddine-el-araj-2-mr-john-cameron-2021-difc-cfi-057

CASE NAME:

Dant Investment LLC v Olive Green Holding Ltd

CASE REFERENCE:

[2024] DIFC CFI 038

KEY ISSUES ADDRESSED:

Construction of conditions precedent and the "Closing Date" in an asset purchase agreement for the sale of a used aircraft. Whether the Seller had fulfilled, or was required to fulfil, its closing conditions by the Closing Date. The correct interpretation of the "acceptance" and "delivery" procedures in an aviation asset purchase agreement, and in particular whether "acceptance" required physical delivery of an Acceptance and Delivery Certificate before the Closing Date. Whether the Buyer's termination of the agreement was lawful.

KEY ISSUE DECIDED:

The Court declared the Defendant's (Buyer's) termination of the asset purchase agreement on 25 January 2024 to be lawful. The Claimant Seller's claim for repudiatory breach was dismissed. The Buyer was entitled to have its deposit of USD 400,000 returned. The Buyer was ordered to pay USD 7,000 to the Claimant in respect of a single test flight taken prior to execution of the agreement. Costs were awarded to the Defendant.

SUMMARY OF THE CASE:

1. Dant Investment LLC ("Dant") was the seller, and Olive Green Holding Ltd ("Olive Green") was the buyer, under an Asset Purchase Agreement ("APA") for the sale and purchase of a used Bombardier Challenger 605 aircraft (serial number 5837). Olive Green paid a deposit of USD 400,000. The agreement provided for a Closing Date by which the conditions precedent to completion had to be satisfied.

2. The APA contemplated a detailed set of closing procedures. In particular, clause 1.6 addressed the "acceptance" of the aircraft, and clause 1.7 set out the steps required at closing, including the execution and delivery of an Acceptance and Delivery Certificate, the transfer of title documentation, and other deliverables. The parties corresponded from early January 2024 in preparation for closing, but became deadlocked as to the sequence of steps and the satisfaction of the closing conditions.

3. The central dispute was whether Dant had fulfilled or was in a position to fulfil its closing conditions by the Closing Date. Dant contended that Olive Green had wrongfully terminated by refusing to complete. Olive Green maintained that Dant had failed to satisfy the conditions required of it under the APA, including in relation to maintenance status documentation and certain pre-closing deliverables, and that it was therefore entitled to terminate under the agreement's termination clause.

4. The case was tried before H.E. Justice Sapna Jhangiani. The Court analysed the APA's closing mechanics carefully. It rejected Dant's construction of clause 1.6 — which would have required Olive Green to accept the aircraft 15 days before closing, with the Acceptance and Delivery Certificate issued separately — as inconsistent with the

structure of the agreement as a whole and with commercial common sense: the acceptance and the delivery of the Certificate were part of the closing procedure itself.

5. The Court found that Dant had not fulfilled its conditions precedent by the Closing Date, and that Olive Green had been entitled to terminate pursuant to the applicable termination provision (which permitted either party to terminate if the other's conditions were not satisfied by the Closing Date, provided the terminating party was not itself in breach). Olive Green's termination was accordingly lawful.

6. The USD 400,000 deposit was ordered to be returned to Olive Green. However, the Court held that Olive Green was liable to pay USD 7,000 to Dant in respect of one test flight of the aircraft that Olive Green had taken before the parties entered into the APA — a sum that was conceded to be due under clause 1.4 of the APA. Dant's broader damages claims, including for legal fees, were dismissed.

CASES CITED/RELIED UPON BY THE COURT:

The Court applied general principles of contractual construction under the applicable law. No specific English or DIFC authorities were confirmed in the notes available.

LINK:

https://www.difccourts.ae/rules-decisions/judgments-orders/court-first-instance/dant-investment-llc-v-olive-green-holding-ltd-2024-difc-cfi-038

CASE NAME:

(1) AES Middle East Insurance Broker LLC (2) AES Insurance Brokers Ltd (3) AES UK Holdings Ltd v GSB Capital Ltd

CASE REFERENCE:

[2023] DIFC CFI 060

KEY ISSUES ADDRESSED:

Enforceability of non-solicitation covenants in DIFC employment contracts. The burden and standard of proof required to establish misuse of confidential information when employees depart to a rival firm. Whether the departure of employees and the subsequent solicitation of clients by a rival business established, without more, a breach of non-solicitation or confidentiality obligations.

KEY ISSUE DECIDED:

All claims were dismissed. The Court upheld the non-solicitation covenants as valid and enforceable in principle, but found that the Claimants had failed to discharge the burden of proving that those covenants had been breached. On the confidential information claims, the Court held that mere departure to a competing firm, followed by the signing of clients who had been known to the former employer, does not by itself establish that those clients were solicited in breach of covenant or that confidential information was misused. The Claimants had to demonstrate specific acts of solicitation or specific use of confidential information, and had not done so.

SUMMARY OF THE CASE:

1. The Claimants, companies forming part of the AES insurance broking group, brought claims against GSB Capital Ltd ("GSB"), a competing DIFC-based insurance broker, arising from the departure of a number of AES employees to GSB. The Claimants alleged that GSB had unlawfully poached their employees in breach of non-solicitation covenants and had thereafter used confidential information obtained from those employees to solicit and win AES's clients.

2. The former employees' employment contracts with the AES entities contained non-solicitation covenants prohibiting them, for a defined period following termination, from: (i) soliciting or inducing the departure of other AES employees; and (ii) soliciting AES's clients. The Claimants contended that the employees who joined GSB had actively solicited colleagues and clients in breach of these covenants.

3. The Court found that the non-solicitation covenants were valid and enforceable in the DIFC context. They were reasonable in scope and duration and did not go further than necessary to protect the Claimants' legitimate business interests. However, the Court emphasised that the fact that covenants are valid does not resolve the factual question of whether they were breached.

4. On the employee solicitation claim, the Court found that the Claimants had not proved that the departing employees had been induced to leave AES by the breach of any solicitation obligation. Employees are entitled to accept offers of employment from

competitors, and the evidence did not establish that they were solicited in a manner that breached the relevant covenants.

5. On the client solicitation and confidential information claims, the Court held that the burden of proof lay on the Claimants to establish specific acts of misuse: it was not sufficient to show that GSB had won clients who had previously been customers of AES. Business relationships and client goodwill are not the property of an employer; they may follow employees for reasons unconnected with any solicitation or use of confidential information. The Claimants needed to demonstrate that specific confidential information had been used or that specific acts of solicitation had occurred, and had failed to do so.

6. All claims were dismissed with costs to the Defendant.

CASES CITED/RELIED UPON BY THE COURT:

The Court applied DIFC employment law and the general law on restraint of trade and misuse of confidential information as developed in the DIFC Courts.

LINK:

https://www.difccourts.ae/rules-decisions/judgments-orders/court-first-instance/aes-middle-east-insurance-broker-llc-ors-v-gsb-capital-ltd-2023-difc-cfi-060

CASE NAME:

Mr Nancy v Narcissa DIFC

CASE REFERENCE:

[2023] DIFC CFI 098

KEY ISSUES ADDRESSED:

Entitlement of a senior private equity professional to "Carry" (carried interest) under employment and carry agreements following termination. The interpretation of carry pool provisions and the conditions upon which points in a carry pool vest or become payable. Whether an employee who continued to provide services after the termination of his employment contract did so under a new implied contract of employment, giving rise to a right to wages. The application of Article 19(2) of the DIFC Employment Law, which imposes a penalty for late payment of outstanding sums due to an employee.

KEY ISSUE DECIDED:

Judgment was entered for the Claimant in the sum of AED 4,000 only, representing a penalty under Article 19(2) of the DIFC Employment Law for late payment of a relatively modest outstanding sum. All other claims were dismissed. The Carry claims failed: three of the four carry vehicles (N1, N2, N3) were abandoned by the Claimant at the close of submissions when cross-examination demonstrated that the funds were "under water" and generated no carry; the claim in respect of the fourth (N4) was dismissed as inadmissible in its final iteration, without legal foundation, and in any event speculative. The implied contract of employment claim was dismissed: the evidence disclosed no common intention to enter a new employment relationship following termination; the Defendant's retention of the Claimant's visa was an act of practical sympathy, not contractual commitment.

SUMMARY OF THE CASE:

1. The Claimant, referred to as "Mr Nancy" (the parties proceeding by anonymised names), was a senior private equity professional employed by Narcissa DIFC ("Narcissa"), a DIFC-incorporated entity within the NOX group of companies. His employment was terminated in August 2022. He brought wide-ranging claims against Narcissa, including for wrongful termination, outstanding wages, end of service entitlement, carry, and penalties.

2. The bulk of the Claimant's case at trial concerned his entitlement to carried interest ("Carry") under a series of Carry Agreements relating to four investment vehicles, referred to as N1 to N4. Private equity carry is a share of the profits of a fund that accrues to investment professionals once a "hurdle rate" of return to investors has been exceeded. Points in a carry pool are typically allocated to employees and vest over time; their value depends upon the financial performance of the underlying portfolio.

3. During cross-examination, the Claimant conceded that N1, N2, and N3 were "under water" — the funds had not exceeded their hurdle rates and had generated no carry to distribute. He accordingly abandoned his claims in respect of those three vehicles at the close of oral submissions. The N4 claim was reformulated on multiple occasions and, in its final version, sought damages on a loss of chance basis on the ground that points

should have been allocated in a fourth vehicle. The Court found this iteration of the claim inadmissible (it had been raised too late and without proper particularisation), without legal foundation (there was no evidence that points were ever allocated or promised), and speculative (any distribution from the N4 fund in 2026 was said to consist of liquidation fees, which on a proper construction of the carry agreement did not constitute "carried interest").

4. On the wages claim, the Claimant argued that, following the termination of his employment, he had continued to provide services to Narcissa under an implied contract of employment. The Court rejected this. The evidence showed that both parties understood the employment to have ended; that any post-termination engagement was informal and for limited purposes; that Narcissa had retained the Claimant's visa as a matter of practical sympathy to facilitate personal legal proceedings he was dealing with, not as recognition of any subsisting employment; and that there was no common intention to enter a new employment contract.

5. The sole head of claim that succeeded was a penalty of AED 4,000 under Article 19(2) of the DIFC Employment Law, which provides for a daily penalty equal to the employee's daily wage for each day that arrears of wages remain unpaid after the due date. Judgment in this sum was awarded. All other claims were dismissed.

CASES CITED/RELIED UPON BY THE COURT:

DIFC Employment Law 2019 (as amended), Article 19(2) (penalty for late payment of wages).

LINK:

https://www.difccourts.ae/rules-decisions/judgments-orders/court-first-instance/mr-nancy-v-narcissa-difc-2023-difc-cfi-098

CASE NAME:

Michael George Forbes v Robert Kidd

CASE REFERENCE:

[2023] DIFC CFI 081

KEY ISSUES ADDRESSED:

Whether a success fee agreement for litigation support services was accepted by the Defendant under UAE law by conduct and/or by silence in circumstances of a prior course of dealing (Articles 129, 132, and 135 of the UAE Civil Transactions Law). Whether litigation support services constitute "legal services" for the purpose of UAE law on regulated activities and lawyers' success fees, such that the agreement would be contrary to public order and unenforceable. The correct approach to calculating a success fee where the fee agreement provides for a percentage of net recovery after deduction of qualifying expenses, and the evidential requirements for establishing those expenses.

KEY ISSUE DECIDED:

Judgment was entered for the Claimant, Mr Forbes, in the sum of GBP 4,599,352.22. The Court held that the Letter of Engagement dated 21 November 2016 had been accepted by Mr Kidd by conduct and/or by silence in circumstances where there was an established prior course of dealing: under Article 135(1) of the UAE Civil Transactions Law, silence can constitute acceptance where the circumstances give rise to a need to speak, and under Article 135(2), silence is deemed acceptance where there is a prior course of dealing to which the new offer relates and the offer benefits the offeree. The success fee agreement was not contrary to UAE public order: the services provided by Sarcogent were litigation support services, not "legal services" as understood under UAE law, and the prohibition on success fees by lawyers accordingly did not apply. On quantum, three loan amounts claimed as deductible expenses by Mr Kidd were rejected for want of satisfactory evidence; the success fee was calculated on net recovery of approximately GBP 13.75 million, yielding a fee of GBP 2,750,315.27, to which interest at 9% was added.

SUMMARY OF THE CASE:

1. Mr Forbes, the Claimant, sought to recover a success fee from Mr Kidd, the Defendant, under a Letter of Engagement sent on 21 November 2016 and addressed to Mr Kidd by Mr Christopher Smylie of SarCogent Solutions DMCC ("Sarcogent"), a DIFC company co-founded by Mr Forbes and Mr Smylie. Mr Forbes brought the claim as assignee of Sarcogent's rights.

2. The underlying litigation concerned proceedings brought by Mr Kidd against BP in Scotland ("the BP Litigation") in respect of losses allegedly caused to his business by the Deepwater Horizon oil spill in the Gulf of Mexico. Sarcogent had provided litigation support services to Mr Kidd in connection with that litigation since at least 2013, initially under informal arrangements and subsequently under a Letter of Engagement dated 15 August 2015 and then the 2016 Letter of Engagement. The Letter of Engagement provided for a success fee of 20% of net recovery from the BP Litigation after deduction of qualifying expenses.

3. Mr Kidd denied that he had ever accepted the 2016 Letter of Engagement. His primary case was that the fee arrangement had always been structured differently — 25% of recovery to be shared among all professionals engaged (including lawyers and experts), not 20% to Sarcogent alone. His alternative case was that the arrangement with Sarcogent was not personal to him but was an obligation of one of his companies. The BP Litigation settled in January 2018 for GBP 20 million (inclusive of a prior costs award), but Mr Kidd took the benefit of that settlement without paying any sum to Mr Forbes or Sarcogent.

4. The trial was heard before H.E. Justice Sir Jeremy Cooke over a hearing from 1 to 15 September 2025. The Court heard evidence from both Mr Forbes and Mr Kidd, and noted that while Mr Forbes had an inflated view of his own contribution to the litigation and had not been entirely accurate in his evidence, Mr Kidd's evidence was markedly less credible: he had denied at every turn the existence of any success fee agreement and sought to walk back prior admissions, even though his own appointed expert had by the time of trial effectively undermined his primary defence.

5. On contract formation under UAE law, the Court applied Articles 129 (offer and acceptance), 132 (acceptance by conduct), and 135 (acceptance by silence) of the UAE Civil Transactions Law. It found that the 2016 Letter of Engagement had been sent to Mr Kidd, who had not objected to it or repudiated it, and who continued to require Sarcogent to render the services described in it. This constituted acceptance by conduct and/or by silence: by 2016 there was a well-established prior course of dealing between the parties, the offer was directly beneficial to Mr Kidd (who was receiving ongoing services), and his failure to reject the Letter was properly to be treated as acceptance.

6. On illegality, the Defendant argued that Sarcogent was not licensed to provide legal services in the UAE and that a success fee payable to non-lawyers was contrary to UAE public order. Expert UAE lawyers appointed by both parties produced a joint report broadly agreeing on the relevant legal framework. The Court found that Sarcogent was providing litigation support services — case management, co-ordination, monitoring of costs, assistance with funding, and strategic input — which were distinct from the regulated activity of providing legal services. The prohibition on success fees therefore did not apply.

7. On quantum, the success fee of 20% was applied to net recovery after deduction of qualifying expenses, as defined in the Letter of Engagement. Mr Kidd sought to deduct three sets of alleged loans (from Alistair Munro, A&E Investments, and O&GM) totalling approximately GBP 1.98 million. The Court rejected all three loans as deductible: the first was partially reflected in the interest figures already taken into account; the second was unsupported by credible evidence of a genuine arm's length loan; and the third was supported only by Mr Kidd's own assertion with no corroborating documentation. The success fee was calculated on net recovery of approximately GBP 13.75 million. Adding agreed interest at 9%, the total judgment sum was GBP 4,599,352.22.

CASES CITED/RELIED UPON BY THE COURT:

UAE Civil Transactions Law, Articles 129 (formation), 132 (acceptance by conduct), 135 (acceptance by silence), 141 and 142 (validity conditions).

LINK:

https://www.difccourts.ae/rules-decisions/judgments-orders/court-first-instance/michael-george-forbes-v-robert-kidd-2023-difc-cfi-081

CASE NAME:

Al Buhaira National Insurance Company v Arab War Risks Insurance Syndicate

CASE REFERENCE:

[2024] DIFC CFI 013

KEY ISSUES ADDRESSED:

The proper law of a reinsurance contract where the policy does not contain an express governing law clause. Whether English law governed the reinsurance relationship between a UAE insurer and an Arab war risks reinsurance syndicate. The scope of cover under a marine hull war risks reinsurance policy for defence costs incurred by the reinsured in defending claims by a third-party insured. The construction of standard war risks reinsurance terms.

KEY ISSUE DECIDED:

Judgment was entered for Al Buhaira against the Arab War Risks Insurance Syndicate ("AWRIS") for the sum of AED 4,563,051.74 in respect of defence costs. The Court held that English law governed the reinsurance contract, this being the law most closely connected with the transaction having regard to the nature of the contract, the market in which it was placed, and the surrounding circumstances. On the merits, the scope of the reinsurance policy extended to cover defence costs incurred by Al Buhaira in defending claims under the underlying marine hull war risks policy, and AWRIS was liable for those costs in the proportions set out in the reinsurance slip.

SUMMARY OF THE CASE:

1. Al Buhaira National Insurance Company ("Al Buhaira") was the insurer under a marine hull war risks policy. Having incurred defence costs in relation to a claim under that policy, it sought to recover those costs from AWRIS under a reinsurance contract. The reinsurance was placed in the Arab war risks reinsurance market and did not contain an express governing law clause.

2. The trial was heard before H.E. Justice Sir Jeremy Cooke. A preliminary issue concerned the proper law of the reinsurance contract. The Court held that English law governed: the contract had been placed in a market with strong connections to English law; the use of standard form terms derived from the London market pointed to English law as the intended governing law; and the overall structure of the transaction, including the involvement of London-connected brokers and market participants, made English law the law most closely connected with the contract.

3. On the substantive issue, the Court construed the scope of cover under the marine hull war risks reinsurance policy. AWRIS contested that defence costs fell within the cover afforded. The Court rejected this: the policy wording, construed in accordance with established English principles of insurance contract construction, extended to cover defence costs incurred by the reinsured (Al Buhaira) in defending third-party claims under the underlying policy.

4. Judgment was entered in favour of Al Buhaira for AED 4,563,051.74.

CASES CITED/RELIED UPON BY THE COURT:

English principles of insurance and reinsurance contract construction; principles applicable to determining the proper law of a contract in the absence of an express choice.

LINK:

https://www.difccourts.ae/rules-decisions/judgments-orders/court-first-instance/al-buhaira-national-insurance-company-v-arab-war-risks-insurance-syndicate-2024-difc-cfi-013

CASE NAME:

State Bank of India (DIFC Branch) v (1) NMC Healthcare Ltd (2) Bavaguthu Raghuram Shetty

CASE REFERENCE:

[2020] DIFC CFI 047

KEY ISSUES ADDRESSED:

Enforcement of a personal guarantee given by B R Shetty in connection with credit facilities advanced to NMC Healthcare Ltd. Whether Mr Shetty's signature on the guarantee was authentic, in circumstances where the defendant disputed the authenticity of his signature and the parties adduced competing forensic handwriting expert evidence. The appropriate weight to be given to forensic handwriting expert evidence and the circumstances in which an adverse inference may be drawn from a party's failure to call such an expert.

KEY ISSUE DECIDED:

Judgment was entered against Mr Shetty for USD 45,997,554.59. The Court found that his signature on the personal guarantee was authentic. The forensic handwriting evidence adduced by Mr Shetty was insufficient to displace the totality of evidence pointing to the genuineness of the guarantee. In particular, the Court considered the broader documentary and circumstantial context — including Mr Shetty's conduct in relation to the underlying facilities and the absence of any contemporaneous challenge to the document — and concluded that the defendant had not discharged the evidential burden of raising a genuine issue as to the authenticity of his signature.

SUMMARY OF THE CASE:

1. The State Bank of India (DIFC Branch) ("SBI") claimed against NMC Healthcare Ltd ("NMC") and its founder, B R Shetty, under credit facilities totalling approximately USD 46 million. NMC had collapsed in 2020 following the discovery of substantial fraud and undisclosed debt within the NMC group. SBI claimed against Mr Shetty as personal guarantor of the facilities.

2. Mr Shetty disputed the authenticity of his signature on the personal guarantee and adduced forensic handwriting expert evidence in support of his challenge. SBI adduced its own forensic handwriting evidence. The competing experts gave evidence before H.E. Justice Shamlan Al Sawalehi.

3. The Court found in SBI's favour. The forensic handwriting evidence adduced by Mr Shetty, while capable of raising some question about the signature, was insufficient to displace the strong overall evidence that the guarantee was a genuine executed document. The Court took into account: (i) the guarantee had been produced in the ordinary course of banking business and there was no contemporaneous challenge; (ii) Mr Shetty's conduct in relation to the underlying NMC facilities was consistent with his having given a guarantee; and (iii) the documentary context made it highly implausible that the bank would have advanced the relevant facilities without a genuinely executed guarantee from the founder.

4. The Court also addressed the weight of forensic handwriting evidence in proceedings of this kind. Expert evidence as to the authenticity of signatures is of limited standalone

value and must always be considered in the context of the full documentary and circumstantial record. The Court indicated that the failure of a challenger to provide satisfactory expert evidence does not in itself call for an adverse inference against the party relying on the document; rather, the court weighs all available evidence to determine whether the overall burden has been discharged.

5. This case forms part of a series of DIFC Court judgments arising from the NMC collapse and the associated guarantee litigation against Mr Shetty: compare ICICI Bank Limited v Bavaguthu Raghuram Shetty [2022] DIFC CFI 034, decided later in 2025.

CASES CITED/RELIED UPON BY THE COURT:

The Court applied general principles of the law of guarantee and evidence applicable in the DIFC Courts. No specific reported authorities are confirmed in the notes available.

LINK:

https://www.difccourts.ae/rules-decisions/judgments-orders/court-first-instance/state-bank-of-india-difc-branch-v-nmc-healthcare-ltd-bavaguthu-raghuram-shetty-2020-difc-cfi-047

CASE NAME:

Amitesh Gahlowt Amar Nath Singh v Coinvesting Capital Limited

CASE REFERENCE:

[2024] DIFC CFI 009

KEY ISSUES ADDRESSED:

Whether fixed-term employment contracts that were renewed on multiple occasions, without formal documentation of the renewal, had converted into contracts of indefinite duration by operation of law or by the conduct of the parties under the DIFC Employment Law. The effect of an agreement by an employee to waive part of his outstanding salary entitlements under Article 11 of the DIFC Employment Law. Whether the employer was entitled to rely on an estoppel arising from representations made by the employee in correspondence about his outstanding entitlements. The applicable limitation period for employment claims under Article 10 of the DIFC Employment Law. The employer's obligations in respect of DEWS contributions.

KEY ISSUE DECIDED:

The Court declared that the Claimant's employment was on fixed-term contracts (June 2020 to June 2022, then June 2022 to June 2024) and that it was terminated by the Claimant's resignation with immediate effect on 11 August 2023. The Claimant was awarded unpaid salary from 11 June 2022 to 11 August 2023 and DEWS contributions from November 2022 onwards. The waiver agreement of November 2022 was declared void under Article 11 of the DIFC Employment Law. The estoppel defence was rejected: although the Claimant had made representations about his entitlements in October 2022 correspondence, the conditions for a binding estoppel were not made out. Claims under the contract ending in June 2022 were time-barred under Article 10 of the DIFC Employment Law, which requires proceedings to be brought within six months of the end of employment or the date of any alleged breach.

SUMMARY OF THE CASE:

1. The Claimant, Amitesh Gahlowt ("Mr Gahlowt"), was employed by Coinvesting Capital Limited ("Coinvesting"), a DIFC-regulated investment firm, as its Senior Executive Officer ("SEO"). He had first been engaged by the group in 2018, and in June 2020 he entered into a formal fixed-term employment contract for two years. That contract was renewed for a further two-year period commencing June 2022, again on a fixed-term basis, without any express documentation of the renewal.

2. From June 2022, Coinvesting ceased paying Mr Gahlowt's salary. In November 2022, a payment of USD 53,000 was made to him, and he executed a document recording an agreement to accept that sum in satisfaction of his outstanding salary entitlements to that date. Coinvesting contended that this payment and agreement: (a) terminated the employment; and (b) in the alternative, gave rise to an estoppel precluding Mr Gahlowt from claiming further salary arrears.

3. Mr Gahlowt resigned with immediate effect on 11 August 2023, citing the employer's non-payment of salary as a repudiatory breach. He claimed unpaid salary from June 2022 to the date of his resignation and outstanding DEWS contributions.

4. The Court rejected Coinvesting's contention that the employment had been terminated in November 2022. The payment of USD 53,000 was not accompanied by any formal notice of termination or any contractually compliant mechanism for ending the employment; the court found that employment continued on the same terms until August 2023.

5. The waiver agreement of November 2022, by which Mr Gahlowt purported to accept the USD 53,000 as full satisfaction of his salary arrears, was declared void under Article 11 of the DIFC Employment Law. Article 11 renders void any agreement by an employee that purports to exclude, limit, or waive statutory employment rights. The obligation to pay salary is a statutory right under the Employment Law, and an agreement to accept a lesser sum in satisfaction is accordingly void.

6. On estoppel, the Court applied the test stated by Lord Tomlin in Greenwood v Martins Bank Ltd [1933] AC 51: (i) a representation or conduct amounting to a representation intended to induce reliance; (ii) an act or omission resulting from the representation; and (iii) detriment as a consequence. The Court found that although Mr Gahlowt had made statements in his October 2022 email about his outstanding entitlements, the evidence did not establish that Coinvesting had acted to its detriment in reliance upon those statements in a manner that would make it unconscionable for Mr Gahlowt to advance his employment claims.

7. The Court upheld the Defendant's limitation argument in part: claims arising under the employment contract that expired in June 2022 would have needed to be brought by 10 December 2022 under Article 10 of the DIFC Employment Law (six months from the end of that fixed-term contract) and were accordingly time-barred. However, the unpaid salary from June 2022 onwards arose under the renewed fixed-term contract and was not time-barred.

8. On fixed-term versus indefinite duration, the Court rejected Mr Gahlowt's argument that the contracts had converted to indefinite duration by virtue of his seniority, continuity of service, and the absence of any documentation of renewal. Under the DIFC Employment Law and the terms of the contracts themselves, the parties had elected fixed-term arrangements; the mere continuation of employment without express re-documentation did not convert those arrangements into contracts of indefinite duration.

CASES CITED/RELIED UPON BY THE COURT:

DIFC Employment Law 2019 (as amended), Articles 10 (limitation), 11 (non-derogation from statutory rights).

Greenwood v Martins Bank Ltd [1933] AC 51 (elements of estoppel by representation).

LINK:

https://www.difccourts.ae/rules-decisions/judgments-orders/court-first-instance/amitesh-gahlowt-amar-nath-singh-v-coinvesting-capital-limited-2024-difc-cfi-009

CASE NAME:

(1) Access Group DWC LLC (2) Proex Partners Limited v BLS International FZE

CASE REFERENCE:

[2023] DIFC CFI 091

KEY ISSUES ADDRESSED:

Construction of sub-contracts whose duration was expressed to last "till the subsistence of the contract awarded by the Ministry of Foreign Affairs and Cooperation of Spain in favour of BLS": whether this language tied the sub-contracts to a specific first Ministry contract or to any Ministry arrangement that BLS held from time to time. Whether parties who continued to perform obligations after the expiry of the original sub-contracts thereby created new implied binding sub-contracts for the duration of a subsequent Ministry arrangement. The principles governing adverse inference from a party's failure to give proper disclosure. The scope of non-compete clauses in the context of an ad hoc arrangement that has not ripened into a binding contract.

KEY ISSUE DECIDED:

All claims were dismissed. The sub-contracts expired on 25 February 2023 when the First Ministry Contract between BLS and the Spanish Ministry of Foreign Affairs finally came to an end. The Court rejected the Claimants' arguments that the sub-contracts were intended to survive the First Ministry Contract and continue under any successor arrangement. The language of the sub-contracts referred to the specific First Ministry Contract, not to BLS's relationship with the Spanish Ministry at large. Following expiry, the parties continued to perform on an ad hoc basis "without commitment" to the future. This gave rise only to an informal arrangement terminable at will and did not constitute a new binding sub-contract for the duration of the Second Ministry Contract. BLS was accordingly entitled to terminate that arrangement. The non-compete claims also failed. An adverse inference was declined: the Defendant's disclosure failings, whilst criticised, did not justify striking out or a decisive inference adverse to BLS on the primary issues.

SUMMARY OF THE CASE:

1. BLS International FZE ("BLS") is a subsidiary of BLS International Services, a company providing visa processing, consular, and front-end services to governments. In connection with a contract with the Spanish Ministry of Foreign Affairs ("the First Ministry Contract"), BLS engaged the Claimants — Access International FZC (whose rights were later assigned to Access Group DWC LLC) and Proex Partners Limited — as sub-contractors to operate visa application centres ("VACs") in various countries including Spain, Cyprus, Ghana, KSA, Lebanon, and Iran.

2. The First Ministry Contract was extended on multiple occasions, including under extraordinary powers introduced during the COVID-19 pandemic, before finally expiring on 25 February 2023. From that date, BLS operated under a 2023 Emergency Contract pending the award of a new (Second) Ministry Contract. Each of the relevant sub-contracts contained a term to the effect that it "shall remain in force till the subsistence of the contract awarded by the Ministry of Foreign Affairs and Cooperation of Spain in favour of BLS."

3. The central construction question was whether this language referred specifically to the First Ministry Contract — in which case the sub-contracts expired on 25 February 2023 — or whether it referred to any contract BLS held with the Spanish Ministry from time to time, in which case the sub-contracts would have continued under the 2023 Emergency Contract and subsequently under the Second Ministry Contract.

4. The trial was heard before H.E. Justice Lord Angus Glennie. The Court held that the language referred to the First Ministry Contract. The drafting, read in context, indicated that the sub-contracts were intended to have the same duration as the specific contract that had been awarded at the time the sub-contracts were made. That contract was the First Ministry Contract. When it expired, the sub-contracts expired with it.

5. The Claimants' alternative case was that, by continuing to perform after 25 February 2023 in substantially the same manner as before, the parties had entered into implied replacement sub-contracts for the duration of the Second Ministry Contract. The Court rejected this. It found that the continued performance represented an ad hoc arrangement by which both parties simply "jogged along" in anticipation of fresh negotiations that might or might not result in new formal sub-contracts. Both parties understood that the old contracts had expired and that new terms would need to be negotiated. In those circumstances, the conduct did not give rise to an inference of commitment to a new long-term contractual relationship. BLS was entitled to terminate the ad hoc arrangement.

6. The non-compete claims failed in consequence: since BLS was not in breach of any binding sub-contract in terminating the arrangement, the question of whether its subsequent direct operation of the VACs breached a non-compete obligation did not arise in any actionable form.

7. The Defendant was criticised for failures of disclosure, and the Court considered the applicable five-stage test for determining what adverse inference (if any) ought to be drawn from such failings. The Court concluded that, in the circumstances of this case, the appropriate response was to take the disclosure failings into account in assessing the overall credibility of BLS's evidence, but that they did not justify striking out BLS's defence or drawing a decisive inference adverse to BLS on the primary issues.

CASES CITED/RELIED UPON BY THE COURT:

[2017] DIFC CA 005 (five-stage test for adverse inference from disclosure failings).

[2022] DIFC CFI 049 (applied).

Candy v Holyoake [2017] EWHC 373.

Derby v Weldon.

Engineering v Morrison [2018] CSOH 51 (Court of Session, Scotland — on implied contracts arising from continued performance).

LINK:

https://www.difccourts.ae/rules-decisions/judgments-orders/court-first-instance/1-access-group-dwc-llc-2-proex-partners-limited-v-bls-international-fze-2023-difc-cfi-091

CASE NAME:

Ahmed Seddiq Mohamed Samea Almutawa v Mohamed Seddiq Mohamed Samea Al Mutawa

CASE REFERENCE:

[2023] DIFC CFI 095

KEY ISSUES ADDRESSED:

Enforcement of a share sale and purchase agreement ("SSPA") for the sale of a 70% shareholding in the Atlas Group by an older brother (Claimant) to a younger brother (Defendant) for AED 16,030,000 payable in 60 monthly instalments, where the Defendant had not paid a single instalment. The availability of a defence of unilateral mistake under Article 37 of the DIFC Contract Law 2004. The effect of an entire agreement clause on defences based on extrinsic representations. Affirmation of a contract by subsequent conduct. The pleading requirements for pre-judgment interest claims under RDC Rule 17.18, and the court's discretion to allow a claim that does not strictly comply. The appropriate rate of pre-judgment interest by reference to EIBOR.

KEY ISSUE DECIDED:

Judgment was entered for the Claimant for AED 16,030,000 (principal) plus AED 2,447,156.28 (pre-judgment interest at EIBOR plus 1% per annum, applied instalment by instalment from each due date) = AED 18,477,156.28 in total, with post-judgment interest at 5% per annum on the principal. The Defendant's defences — duress, misunderstanding, lack of informed consent, and reliance on a purportedly flawed Deloitte valuation — were all rejected as lacking credibility. The unilateral mistake defence under Article 37 DIFC Contract Law 2004 failed: the requirements of that Article (that the other party knew or ought to have known of the mistake, or caused it) were not established. The entire agreement clause in the SSPA and the Defendant's subsequent conduct in accepting full ownership and requesting revised payment schedules were both inconsistent with the defence. The interest claim was allowed despite partial non-compliance with RDC Rule 17.18, as the Defendant had suffered no prejudice.

SUMMARY OF THE CASE:

1. The Claimant, Ahmed Seddiq Mohamed Samea Almutawa, is the founder of the Atlas brand (established 1983), a diversified group operating in security, telecommunications, oil and gas, and defence. He is the older brother of the Defendant, Mohamed Seddiq Mohamed Samea Al Mutawa. In or around 2018 to 2019, the Claimant sold his 70% shareholding in the Atlas Group to the Defendant under a Share Sale and Purchase Agreement ("SSPA") executed before a Notary Public. The Defendant held a US business degree and had been a member of the Atlas group since 2000.

2. The SSPA provided for a total purchase price of AED 16,030,000, to be paid in 60 monthly instalments commencing on 30 June 2019. The consideration was based on a Deloitte valuation of the group's assets and businesses, which was accepted by both parties and referenced in the SSPA. The SSPA contained an entire agreement clause (clause 10).

3. The Defendant paid not a single instalment. He offered several explanations: he claimed he had been subjected to duress; that he had not received adequate legal advice or an Arabic translation; that he had misunderstood the nature of the consideration (believing it related only to inter-company debt repayment rather than the share purchase price); and that the Deloitte valuation was unreliable. A formal demand was served on the Defendant in March 2023 under the Dubai Courts.

4. The trial was heard before H.E. Justice Rene Le Miere. The Court found the Defendant's evidence comprehensively lacking in credibility: his claims of limited English were contradicted by his education and communications; his assertions of duress were unsupported by any contemporaneous documentation; and his supposed misunderstanding of the consideration was irreconcilable with his concurrent assertion that it was based on the Deloitte valuation.

5. On the unilateral mistake defence under Article 37 of the DIFC Contract Law 2004, the Court held that even assuming the Defendant had genuinely misunderstood the consideration (which it did not accept), the requirements of Article 37(2) and (3) were not met. There was no evidence that the Claimant knew or ought to have known of any mistake or had caused it.

6. The entire agreement clause in clause 10 of the SSPA precluded reliance on extrinsic representations. The Defendant's subsequent conduct — accepting full ownership of the Atlas Group, complying with post-sale obligations, requesting revised payment schedules, and failing to object for several years — constituted affirmation of the contract and was wholly inconsistent with the defences advanced.

7. On the interest claim, the Defendant argued that the Claimant's reliance on EIBOR plus 1% as the interest rate had not been properly pleaded in accordance with RDC Rule 17.18. The Court held that while the Particulars of Claim had not fully complied with that Rule, the Defendant was fully aware of the interest claim, had had ample opportunity to respond, and had in fact done so. No prejudice was demonstrated. In accordance with the overriding objective, the Court exercised its discretion to allow the interest claim. Pre-judgment interest was calculated instalment by instalment from each due date to the date of judgment, using the average 3-month EIBOR rate of 2.8790% for the period 2019 to 2025 (giving a total rate of 3.8790% per annum), applied on a simple basis.

CASES CITED/RELIED UPON BY THE COURT:

DIFC Contract Law 2004, Article 37 (unilateral mistake).

DIFC Courts Rules of Court ("RDC"), Rules 17.18 (pleading interest) and Part 1 (overriding objective).

LINK:

https://www.difccourts.ae/rules-decisions/judgments-orders/court-first-instance/ahmed-seddiq-mohamed-samea-almutawa-v-mohamed-seddiq-mohamed-samea-al-mutawa-2023-difc-cfi-095

CASE NAME:

Siraj Power Machinery And Equipment Leasing LLC v (1) Al Tajir Glass Industries LLC (2) Transnational Pallet Industries

CASE REFERENCE:

[2024] DIFC CFI 070

KEY ISSUES ADDRESSED:

Enforcement of solar power equipment leasing agreements against a lessee and a guarantor. Default judgment and the calculation of outstanding rental arrears and accelerated future rentals upon default. The exercise of the court's power to enter default judgment where a defendant fails to participate in proceedings.

KEY ISSUE DECIDED:

Default judgment was entered against both Defendants. The First Defendant, Al Tajir Glass, was ordered to pay AED 9,826,528.83, representing outstanding rental arrears under the leasing agreements. The Second Defendant, Transnational Pallet Industries, was ordered to pay AED 7,792,942.32 under a separate but related leasing arrangement. The total sums awarded amounted to approximately AED 17.6 million.

SUMMARY OF THE CASE:

1. Siraj Power Machinery And Equipment Leasing LLC ("Siraj") entered into leasing agreements with Al Tajir Glass Industries LLC ("Al Tajir Glass") for solar power generation equipment. Transnational Pallet Industries was party to a separate but related leasing arrangement. Both Defendants defaulted on their payment obligations and failed to engage with proceedings brought against them in the DIFC Court of First Instance.

2. The case was heard before H.E. Justice Sapna Jhangiani. Siraj applied for default judgment following the Defendants' failure to participate. The Court reviewed the evidence in support of the claim, including the leasing agreements, proof of delivery and installation of the solar equipment, and calculations of the sums outstanding. The Court was satisfied that the claims were properly made out on the evidence filed.

3. Default judgment was entered for AED 9,826,528.83 against Al Tajir Glass (representing outstanding rental arrears under the principal lease) and for AED 7,792,942.32 against Transnational Pallet Industries (under the related lease), for a total of approximately AED 17.6 million plus applicable interest and costs.

CASES CITED/RELIED UPON BY THE COURT:

No specific authorities are relied upon in the judgment; the matter proceeded by way of default judgment on the documentary evidence filed by the Claimant.

LINK:

https://www.difccourts.ae/rules-decisions/judgments-orders/court-first-instance/siraj-power-machinery-and-equipment-leasing-llc-v-al-tajir-glass-industries-llc-transnational-pallet-industries-2024-difc-cfi-070

PROCEDURAL AND CASE MANAGEMENT ORDERS — CFI 2025

In addition to the 15 substantive judgments digested above, the DIFC Court of First Instance issued approximately 141 procedural and case management orders during 2025. These included orders for service out of the jurisdiction, case management directions, applications for default judgment (procedural), security for costs, strike-out applications, adjournment and listing orders, and consent orders recording settlements. The volume of procedural work reflects the breadth of commercial litigation active in the CFI. A full list of all entries for 2025 is available on the DIFC Courts website at:

https://www.difccourts.ae/rules-decisions/judgments-orders/court-first-instance?keywords=&year=2025

Notable case references appearing in the CFI 2025 procedural record include: CFI 030/2023 (Sam Precious Metals, multiple directions hearings), CFI 034/2022 (ICICI v Shetty, case management), CFI 047/2020 (SBI v NMC, enforcement steps), CFI 053/2022 (Vision Investment, interlocutory applications), CFI 060/2023 (AES Middle East, disclosure applications), CFI 081/2023 (Forbes v Kidd, pre-trial directions), and numerous newly-commenced proceedings across a range of commercial, financial, and employment disputes. Readers seeking the procedural history of any specific CFI proceeding should consult the DIFC Courts registry directly.

VOLUME IV — COURT OF ARBITRATION

This volume covers substantive orders of the DIFC Arbitration Division published in 2025 that address questions of law or practice of interest to practitioners. The ARB Division publishes only Orders (not Judgments); those orders containing extended reasons on jurisdictional, enforcement, interim relief, or procedural questions are included. Pure costs assessments, extension of time applications, and formal procedural directions are excluded.

CASE NAME:

Mirma v Mobal and Mobal v Mirma

CASE REFERENCE:

ARB 004/2022 & ARB 005/2023 (DIFC Court of Appeal, 27 January 2025)

COURT:

Court of Appeal: Chief Justice Wayne Martin, Deputy Chief Justice Ali Al Madhani, Justice Robert French AC

KEY ISSUES ADDRESSED:

Whether the Court of Appeal should grant permission to appeal an ICC award (USD ~75 million, DIFC seat) on five grounds: (1) tribunal jurisdiction over a claim characterised as relating to the tortious detention of a vessel by Iraqi naval forces (Act of State doctrine); (2) natural justice — alleged denial of fair opportunity to address an issue of Iraqi law; (3) public policy under Article 41(2)(b)(iii) of the DIFC Arbitration Law; (4) the award allegedly going beyond the scope of submission by deciding a claim concerning a dhow (small vessel) not within the Terms of Reference; and (5) whether the ICC Rules precluded the dhow claim.

KEY ISSUE DECIDED:

All five grounds for permission to appeal were dismissed. The Court of Appeal affirmed the primacy of the DIFC Arbitration Law's closed list of grounds for challenge under Article 41 and applied a high threshold for each. On the Act of State doctrine, the characterisation of the issue as a jurisdictional bar was unsustainable on the facts: the relevant conduct was that of Mirma itself, not sovereign Iraqi acts. On natural justice, the applicant had a fair opportunity to address all material issues. On public policy, the test requires that the award's enforcement would fundamentally offend the most basic principles of the DIFC legal system, a threshold not met by alleged unethical conduct by one party. On scope of submission, the dhow claim had been included in the Statement of Claim at the time the Terms of Reference under ICC Rules Article 23(4) were signed and was therefore within the tribunal's mandate.

SUMMARY OF THE CASE:

1. Mirma, an Iraqi state-owned company affiliated with the Iraqi Ministry of Oil, engaged the Dutch company Mobal to perform salvage operations on sunken vessels in Iraqi territorial waters. The parties entered into a DIFC-seated ICC arbitration agreement. The seat was formally changed to the DIFC in January 2019. The ICC tribunal issued an award of approximately USD 75 million in favour of Mobal.

2. Mirma sought permission to appeal the award on five grounds. The first two grounds concerned the tribunal's jurisdiction. Mirma contended that certain claims arising from the detention of its vessels by Iraqi naval forces engaged the Act of State doctrine and therefore fell outside the tribunal's jurisdiction. The Court of Appeal held that this characterisation was misconceived: the doctrine applies where a court is asked to adjudicate upon the sovereign acts of a foreign state, but the claims in question were directed at the conduct of Mirma itself, not at the Iraqi State. No real jurisdictional argument arose.

3. Ground 3 alleged a denial of natural justice on the basis that Mirma had not been given a fair opportunity to address a point concerning Article 7 of the Iraqi Civil Code and its bearing on the unlawfulness of Mobal's conduct. The Court held that the arbitration process had afforded Mirma proper opportunity to address this issue and that the ground disclosed no arguable breach of natural justice.

4. Ground 4 raised public policy under Article 41(2)(b)(iii) of the DIFC Arbitration Law. Mirma alleged that Mobal had procured its contract by corrupt dealings with an Iraqi member of parliament. The Court reaffirmed that the public policy ground requires that enforcement of the award would "fundamentally offend the most basic principles of the DIFC legal system." Mere allegations of unethical conduct by one party, even if established, did not meet that threshold.

5. Grounds 5 (the dhow claim) alleged that the tribunal had gone beyond the scope of submission by deciding a claim concerning a small vessel (a dhow) not included within the Terms of Reference. Under ICC Rules Article 23(4), the Terms of Reference fix the tribunal's mandate at the time of signature. The Court held that the dhow claim had in fact been pleaded in the Statement of Claim at the time the Terms of Reference were executed; accordingly, it was within the tribunal's mandate and this ground was rejected.

6. All grounds were dismissed, and the application for permission to appeal was refused in its entirety.

CASES CITED/RELIED UPON BY THE COURT:

DIFC Arbitration Law No. 1 of 2008, Article 41 (grounds for setting aside — closed list); Article 41(2)(b)(iii) (public policy); ICC Rules, Article 23(4) (Terms of Reference); Reliance Industries Limited v Union of India [2018] EWHC 822 (Act of State doctrine in arbitration context).

LINK:

https://www.difccourts.ae/rules-decisions/judgments-orders/arbitration/arb-0042022-arb-0052023-mirma-v-mobal-and-mobal-v-mirma

CASE NAME:

Nashrah v (1) Najem (2) Nex

CASE REFERENCE:

ARB 005/2025 (DIFC CFI, 6 February 2025; reasons 19 February 2025; CA PTA, 30 July 2025)

COURT:

Court of First Instance: H.E. Justice Shamlan Al Sawalehi. Court of Appeal (PTA): Chief Justice Wayne Martin

KEY ISSUES ADDRESSED:

Whether the DIFC Court has jurisdiction to grant an anti-suit injunction ("ASI") restraining proceedings in the English High Court (a Section 9 Arbitration Act 1996 stay application) in support of a DIAC arbitration under a former DIFC-LCIA arbitration agreement. The effect of Dubai Decree No. 34 of 2021 on the validity of a DIFC-LCIA clause. Whether "Dubai" as the stated seat encompasses the DIFC. Whether a consumer contract exception applied. The application of the comity principle. On appeal: whether the first-instance judge correctly exercised his discretion in granting the ASI given the advanced state of the English proceedings.

KEY ISSUE DECIDED:

The ASI was maintained restraining the Defendants from pursuing English High Court proceedings (including a Section 9 stay application). The Court held that the DIFC Court had jurisdiction under Article 32 of the DIFC Courts Law (supportive jurisdiction) to grant the relief. The former DIFC-LCIA agreement was not rendered void by Decree 34: it was "merely linguistically outdated," and DIAC had accepted jurisdiction over the transferred arbitration. The seat of "Dubai" was capable of meaning the DIFC (applying Hayri International). The consumer contract exception did not apply as Mr Najem was a commercial pilot operating in a professional context. Comity did not preclude the ASI where its purpose was to enforce a contractual bargain. On the PTA application, the Court of Appeal granted permission to appeal on 8 of 12 grounds (including comity, the discretion to grant the ASI, and seat construction), indicating that those grounds were arguable with real prospects of success.

SUMMARY OF THE CASE:

1. Nashrah entered into a commercial agreement with Mr Najem (a pilot) and Nex (a company) containing a DIFC-LCIA arbitration clause with the seat stated as "Dubai." Following the dissolution of the DIFC-LCIA by Dubai Decree No. 34 of 2021, DIAC assumed jurisdiction over claims under former DIFC-LCIA agreements. Nashrah commenced a DIAC arbitration under the agreement.

2. The Defendants issued proceedings in the English High Court seeking a stay under Section 9 of the Arbitration Act 1996 on the basis that there was no valid arbitration agreement binding them. On 20 January 2025, Nashrah obtained an ex parte ASI from the DIFC Court restraining those English proceedings. The Defendants applied to discharge the ASI on 4 February 2025, and the application was dismissed at a return date hearing on 6 February 2025, with detailed reasons published on 19 February 2025.

3. On jurisdiction, the Court accepted that Article 32 of the DIFC Courts Law confers a freestanding supportive jurisdiction to grant interim relief in support of arbitration, irrespective of whether the seat is the DIFC. This is distinct from supervisory jurisdiction (which is seat-dependent) and has been consistently recognised in DIFC jurisprudence.

4. On Decree 34, the Court held that the dissolution of the DIFC-LCIA did not void the arbitration clause or render it unenforceable. The clause remained "merely linguistically outdated" as to the administering institution; the substantive agreement to arbitrate survived, and DIAC had accepted the reference in substitution under the Decree's transitional provisions.

5. On the seat, the Court applied Hayri International [2016] DIFC ARB 010 and held that a clause specifying "Dubai" as the seat is capable of being construed as referring to the DIFC, particularly where the parties had selected a DIFC-based arbitral institution.

6. On the consumer exception, Mr Najem was a professional pilot who had contracted in the course of his professional capacity. The Court held that he did not fall within the consumer exemption from the arbitration agreement.

7. On comity, the Court held that the principle of comity does not prevent an ASI where the purpose of the injunction is to hold the defendant to its contractual bargain. An English court could not be said to have "unwavering jurisdiction" to determine the Section 9 application simply by virtue of being seized first, particularly where the Section 9 hearing had not yet taken place.

8. On 30 July 2025, the Court of Appeal granted the Defendants permission to appeal on Grounds 1, 3 (as amended), 4, 5, 6, 7, 9, and 11, including grounds relating to whether the DIFC Court had jurisdiction to grant the ASI, the discretionary exercise in granting it, the comity analysis, and the construction of the seat. Permission was refused on Grounds 2, 8, 10, and 12. Enforcement of costs orders was stayed pending the appeal, and the Defendants were ordered to pay USD 80,000 into Court as a condition of the grant of permission.

CASES CITED/RELIED UPON BY THE COURT:

Hayri International [2016] DIFC ARB 010 (seat construction — "Dubai" encompasses DIFC); Brookfield Multiplex Constructions LLC v DIFC Investments LLC [2016] DIFC CFI 020 (unusual and exceptional circumstances for non-seat ASIs); Narciso v Narciso [2020] DIFC ARB 008 ("good or strong reasons" test for ASIs); Ledger [2022] DIFC CA 013; UniCredit Bank GmbH v RusChemAlliance LLC [2024] UKSC 30; DIFC Courts Law No. 2 of 2025, Article 32 (supportive jurisdiction for interim orders); Dubai Decree No. 34 of 2021.

LINK:

https://www.difccourts.ae/rules-decisions/judgments-orders/arbitration/arb-0052025-nashrah-v-1-najem-2-nex

CASE NAME:

Naidoo and (1) Nofret v (2) Nandini (3) Nurine (4) Nadidah

CASE REFERENCE:

ARB 011/2025 (DIFC CFI, 9 May 2025)

COURT:

H.E. Justice Shamlan Al Sawalehi

KEY ISSUES ADDRESSED:

Whether the DIFC Court will intervene in ongoing DIAC arbitration proceedings to restrain a listed evidentiary hearing, on the grounds that the tribunal's Procedural Order No. 2 denying a document production phase constituted a breach of the equal treatment/natural justice obligation under Article 25 of the DIFC Arbitration Law. Whether tribunal procedural orders are "awards" susceptible to challenge under Article 41. Whether Article 15 (interim measures) can be used as a vehicle for supervisory intervention in the tribunal's procedural management of an ongoing arbitration.

KEY ISSUE DECIDED:

The application for interim injunctive relief and supervisory intervention was dismissed. The Court affirmed the principle of minimal interference in the internal affairs of an ongoing arbitration and held that any natural justice objection to the tribunal's procedural management must be raised, if at all, post-award by way of challenge under Article 41. Tribunal procedural orders are not "awards" capable of challenge under Article 41, and the Court will not supervise or override the tribunal's procedural discretion absent demonstrable serious prejudice that cannot await the conclusion of the arbitration. The application was also procedurally irregular in having been brought by CFI claim form rather than under RDC Part 43, and in naming the tribunal members as defendants, contrary to the principle of arbitral confidentiality.

SUMMARY OF THE CASE:

1. Naidoo, as applicant, sought urgent interim injunctive relief to prevent the continuation of an evidentiary hearing in DIAC Case No. 240031, together with an order purporting to set aside Procedural Order No. 2 issued by the DIAC tribunal. The applicant contended that the tribunal had, through that Procedural Order, declined to reinstate a document production phase and had thereby imposed an inflexible procedural regime that denied Naidoo a fair opportunity to present its defence and advance its counterclaim, in breach of Article 25 of the DIFC Arbitration Law.

2. The respondent, Nofret, opposed the application on the grounds that: (i) it had been brought by ordinary CFI claim form rather than as an arbitration claim under RDC Part 43; (ii) it inappropriately named the members of the arbitral tribunal as defendants, contrary to arbitral confidentiality; (iii) the procedural order challenged was not an "award" susceptible to set-aside under Article 41; and (iv) the application was premature, as any natural justice complaint should properly be advanced post-award.

3. The Court accepted all of the respondent's submissions. It held that Article 41 of the DIFC Arbitration Law provides an exclusive and closed list of grounds on which an

award may be set aside, and that tribunal procedural orders — however determinative of the structure of the hearing — are not "awards" and therefore fall outside its scope. The supervisory jurisdiction of the DIFC Court under Articles 10 and 11 of the DIFC Arbitration Law does not extend to controlling the tribunal's procedural management of an ongoing arbitration.

4. On Article 15 (interim measures), the Court held that this provision empowers the Court to grant measures in support of arbitration — for example, to preserve assets or evidence — but does not confer a jurisdiction to intervene in the tribunal's internal procedural decision-making. To use Article 15 as a vehicle for such intervention would fundamentally undermine the principle of party autonomy and the finality of the arbitral process.

5. The Court also emphasised that courts of supervisory jurisdiction adopt a policy of minimal interference in arbitral proceedings, save in exceptional circumstances involving demonstrable serious prejudice. Absent such prejudice, parties must complete the arbitration and, if dissatisfied, raise natural justice objections post-award. The application was dismissed as premature and procedurally irregular, with costs awarded to the respondent.

CASES CITED/RELIED UPON BY THE COURT:

DIFC Arbitration Law No. 1 of 2008, Articles 10–11 (supervisory jurisdiction), Article 15 (interim measures), Article 25 (equal treatment and natural justice), Article 41 (set-aside — closed grounds); RDC Part 43 (arbitration claims procedure).

LINK:

https://www.difccourts.ae/rules-decisions/judgments-orders/arbitration/arb-0112025-naidoo-and-1-nofret-v-2-nandini-3-nurine-4-nadidah

CASE NAME:

Nalani v Netty

CASE REFERENCE:

ARB 027/2024 (DIFC CFI, 15 May 2025)

COURT:

H.E. Justice Shamlan Al Sawalehi

KEY ISSUES ADDRESSED:

Whether a Partial Award issued in an LCIA arbitration seated in London, the dispositive terms of which incorporated a Peremptory Order for interim measures, constitutes an "award" within the meaning of Article 42 of the DIFC Arbitration Law and is therefore enforceable. Whether a jurisdictional challenge to an enforcement order brought outside the 14-day window in RDC 43.70 is admissible. Whether an existing recognition and enforcement order constitutes a final and binding order for the purposes of commencing a detailed costs assessment under RDC 40.10.

KEY ISSUE DECIDED:

Both the jurisdictional challenge/strike-out application and the challenge to the Notice of Commencement for detailed costs assessment were dismissed. The Court held that a Partial Award is an "award" within Article 42 of the DIFC Arbitration Law where it contains dispositive relief that is final as to the matters it determines, including interim measures incorporated as peremptory relief by the tribunal. The 14-day period in RDC 43.70 for challenging an enforcement order is mandatory; the Defendant had failed to comply and could not retrospectively contest jurisdiction. The recognition and enforcement order constituted a final order triggering the right to commence detailed assessment under RDC 40.10.

SUMMARY OF THE CASE:

1. Nalani sought recognition and enforcement of a Partial Award dated 20 September 2023 issued in an LCIA arbitration seated in London. The Partial Award incorporated by reference, at paragraph [99(c)], the interim measures originally contained in a Peremptory Order issued by the tribunal. On 24 December 2024, the DIFC Court granted an ex parte recognition and enforcement order pursuant to Articles 42 and 43 of the DIFC Arbitration Law.

2. Netty contested the enforcement proceedings by way of two applications: first, a jurisdictional challenge and strike-out contending that the Partial Award was not an "award" susceptible to enforcement under Article 42 because it comprised only interim/peremptory relief rather than a final determination of substantive rights; and second, an objection to the Claimant's Notice of Commencement of detailed costs assessment on the basis that the enforcement proceedings remained ongoing and had not concluded.

3. On the first issue, the Court applied Article 42, which provides that "an arbitral award, irrespective of the State or jurisdiction in which it was made, shall be recognised as binding." The Court held that this language extends to Partial Awards provided the

relief granted is dispositive and forms part of the tribunal's conclusive findings on the matters submitted. The interim measures incorporated into the Partial Award at paragraph [99(c)] had been rendered as final dispositive relief, not as provisional or interlocutory measures. Applying the DIFC Court of Appeal's decision in Neal v Nadir [2024] DIFC CA 001, the Court confirmed that interim relief orders incorporated into an enforceable award are amenable to recognition and enforcement.

4. On the second issue (timing of jurisdictional challenge), the Court held that RDC 43.70 imposes a mandatory 14-day window within which a respondent to an ex parte enforcement order must apply to set it aside. Netty had not challenged the enforcement order within that period and had not sought any extension of time. The failure to comply was treated as submission to the jurisdiction of the Court for the purposes of the enforcement claim. The jurisdictional objection was accordingly inadmissible.

5. On the costs assessment question, the Court held that the recognition and enforcement order of 24 December 2024 was "final and binding" for the purposes of RDC 40.10. The Defendant's pending applications did not render the enforcement proceedings "ongoing" in a sense that prevented assessment from commencing; the underlying enforcement of the Award had been finally determined by the Court's order.

CASES CITED/RELIED UPON BY THE COURT:

DIFC Arbitration Law No. 1 of 2008, Article 42 (recognition and enforcement of foreign awards), Article 43; RDC 43.70 (14-day set-aside window); RDC 40.10 (detailed costs assessment); Neal v Nadir [2024] DIFC CA 001 (interim relief incorporated into enforceable awards); Deutsche Bank AG v Sebastian Holdings Inc [2024] EWCA Civ 245 (timing of costs assessment — discussed but not followed on the specific facts).

LINK:

https://www.difccourts.ae/rules-decisions/judgments-orders/arbitration/arb-0272024-nalani-v-netty-1

CASE NAME:

Olympio v Olwin

CASE REFERENCE:

ARB 024/2025 (DIFC CFI, 7 August 2025)

COURT:

H.E. Justice Shamlan Al Sawalehi

KEY ISSUES ADDRESSED:

Whether the mere registration of a jurisdictional conflict claim before the Conflicts of Jurisdiction Tribunal ("CJT") automatically stays all DIFC enforcement proceedings under Article 7 of Dubai Decree No. 29 of 2024. Whether the DIFC Court retains jurisdiction to grant and maintain a Worldwide Freezing Order ("WFO") in support of an enforcement claim while CJT proceedings are pending. Whether the DIFC Court has prima facie jurisdiction to recognise and enforce a foreign arbitral award seated outside the DIFC (here, a SIAC award).

KEY ISSUE DECIDED:

The Defendant's application to stay the DIFC enforcement proceedings was dismissed. The Court held that Article 7 of Decree No. 29 of 2024 does not provide for an automatic suspension of DIFC proceedings upon the mere registration of a conflict claim with the CJT. A stay under Article 7 arises only once the CJT has itself made a threshold finding under Article 6 of the Decree that a bona fide conflict of jurisdiction exists. Mere registration by a party does not constitute such a finding. Even if a stay were ultimately ordered, the Court retains jurisdiction to maintain a WFO in support of enforcement pending the CJT's determination. The DIFC Court had prima facie jurisdiction to enforce a SIAC award under Article 42 of the DIFC Arbitration Law, irrespective of the seat being outside the DIFC.

SUMMARY OF THE CASE:

1. Olympio obtained a Final Award in a SIAC arbitration for approximately USD 7.57 million (comprising damages, interest, legal costs, and arbitration fees). The DIFC Court recognised and enforced the Award by order dated 9 July 2025 pursuant to Article 42 of the DIFC Arbitration Law, and subsequently issued a WFO on 21 July 2025 in support of enforcement following concerns about asset dissipation.

2. On 28 July 2025, Olwin filed a jurisdictional conflict claim before the CJT asserting that the Dubai Courts (not the DIFC Courts) had exclusive jurisdiction over enforcement of the Award. That claim was registered as Application No. 2 of 2025 on 31 July 2025. Olwin then applied to this Court for an immediate stay of all DIFC proceedings, including the WFO and related enforcement directions, contending that registration of the CJT application automatically triggered the mandatory stay in Article 7 of Decree No. 29 of 2024.

3. The Court rejected the Defendant's literal reading of Article 7. Applying Lakhan v Lamia [2021] DIFC CA 001, the Court of Appeal had previously held that the mere filing of a conflict claim is insufficient to stay DIFC proceedings; a suspension arises only once the CJT has established its authority and identified a bona fide conflict of

jurisdiction. This was reaffirmed in Naatiq v Nabeeh (ARB-018-2024) and Five Holding Ltd v Qatar Insurance Company [2021] DIFC CFI 027. Article 7 must be read in conjunction with Article 6, which requires a threshold finding by the CJT.

4. On the jurisdictional point raised by Olwin (that the seat being outside the DIFC deprived the Court of enforcement jurisdiction), the Court confirmed that Article 42 of the DIFC Arbitration Law empowers the DIFC Courts to recognise and enforce foreign arbitral awards irrespective of their seat, provided the New York Convention requirements are met. The location of the seat does not determine enforcement jurisdiction.

5. The Court also held that even if the CJT were ultimately to determine that a conflict of jurisdiction existed, it would retain power to maintain the WFO pending that determination, applying Credit Suisse (Switzerland) Ltd v Goel [2020] DIFC CA 008. Permitting a stay application to paralyse enforcement proceedings by the mere act of lodging a conflict claim would allow parties to abuse the Decree's mechanism and undermine the rule of law.

CASES CITED/RELIED UPON BY THE COURT:

Dubai Decree No. 29 of 2024 concerning the Judicial Tribunal for the Resolution of Conflicts of Jurisdiction, Articles 6–7; DIFC Arbitration Law No. 1 of 2008, Article 42; Lakhan v Lamia [2021] DIFC CA 001; Naatiq v Nabeeh (ARB-018-2024); Five Holding Ltd v Qatar Insurance Company [2021] DIFC CFI 027; Credit Suisse (Switzerland) Ltd v Goel [2020] DIFC CA 008 (maintenance of interim relief while jurisdictional questions resolved).

LINK:

https://www.difccourts.ae/rules-decisions/judgments-orders/arbitration/arb-0242025-olympio-v-olwin

CASE NAME:

Mirifa v (1) Mahur (2) Meison (3) Mepur

CASE REFERENCE:

ARB 009/2023 (DIFC CFI, 21 August 2025)

COURT:

H.E. Justice Shamlan Al Sawalehi

KEY ISSUES ADDRESSED:

Whether, in enforcement proceedings on an ICC award of USD 1.6 billion, the Court should order the cross-examination of a judgment debtor (Mr Mepur) pursuant to RDC Parts 50 and 29.58, on the basis of persistent material deficiencies in asset disclosure under a Worldwide Freezing Order and a Specific Disclosure Order. Whether a regime of continuing periodic disclosure obligations should be imposed. Whether document production of specified categories (bank records, company accounts, and investment portfolio documents) should be ordered. Whether alternative service of enforcement-related documents on the Defendant and his solicitors by email is appropriate under RDC 9.31.

KEY ISSUE DECIDED:

All four forms of relief sought by Mirifa were granted. The Court ordered the cross-examination of Mr Mepur under RDC Parts 50 and 29.58, to be conducted before the same judge in the interest of judicial continuity. A regime of quarterly affidavit updates and monthly asset notifications (for assets exceeding USD 50,000) was imposed. Document production was ordered in respect of specified categories of bank statements, company accounts, and investment portfolio records. Alternative service by email on the Defendant and his solicitors was authorised under RDC 9.31. The Court was satisfied that lesser measures had been exhausted and that cross-examination was proportionate and targeted, given the USD 1.6 billion award and the Defendant's persistent failure to comply with disclosure obligations.

SUMMARY OF THE CASE:

1. These are long-running enforcement proceedings in respect of an ICC arbitral award of approximately USD 1.6 billion issued on 20 March 2023 in favour of Mirifa. The DIFC Court had previously granted a Worldwide Freezing Order on 12 May 2023 and a Specific Disclosure Order on 9 August 2024. Notwithstanding those orders, the Court was satisfied, on evidence contained in two witness statements (Onfre 5 and Onfre 6), that there remained significant and material deficiencies in the Third Defendant's (Mr Mepur's) asset disclosure.

2. The Claimant identified specific concerns in respect of the following assets: (i) Orson, said to be materially undervalued; (ii) Odelia, alleged never to have been disclosed despite appearing in exhibited documents; (iii) Oaklee, said to have been undervalued and to have undisclosed links to related entities; (iv) Olushegun, where a development of USD 550 million was said to be inconsistent with a declared valuation of USD 19–20 million; (v) Ondrea, where public information indicated active commercial operations inconsistent with the Defendant's claim of negligible interest; and (vi)

historic Ombretta banking records showing inflows and outflows of hundreds of millions of dollars, irreconcilable with declared assets of only USD 80 million.

3. The Defendant resisted the application on the basis that he had substantially complied with his disclosure obligations, that his assets amounted to approximately USD 80 million as declared, and that the Claimant's criticisms were based on speculative sources. He also argued that the relief sought was disproportionate, that cross-examination risked duplication, and that the Claimant had failed to pursue available enforcement routes in Iraq.

4. On cross-examination, the Court held that the power under RDC Parts 50 and 29.58 is a well-established enforcement tool. The Court had issued multiple disclosure orders accompanied by penal notices over more than a year; those had failed to produce reliable disclosure. The Defendant had repeatedly failed to explain discrepancies between successive affidavits, including inconsistent explanations regarding the Ombretta account and contradictory accounts of ownership and control of key corporate vehicles. Cross-examination was the only remaining effective mechanism to test the veracity of the disclosures.

5. The Court ordered that cross-examination be conducted before the same judge in the interest of judicial continuity, given the complexity of the proceedings. The right to decline answers on proper legal advice was preserved, and the scope of questioning was confined to specified topics.

6. The Court imposed a regime of quarterly affidavit updates and monthly notifications of acquisitions and disposals of assets exceeding USD 50,000, finding that periodic supervision was necessary and proportionate given the scale of the Award and the international reach of the Defendant's asset base. Document production was ordered in respect of bank statements, company accounts, and Ombretta portfolio records, as these fell within the scope of enforcement-related disclosure and were necessary to trace assets for recovery.

CASES CITED/RELIED UPON BY THE COURT:

RDC Parts 50 and 29.58 (cross-examination in aid of enforcement); RDC 9.31 (alternative service); general enforcement principles under the DIFC Arbitration Law and Rules of the DIFC Courts.

LINK:

https://www.difccourts.ae/rules-decisions/judgments-orders/arbitration/arb-0092023-mirifa-v-1-mahur-2-meison-3-mepur-2

CASE NAME:

Oswin v (1) Otila (2) Ondray

CASE REFERENCE:

ARB 032/2025 (DIFC CFI, 16 September 2025)

COURT:

H.E. Justice Sir Jeremy Cooke

KEY ISSUES ADDRESSED:

Whether the DIFC Court has jurisdiction to grant interim measures in support of a DIAC arbitration under a Joint Venture Agreement ("JVA") containing a DIFC-seated arbitration clause, where the Second Defendant contends that an Operations and Maintenance Agreement ("O&M Agreement"), with an Abu Dhabi jurisdiction clause, has superseded the JVA and the disputes are subject to Abu Dhabi Courts jurisdiction. The construction of competing jurisdiction and arbitration clauses in a multi-agreement commercial structure. The applicable law governing the validity of a DIFC-seated arbitration agreement.

KEY ISSUE DECIDED:

The interim injunction was continued. The Court held that the JVA was the overarching contractual document governing the relationship between the parties and that its arbitration clause (Clause 21.3) was the operative dispute resolution mechanism. The Abu Dhabi jurisdiction clause in Clause 21.4 of the JVA was expressly stated to be "subject to" Clauses 21.2 and 21.3, and accordingly yielded to the arbitration agreement. Under Article 14 of the DIFC Courts Law No. 2 of 2025, the DIFC Courts have exclusive jurisdiction over disputes arising from a DIFC-seated arbitration. Under Article 24(3) of the DIFC Arbitration Law, the Court has power to grant interim measures in support of such arbitration. The O&M Agreement and UAE Federal Decree-Law No. 30 of 2020 were irrelevant to the question of the governing arbitration agreement.

SUMMARY OF THE CASE:

1. The case arose from a joint venture for the construction and operation of a waste treatment plant. The parties had entered into a JVA containing a DIFC-seated DIAC arbitration clause (Clause 21.3). Separately, the joint venture had entered into an O&M Agreement with the Second Defendant, which contained a clause submitting disputes to the Abu Dhabi Courts (Clause 21.4 of the JVA, which was also incorporated into or reflected in the O&M Agreement).

2. The Claimant, Oswin, commenced a DIAC arbitration under the JVA and applied to the DIFC Court for interim injunctive relief in support of that arbitration. At the return date hearing, the Second Defendant challenged jurisdiction on the basis that the O&M Agreement governed the disputes and that the Abu Dhabi jurisdiction clause superseded the JVA arbitration clause.

3. The Court, applying standard principles of contractual construction, held that the JVA was the primary and overarching document. The arbitration clause in Clause 21.3 of the JVA was the operative dispute resolution mechanism. The Abu Dhabi jurisdiction clause in Clause 21.4 was expressly prefaced by the words "subject to Clauses 21.2 and

21.3," which meant that it could only operate in cases falling outside the arbitration agreement. The O&M Agreement did not supersede the JVA's arbitration clause.

4. On jurisdiction of the DIFC Court, the Court applied Article 14 of the DIFC Courts Law No. 2 of 2025, which confers exclusive jurisdiction on the DIFC Courts in respect of disputes arising from DIFC-seated arbitrations (including applications for recognition and enforcement, and applications for interim relief in support thereof under Article 14(A)(5)). The Second Defendant's reliance on UAE Federal Decree-Law No. 30 of 2020 was dismissed as irrelevant: DIFC law governs the validity and effect of a DIFC-seated arbitration agreement.

5. On the power to grant interim measures, the Court applied Article 24(3) of the DIFC Arbitration Law, which expressly empowers the Court to grant interim measures in support of an arbitration with its seat in the DIFC, including injunctive relief. A Dubai Court of Cassation decision relied upon by the Second Defendant was distinguished as having no application to DIFC-seated proceedings governed by DIFC law.

CASES CITED/RELIED UPON BY THE COURT:

DIFC Courts Law No. 2 of 2025, Article 14 (exclusive jurisdiction over DIFC-seated arbitration matters), Article 14(A)(5); DIFC Arbitration Law No. 1 of 2008, Article 24(3) (power to grant interim measures); UAE Federal Decree-Law No. 30 of 2020 (held irrelevant to DIFC-seated arbitration agreements).

LINK:

https://www.difccourts.ae/rules-decisions/judgments-orders/arbitration/arb-0322025-oswin-v-1-otila-2-ondray

CASE NAME:

(1) Obert (2) Ona v Ondray

CASE REFERENCE:

ARB 014/2025 (DIFC CFI, 9 October 2025)

COURT:

H.E. Justice Shamlan Al Sawalehi

KEY ISSUES ADDRESSED:

Whether recognition and enforcement of a DIFC-LCIA (now DIAC) award seated in the DIFC should be refused on the ground that the arbitration agreement was extinguished when the parties entered into a Termination and Settlement Agreement ("TSA") settling the underlying consultancy contract. The scope of the separability principle under Article 23(1) of the DIFC Arbitration Law. Whether the tribunal acted within its jurisdiction in awarding a sum referable to the consultancy contract when the TSA had partially resolved those obligations. Whether the public policy ground (Article 41(2)(b)(iii)) warranted refusal of enforcement.

KEY ISSUE DECIDED:

Recognition and enforcement of the DIFC-seated award (EUR 100,000) was granted. The Court held that the separability principle in Article 23(1) of the DIFC Arbitration Law preserved the arbitration clause in the Consultancy Agreement notwithstanding the parties' execution of the TSA, which terminated the main contract. The claims had been pleaded under the Consultancy Agreement from the outset and recorded as such in the Declaration of the Arbitration ("DOA"); the TSA was properly treated as evidence going only to quantum. The public policy objection failed to meet the high threshold of "fundamentally offending the most basic principles of the DIFC legal system." Procedural objections relating to the manner of service of the claim bundle were dismissed as causing no prejudice.

SUMMARY OF THE CASE:

1. Obert and Ona had entered into a Consultancy Agreement with Ondray in November 2018, which contained a DIFC-LCIA arbitration clause. In January 2019, the parties executed a Termination and Settlement Agreement ("TSA") which terminated the Consultancy Agreement and provided for payment of EUR 50,000 to each of the Claimants. Ondray failed to make those payments in full, and in August 2023, Obert and Ona commenced arbitration under the former DIFC-LCIA clause (the reference having been transferred to DIAC following Decree 34). A Final Award of EUR 100,000 was issued on 26 February 2025.

2. Ondray resisted enforcement on four grounds. First, it contended that the arbitration clause in the Consultancy Agreement had been extinguished when that agreement was terminated by the TSA. The Court rejected this argument by reference to the separability principle in Article 23(1) of the DIFC Arbitration Law, which provides that an arbitration clause shall be treated as a separate agreement from the main contract and shall survive the termination of that contract. The termination of the Consultancy Agreement by the TSA did not extinguish the tribunal's jurisdiction.

3. Second, Ondray alleged that the tribunal had exceeded its jurisdiction by deciding claims under the Consultancy Agreement when, it argued, the parties had modified their obligations by the TSA. The Court held that the claims had been clearly pleaded under the Consultancy Agreement from the inception of the arbitration and had been identified as such in the DOA. The tribunal had acted within its mandate. The TSA had been treated as evidence relevant to quantum, not as a novation that extinguished the underlying claim.

4. Third, Ondray raised a natural justice objection, alleging that it had been ambushed by the way the TSA was deployed at the hearing. The Court found this argument unpersuasive: the TSA had been in evidence throughout the proceedings, and its relevance to the quantum of the award was not unexpected.

5. Fourth, Ondray invoked the public policy ground under Article 41(2)(b)(iii), arguing that enforcement of the award would offend DIFC public policy. The Court reaffirmed the high threshold: enforcement must "fundamentally offend the most basic principles of the DIFC legal system." Mere disagreement with the tribunal's reasoning or dissatisfaction with the outcome does not meet this standard. The ground was rejected.

CASES CITED/RELIED UPON BY THE COURT:

DIFC Arbitration Law No. 1 of 2008, Article 23(1) (separability principle); Article 41 (grounds for setting aside); Article 41(2)(b)(iii) (public policy — high threshold); RDC Part 43 (arbitration claims procedure); Dubai Decree No. 34 of 2021 (DIFC-LCIA to DIAC transfer).

LINK:

https://www.difccourts.ae/rules-decisions/judgments-orders/arbitration/arb-0142025-1-obert-2-ona-v-ondray

CASE NAME:

Oswin v (1) Otila (2) Ondray (No. 2)

CASE REFERENCE:

ARB 032/2025 (DIFC CFI, 21 October 2025)

COURT:

H.E. Justice Michael Black KC

KEY ISSUES ADDRESSED:

Whether an anti-suit injunction should be granted to restrain the Defendants from pursuing proceedings commenced in the Abu Dhabi Courts in breach of the DIFC-seated DIAC arbitration agreement and in violation of existing DIFC Court orders. The applicable test for granting an ASI in support of a DIFC arbitration agreement: in particular, whether the test is the "vexatious or oppressive" standard or the "good or strong reasons" test. The binding effect, as res judicata, of a prior jurisdictional ruling by a different judge in the same proceedings. The treatment of costs where a party has been found to have breached existing Court orders.

KEY ISSUE DECIDED:

An anti-suit injunction was granted restraining the Defendants from pursuing the Abu Dhabi Court proceedings. The Court held that the correct test for granting an ASI to enforce an arbitration agreement is whether the party seeking to avoid arbitration can demonstrate "good or strong reasons" why the agreement should not be enforced — not the higher threshold of showing that the foreign proceedings are vexatious or oppressive. The jurisdictional finding of Justice Sir Jeremy Cooke at the September 2025 hearing (digest entry 7 above) was binding on the parties as res judicata. The Abu Dhabi proceedings were in breach of that finding and of existing Court orders. Costs were assessed and awarded immediately (AED 195,155) rather than reserved, in light of the Defendants' breach of Court orders.

SUMMARY OF THE CASE:

1. Following the September 2025 order of Justice Sir Jeremy Cooke (see ARB 032/2025, 16 September 2025), the Defendants commenced or continued proceedings before the Abu Dhabi Courts in respect of the same subject matter as the DIAC arbitration, notwithstanding the DIFC Court's existing orders. Oswin applied for an ASI.

2. On the applicable test, the Court held that in the DIFC context, the correct standard for an ASI in support of an arbitration agreement is that set out in Narciso v Narciso: the defendant must show "good or strong reasons" why the arbitration agreement should not be enforced and the foreign proceedings should be permitted to continue. This is a less demanding threshold for the applicant than the English "vexatious or oppressive" standard and reflects the strong DIFC policy of holding parties to their contractual dispute resolution agreements.

3. On res judicata, the Court held that Justice Sir Jeremy Cooke's jurisdictional finding — that the JVA and its arbitration clause governed the parties' disputes — was binding on the Defendants in these proceedings. The Defendants could not re-litigate that issue

before the Abu Dhabi Courts, and their doing so constituted a breach of the DIFC Court's orders.

4. The Court found that the Abu Dhabi proceedings included information requests that the Defendants should properly have pursued through the DIAC arbitration. The DIAC tribunal had all the powers necessary to deal with those requests. The Defendants' conduct in pursuing parallel Abu Dhabi proceedings was therefore without justification.

5. On costs, the Court declined to reserve or adjourn the costs assessment. Given that the Defendants had been found to have breached the Court's existing orders, an immediate costs order was appropriate to mark that breach. Costs of AED 195,155 were awarded and payable forthwith.

CASES CITED/RELIED UPON BY THE COURT:

Narciso v Narciso [2020] DIFC ARB 008 ("good or strong reasons" test for ASIs in support of DIFC arbitration agreements); general principles of res judicata; DIFC Courts Law No. 2 of 2025, Article 14; DIFC Arbitration Law No. 1 of 2008, Article 24(3).

LINK:

https://www.difccourts.ae/rules-decisions/judgments-orders/arbitration/arb-0322025-oswin-v-1-otila-2-ondray-3

CASE NAME:

Om v Ottilie

CASE REFERENCE:

ARB 017/2025 (DIFC CFI, 28 October 2025)

COURT:

H.E. Justice Shamlan Al Sawalehi

KEY ISSUES ADDRESSED:

Jurisdictional challenge to the recognition and enforcement of a foreign arbitral award (seat not in the DIFC). Whether the DIFC Courts have exclusive jurisdiction to recognise and enforce foreign awards under Articles 42–44 of the DIFC Arbitration Law, irrespective of the parties' domicile, the location of their assets, or their business activities. Whether a challenge to an ex parte enforcement order filed outside the 14-day window in RDC 43.70 can be entertained. Whether the formalities in Article 42(2) must be strictly complied with at the enforcement stage. Whether a defence of conduit jurisdiction is available. Whether the doctrine of forum non conveniens applies to recognition and enforcement proceedings.

KEY ISSUE DECIDED:

The jurisdictional challenge to recognition and enforcement of the foreign award was dismissed both on procedural and substantive grounds. Procedurally, the Defendant had filed its Acknowledgement of Service outside the 14-day window prescribed by RDC 11.5 and had failed to issue a set-aside application within the 14-day period in RDC 43.70. It was therefore deemed to have submitted to jurisdiction. Substantively, the DIFC Courts have exclusive jurisdiction for recognition and enforcement of foreign awards under Article 14(A)(5) of the DIFC Courts Law No. 2 of 2025 and Articles 42–44 of the DIFC Arbitration Law; the parties' domicile, asset location, and business activities are irrelevant. The conduit jurisdiction argument was rejected as inconsistent with established authority. Forum non conveniens does not apply in recognition and enforcement proceedings given the Court's exclusive statutory competence. The Article 42(2) formalities were either met or capable of being cured inter partes. The RDC 45.22 Arabic translation requirement applies only at the execution stage, not at the recognition stage.

SUMMARY OF THE CASE:

1. Om obtained a foreign arbitral award and applied ex parte to the DIFC Court for recognition and enforcement pursuant to Articles 42 and 43 of the DIFC Arbitration Law, read with Article 14(A)(5) of the DIFC Courts Law No. 2 of 2025. An enforcement order was granted, with a 14-day window for the Defendant to apply to set it aside under RDC 43.70.

2. Ottilie filed an Acknowledgement of Service late (outside the 14-day deadline in RDC 11.5) and did not issue a set-aside application within the 14-day period. It subsequently applied to challenge jurisdiction and set aside the enforcement order. The Court held that, as a result of the late Acknowledgement of Service and failure to apply in time, the Defendant was deemed under RDC 12.5(1) to have submitted to the jurisdiction of

the DIFC Courts. No extension of time had been sought. The procedural objections were therefore inadmissible at this stage.

3. On the substantive jurisdictional challenge, the Court held that the DIFC Courts' jurisdiction to recognise and enforce foreign awards is conferred exclusively by Article 14(A)(5) of the DIFC Courts Law and Articles 42–44 of the DIFC Arbitration Law. The Defendant's arguments that jurisdiction required a connection with the DIFC through domicile, assets, or business activity were rejected as inconsistent with the statutory framework, which makes no such qualification.

4. On the conduit jurisdiction argument, the Court noted that this argument has been repeatedly rejected in DIFC jurisprudence. The idea that the DIFC Courts should decline jurisdiction to enforce a foreign award on the basis that the Defendant's assets are located in mainland Dubai and could be levied through the Dubai Courts finds no support in the DIFC Arbitration Law or the Rules.

5. On forum non conveniens, the Court held that the doctrine is inapplicable in recognition and enforcement proceedings where the DIFC Courts have exclusive statutory competence. There is no residual discretion to decline jurisdiction in favour of another court in such proceedings.

6. On the Article 42(2) formalities (production of the original award and arbitration agreement, or certified copies), the Court found that those requirements had been met or were capable of cure between the parties, and that the Defendant had not raised a genuine dispute as to the authenticity of the relevant documents. On the Arabic translation requirement in RDC 45.22, the Court confirmed that this applies only at the execution stage (when enforcement is being levied) and not at the stage of recognition.

CASES CITED/RELIED UPON BY THE COURT:

DIFC Arbitration Law No. 1 of 2008, Articles 42–44 (recognition and enforcement of foreign awards); Article 42(2) (formalities); DIFC Courts Law No. 2 of 2025, Article 14(A)(5) (exclusive jurisdiction for enforcement proceedings); RDC 11.5 (acknowledgement of service timeline); RDC 12.5(1) (deemed submission to jurisdiction); RDC 43.70 (14-day set-aside window); RDC 45.22 (Arabic translation requirement at execution stage); general DIFC authorities rejecting conduit jurisdiction.

LINK:

https://www.difccourts.ae/rules-decisions/judgments-orders/arbitration/arb-0172025-om-v-ottilie

VOLUME V — SMALL CLAIMS TRIBUNAL 2025

This volume covers substantive orders and judgments of the DIFC Small Claims Tribunal. Entries are selected for the significance of the legal principles addressed on employment law, commercial disputes, and procedural matters. Pure costs decisions, brief procedural directions, and applications refused as totally without merit on purely factual grounds are excluded. Cases are arranged in chronological order by the date of the appeal or permission decision.

CASE NAME:

Naho v Neukirchi

CASE REFERENCE:

SCT 415/2024 (DIFC Court of First Instance, 7 April 2025)

COURT:

Court of First Instance: H.E. Justice Michel Black KC

KEY ISSUES ADDRESSED:

Whether an amendment to the commencement date of an employment contract requires compliance with Article 14(3) of the DIFC Employment Law (written agreement signed by both employer and employee), or whether such an amendment is merely "administrative" and can be effected by unilateral written notice. Whether, if Article 14(3) applies, an exchange of emails attaching a wet-ink signed copy of the contract satisfies the requirement of a written and signed amendment, having regard to the DIFC Electronic Transactions Law No. 2 of 2017.

KEY ISSUE DECIDED:

Permission to appeal granted. The first-instance judge held that the amendment to the employment start date was "administrative" and therefore fell outside the Article 14(3) requirement for a written, signed amendment. The permission judge (Justice Michel Black KC) found a realistic prospect that an appeal court would hold the start date is not administrative because of the important consequences that flow from it, in particular the duration of any probationary period and the accrual of statutory rights on its completion. If the court were to hold Article 14(3) engaged, a further question arises whether an email chain with an attached wet-ink signed contract satisfies the requirements of Article 14(3), read together with Articles 21 and 23(1) of the DIFC Electronic Transactions Law.

SUMMARY OF THE CASE:

1. Naho was employed as a Travel/Administration Manager by Neukirchi under a written employment contract originally dated October 2023. Before she commenced work, the agreed start date was changed from the originally contracted date. The employer documented this by written notice but did not obtain a fresh signed agreement from the employee. Naho subsequently made claims against Neukirchi for, among other sums, payment in lieu of a three-month notice period, holiday tickets, school tuition fees, and a pro-rated housing allowance arising out of the termination of her employment.

2. The first-instance judge dismissed the claim. Central to the judgment was the finding that the alteration to the commencement date was of an administrative nature only and therefore did not engage Article 14(3) of the DIFC Employment Law, which requires any amendment to an employment contract to be "in writing" and "signed" by both employer and employee. In consequence, the employer's written notification of the revised start date was held effective.

3. On the permission to appeal application, Justice Michel Black KC found a realistic prospect of success. The commencement date of employment carries significant legal consequences: it determines when any probationary period begins and ends, and therefore when the employee accrues the statutory rights that mature only on completion of probation. These are not administrative matters; they go to the substance of the employment relationship. The judge considered it reasonably arguable that a change to the commencement date requires the bilateral written agreement contemplated by Article 14(3).

4. A secondary question was whether, even if Article 14(3) applies, the requirement for a written and signed amendment was met on the facts. Neukirchi submitted that Naho's email of 20 October 2023, to which she attached a wet-ink signed copy of the contract, constituted a signed electronic record. Article 21 of the DIFC Electronic Transactions Law No. 2 of 2017 provides that where any DIFC law requires a signature, an electronic signature satisfies that requirement. Article 23(1) provides that an electronic signature is attributable to a person if it was their act. The permission judge identified this as a further question on which the appeal court would benefit from full argument.

5. Permission to appeal was granted in full. The costs of the permission application were ordered to be costs in the appeal.

CASES CITED/RELIED UPON BY THE COURT:

DIFC Employment Law No. 2 of 2019 (as amended), Article 14(3) (written and signed amendments to employment contracts); DIFC Electronic Transactions Law No. 2 of 2017, Articles 21 (electronic signature satisfies statutory signature requirements) and 23(1) (attribution of electronic signatures).

LINK:

https://www.difccourts.ae/rules-decisions/judgments-orders/small-claims-tribunal/naho-v-neukirchi-2024-difc-sct-415

CASE NAME:

Oleta v Onesimo

CASE REFERENCE:

SCT 454/2024 (DIFC Court of First Instance, 25 April 2025)

COURT:

Court of First Instance: H.E. Justice Andrew Moran

KEY ISSUES ADDRESSED:

The construction of a training cost repayment clause in an employment contract: whether the clause extended to the cost of internal, on-the-job training delivered by fellow employees, or was confined to externally provided and invoiced training. The employer's obligation to prove the quantum of any recoverable training expenditure. Whether permission to appeal is warranted where all grounds are "totally without merit" under RDC 53.99. Ancillary note on employer obligations to comply with consent orders for visa cancellation.

KEY ISSUE DECIDED:

Permission to appeal refused and declared totally without merit (RDC 53.99). On the training cost clause, the first-instance judge's construction was upheld: the clause applied only to training expenses actually incurred and charged to the employer by an external training provider. It did not extend to internal, on-the-job training given by fellow employees as part of ordinary induction. The employer was also required to prove that it had incurred the recoverable costs claimed; mere assertion of a training cost figure was insufficient. Separately, the court noted that the employer remained subject to an outstanding consent order requiring visa cancellation and would face enforcement proceedings if it failed to comply.

SUMMARY OF THE CASE:

1. Oleta was employed by Onesimo under a contract of employment dated 21 May 2024. The contract contained a clause entitling the employer to recover training costs from the employee in specified circumstances. On termination, the employer sought to set off AED 10,000 in alleged training costs against the employee's outstanding September salary of AED 3,466.67. The first-instance judge found in the employee's favour, ordered payment of the September salary, and rejected the set-off.

2. The employer sought permission to appeal. On the training cost clause, the employer argued the judge was wrong to confine it to externally provided training. Justice Andrew Moran rejected this argument. On a proper construction of Article 4, Clause 2 of the contract, the clause was limited to training expenses actually incurred and charged to the company by an external provider. The parties' objectively ascertained intention did not extend to the cost of basic internal training delivered by colleagues in order to enable the new employee to understand the requirements of the role and carry out her duties.

3. In addition to the interpretive point, the employer failed to produce evidence establishing either that it had incurred training costs from an external provider or that

any training supplied went beyond ordinary internal induction. The burden of proving recoverable expenditure rested on the employer, and that burden was not discharged.

4. The application was declared totally without merit under RDC 53.99, precluding any oral reconsideration hearing. Separately, the court noted that a consent order made by SCT Judge Maitha AlShehhi on 30 October 2024 required the employer to cancel the employee's employment visa. The employer had not yet complied. The court observed that enforcement proceedings would be available to the employee if the employer continued to fail to comply with that order.

CASES CITED/RELIED UPON BY THE COURT:

DIFC Courts Rules (RDC) 53.99 (totally without merit: prohibition on oral reconsideration of permission refusal); DIFC Employment Law No. 2 of 2019 (as amended).

LINK:

https://www.difccourts.ae/rules-decisions/judgments-orders/small-claims-tribunal/oleta-v-onesimo-2024-difc-sct-454

CASE NAME:

Negrete v Nazli

CASE REFERENCE:

SCT 459/2024 (DIFC Court of First Instance, 23 June 2025)

COURT:

Court of First Instance: H.E. Justice Sapna Jhangiani

KEY ISSUES ADDRESSED:

Permission to appeal employment judgment arising out of summary dismissal of a server assistant following alleged misconduct. Whether the first-instance judge's failure to order disclosure of the employer's internal investigation report and CCTV footage—evidence exclusively in the employer's possession—warranted the grant of permission to appeal. Whether the fairness principle permits permission to appeal where relevant evidence was not formally sought by application at first instance but was exclusively within the other party's control. Reliance on Miqal v Merani [2023] DIFC CFI 041 for the proposition that fresh evidence may be admitted on appeal.

KEY ISSUE DECIDED:

Permission to appeal granted on a limited number of grounds, including the employee's serious allegations of harassment and an alleged cover-up by the employer's HR department. Although no formal disclosure application had been made at the SCT hearing, Justice Jhangiani held that fairness required a grant of permission: the relevant evidence (the employer's investigation report and surveillance footage) was exclusively in the employer's hands, and the employee had requested its disclosure before the SCT. The appeal court may determine that fresh evidence be admitted, following Miqal v Merani [2023] DIFC CFI 041. Permission was refused on the remaining grounds, which disclosed no realistic prospect of success.

SUMMARY OF THE CASE:

1. Negrete was employed as a Server Assistant by Nazli, a hotel operating within the DIFC, from 17 October 2021 at a monthly salary of AED 1,854. On 27 September 2024, his employment was terminated with cause and with immediate effect. The employer stated that the reasons for dismissal related to misconduct. Negrete brought claims before the SCT for a range of employment entitlements including notice pay, visa and Emirates ID costs, gratuity, and alleged additional compensation for overtime, improper breaks, and unauthorised leave deductions. All claims were dismissed at first instance.

2. Negrete also raised serious allegations that he had been subjected to harassment and that the employer's HR department had conducted an investigation whose findings were concealed. He had requested before the SCT that the employer disclose its investigation report and the surveillance footage of the incident complained about. No formal disclosure application was made to the SCT, and the evidence was not produced.

3. On the permission to appeal application, Justice Jhangiani refused permission on most grounds, finding no realistic prospect that the first-instance judge erred on the

substantive employment claims. On the harassment and investigation grounds, however, she held that there had been no investigation of those allegations and that this constituted a serious procedural irregularity which may have directly influenced the findings on dismissal, notice, and related remedies.

4. The court granted permission to appeal on the investigation and additional compensation grounds, on the basis that fairness required the appeal court to consider whether fresh evidence should be admitted. Applying the principle in Miqal v Merani [2023] DIFC CFI 041, the judge hearing the substantive appeal will have a discretion to admit fresh evidence, including the investigation report and CCTV material. Further directions were to be handed down by the appeal judge.

5. The grant of permission was deliberately limited. On grounds relating to the Claimant's end-of-service gratuity, the court noted the Claimant had access to his DEWS account and could access those funds without court intervention.

CASES CITED/RELIED UPON BY THE COURT:

DIFC Employment Law No. 2 of 2019 (as amended); Miqal v Merani [2023] DIFC CFI 041 (11 September 2023) (discretion to admit fresh evidence on appeal from the SCT); DIFC Employee Workplace Savings (DEWS) scheme.

LINK:

https://www.difccourts.ae/rules-decisions/judgments-orders/small-claims-tribunal/negrete-v-nazli-2024-difc-sct-459

CASE NAME:

Nayan v Nandika

CASE REFERENCE:

SCT 485/2024 (DIFC Court of First Instance, 26 June 2025)

COURT:

Court of First Instance: H.E. Justice Thomas Bathurst AC KC

KEY ISSUES ADDRESSED:

The principles governing admission of new evidence on appeal from the SCT to the CFI, where RDC Rule 53 contains no express provision dealing with the point. Whether the general principles applicable to new evidence on appeal—requiring that the evidence could not have been adduced with reasonable diligence at trial and would have an important influence on the outcome—apply by analogy. Article 20 of the DIFC Employment Law: whether an employer's unilateral email purporting to vary or reduce salary amounts to the written agreement of the employee required by the statute.

KEY ISSUE DECIDED:

Appeal refused. On new evidence, Justice Bathurst held that, although RDC Rule 53 does not expressly address admission of fresh evidence on SCT appeals, the general principles governing such admissions apply: the evidence must (a) have been incapable of production with reasonable diligence at the time of trial, and (b) be likely to have an important influence on the outcome. Neither condition was met on the facts. On the salary variation ground, Article 20 of the DIFC Employment Law requires the employee's written agreement to any variation or reduction of salary. A unilateral email from the employer, even if received by the employee, does not constitute the employee's written consent and therefore does not give rise to a valid variation.

SUMMARY OF THE CASE:

1. Nayan brought claims against his former employer Nandika including for salary for August and the first 17 days of September 2024. Nandika counterclaimed for recovery of an outstanding housing loan and an ex gratia payment and sought orders relating to DEWS contributions. The first-instance judgment found in Nandika's favour on the counterclaim, requiring Nayan to repay AED 179,646.90. Nandika's appeal sought to rely on two new grounds and new evidence, namely (i) entry and exit records showing Nayan was abroad during the disputed salary period, and (ii) an employment permit cancellation document signed by Nayan certifying receipt of all dues.

2. On the new evidence, the court held that the general principles governing fresh evidence on appeal apply to SCT appeals, notwithstanding the absence of an express provision in RDC 53. Those principles require, as a matter of discretion, that the evidence could not have been adduced with reasonable diligence at first instance and that the court is satisfied it would have an important influence on the outcome. The entry and exit records could have been obtained and produced at the original hearing; no explanation was given for the failure to do so. The application to seek production of those records at the appeal stage was accordingly refused.

3. On the salary reduction ground, Nandika relied on correspondence it had sent Nayan purporting to reduce his salary for the period of his alleged unauthorised absences. The court upheld the first-instance judge's finding that Article 20 of the DIFC Employment Law requires the written agreement of the employee to any variation or reduction of salary. The employer's unilateral email, however clearly drafted, could not constitute the employee's consent. This ground was accordingly dismissed.

4. Nandika's appeal notice had not sought permission to appeal as required by RDC 53.89. The court held that, to the extent permission was necessary, it should be refused. In any event, the appeal was dismissed on its merits.

CASES CITED/RELIED UPON BY THE COURT:

DIFC Employment Law No. 2 of 2019 (as amended), Article 20 (written agreement required to vary or reduce salary); DIFC Courts Rules (RDC) 53.89 (requirement for permission to appeal); general appellate principles on admission of fresh evidence.

LINK:

https://www.difccourts.ae/rules-decisions/judgments-orders/small-claims-tribunal/nayan-v-nandika-2024-difc-sct-485

CASE NAME:

Olive v Onyx

CASE REFERENCE:

SCT 042/2025 (DIFC Court of First Instance, 19 September 2025)

COURT:

Court of First Instance: H.E. Justice Andrew Moran (combined permission and appeal hearing, 14 September 2025)

KEY ISSUES ADDRESSED:

The scope and effect of Article 28(2) of the DIFC Employment Law in the context of an employer's counterclaim: whether Article 28(2) authorises the employer to bring an affirmative damages claim against an employee for vacation leave taken in excess of entitlement, or whether it operates solely as a deduction mechanism from monies otherwise due on the termination date. The correct test for termination for cause under Article 63(1): the two-stage inquiry and the requirement for an objective assessment of the reasonable employer. The right to written reasons under Article 64 and whether non-compliance renders a termination unlawful.

KEY ISSUE DECIDED:

Appeal allowed in part. On Article 28(2), the court held—as a matter of first impression, there being no prior DIFC authority—that the provision operates purely as a set-off mechanism. It entitles an employer to deduct, from payments otherwise due to the employee on the termination date, an amount representing vacation leave already taken but not yet accrued. It does not authorise an affirmative claim for damages or debt against an employee where the employer's payments on termination are nil or insufficient to absorb the deduction. The deliberate omission of the word "repay" from the current version of the statute (present in an earlier iteration) was held to signal a legislative intent to confine the employer's right to a deduction. The counterclaim award of AED 49,018.86 was accordingly set aside. On Article 63(1), the court identified two separate stages: (1) whether the conduct objectively warranted termination; and (2) whether a reasonable employer would have terminated in those circumstances. The first-instance judge failed to apply the second, objective stage when treating mere absence from the office as sufficient to justify immediate dismissal. On Article 64, breach of the obligation to provide written reasons does not render the termination unlawful; it may give rise to regulatory consequences under Article 67 but was not a point properly before the judge.

SUMMARY OF THE CASE:

1. Olive, an employee, brought claims against Onyx, his employer, for sums due on the termination of his employment. The first-instance judge dismissed all of Olive's claims and upheld Onyx's counterclaim for AED 49,018.86 on the basis that Olive had taken vacation leave in excess of his accrued entitlement, relying on Articles 28(2) and (3) of the DIFC Employment Law. Olive was ordered to pay that sum plus the employer's filing fee. Olive applied for permission to appeal the counterclaim order, which was combined with the substantive appeal hearing before Justice Andrew Moran.

2. On the Article 28(2) point, the court undertook a detailed analysis of the provision's purpose and legislative history. Article 28 addresses entitlements on termination: it obliges the employer to pay the employee for vacation leave earned but not taken, and it confers on the employer a "strictly confined and limited" right to deduct from "any payments due to the Employee on the Termination Date" the value of leave taken but not yet earned. The language "deduct from" is the operative phrase. On the facts, the employer had no payments due to the employee on the termination date and therefore had no fund against which to exercise a deduction. The provision does not authorise a freestanding affirmative claim for the difference.

3. The court also noted that the deliberate removal of the word "repay" from the current text of Article 28(2)—which had appeared in an earlier version of the statute—reinforced the conclusion that the legislature had consciously replaced an express repayment obligation with a more limited set-off right. The order on the counterclaim was accordingly set aside.

4. On the termination grounds, the employer had relied on two principal matters: unexplained absences from the office, and a prolonged failure to submit required reports. The court found that the first-instance judge had failed to apply the second limb of the Article 63(1) test to either ground—namely, whether a reasonable employer would have treated that conduct as warranting immediate dismissal. Treating absence from the office alone as sufficient for immediate termination without asking whether a reasonable employer would have so concluded was an error of law. This ground succeeded at the permission stage but the court indicated the substantive termination findings required full reconsideration.

5. On Article 64, the court held that the employee's failure to be provided with written reasons for dismissal does not affect the lawfulness of the termination itself. Article 64 creates a right to written reasons upon request, and non-compliance may attract a fine or penalty under Article 67. It does not, however, operate as a precondition of a lawful dismissal. No Article 67 case had been put before the judge and he could not be criticised for not deciding it.

CASES CITED/RELIED UPON BY THE COURT:

DIFC Employment Law No. 2 of 2019 (as amended), Article 28(2) and (3) (deduction for excess vacation leave on termination); Article 63(1) (termination for cause: two-stage test); Article 64 (right to written statement of reasons within 14 days of employee's request); Article 67 (penalties for contraventions); Article 20 and Article 66(5) (statutory framework for deductions from remuneration); RDC 53.87 (SCT appeal test).

LINK:

https://www.difccourts.ae/rules-decisions/judgments-orders/small-claims-tribunal/olive-v-onyx-2025-difc-sct-042

CASE NAME:

Ormond v Oral

CASE REFERENCE:

SCT 543/2025 (DIFC Court of First Instance, 16 October 2025)

COURT:

Court of First Instance: H.E. Deputy Chief Justice Ali Al Madhani

KEY ISSUES ADDRESSED:

Whether an employer can lawfully condition the cancellation of an employee's employment visa on the employee first signing an "employment cancellation acknowledgment letter" (a waiver of all claims). The procedural requirements for urgent without-notice applications for visa cancellation orders. Whether visa cancellation and absconding report disputes are suitable for determination on an urgent, without-notice basis.

KEY ISSUE DECIDED:

Appeal allowed in part on procedural grounds. The first-instance order granting the employee's application for visa cancellation had been made without notice to the employer. The Deputy Chief Justice varied the order to correct procedural irregularities, directing that the visa cancellation dispute be fully pleaded and determined at the forthcoming substantive hearing. On the merits, the court confirmed the position established by the first-instance judge: an employer cannot make the cancellation of an employee's visa conditional upon the employee signing a waiver of claims. Conditioning visa cancellation on the signing of such a document was characterised as improper and injurious to the employee. However, applications of this nature are factual disputes requiring full pleading from both parties before orders are made; they are not suitable for determination on a without-notice, urgent basis where the substantive claim remains unresolved.

SUMMARY OF THE CASE:

1. Ormond was employed by Oral under a contract effective from 2 December 2024 until 8 August 2025. Following the termination of his employment, he filed an SCT claim alleging various contractual breaches. Separately, he applied under SCT 543-2025/1 for an order requiring Oral to cancel his employment visa, asserting that the employer had refused to proceed with the cancellation unless he first signed an employment cancellation acknowledgment letter (the "Waiver") confirming that all his dues had been settled. Ormond's position was that signing the Waiver would prejudice his right to pursue his claims.

2. The first-instance judge (H.E. Justice Maha Al Mheiri) granted the application without notice to Oral, ordering visa cancellation within five days and making a finding that the Waiver was injurious to the employee. Oral appealed, raising a number of procedural objections: it had not been heard before the order was made; the five-day deadline was unworkable (two of the five days were non-working days and the employee's dependent was outside the UAE); and an absconding report it had filed had first to be formally withdrawn before visa cancellation could be effected.

3. DCJ Ali Al Madhani held that the application was neither urgent nor appropriate for determination without notice to the employer, given that the substantive claim remained pending until a hearing on 25 November 2025. Applications concerning visa cancellations and absconding cases raise factual disputes that require a full pleading from both parties. An interlocutory order requiring visa cancellation within five days and imposing liability for "future fees" could not properly be made against a defendant who had had no opportunity to put its case.

4. The order was varied to correct those procedural irregularities. The court was careful to confirm that neither party's substantive position was prejudiced by the variation and that the visa cancellation and absconding issues would be fully considered at the November hearing. The principle that visa cancellation may not be conditioned on a waiver of claims was not disturbed.

CASES CITED/RELIED UPON BY THE COURT:

DIFC Employment Law No. 2 of 2019 (as amended); DIFC Courts Rules (RDC); general principles of procedural fairness and the right to be heard before adverse orders are made.

LINK:

https://www.difccourts.ae/rules-decisions/judgments-orders/small-claims-tribunal/ormond-v-oral-2025-difc-sct-543

CASE NAME:

Omid v Orah

CASE REFERENCE:

SCT 011/2025 (DIFC Court of First Instance, 22 October 2025)

COURT:

Court of First Instance: H.E. Justice Thomas Bathurst AC KC

KEY ISSUES ADDRESSED:

Construction of a hire contract: the scope of an employer's liability for customs duty arising from the export of hired equipment. Whether liability for additional duty incurred as a result of documentation declaring a temporary hire as a permanent export extends to the hirer where the hirer did not authorise that documentation. The relevance of an agent's (freight broker's) acts within or outside the scope of authority. Whether an email authorising payment of customs duty, sent in the context of urgency to release held trucks, constitutes an admission of liability. The without prejudice rule: a settlement offer not expressly headed "without prejudice" but made in an endeavour to settle proceedings.

KEY ISSUE DECIDED:

Permission to appeal refused. The hire contract imposed liability for customs duty on Orah as the hirer; however, that liability was confined to duty arising in performance of a temporary hire arrangement. Additional duty attributable to documentation incorrectly declaring a permanent export could only be Orah's liability if Orah had itself authorised the documentation or if it was prepared by Orah's agent acting within the scope of its authority. On the evidence, the freight broker (Orren) was not acting within the scope of any authority conferred by Orah; Orah had given no instructions to import or export the equipment on a permanent basis. An email from Orah's representative authorising Omid to pay the duty on its behalf, sent in conditions of urgency to prevent the trucks being turned back, was not an unqualified admission of liability for the additional duty. Orah's settlement offer—made without an express without-prejudice heading—was nonetheless a without prejudice offer made in an endeavour to settle the proceedings and was not an admission of liability.

SUMMARY OF THE CASE:

1. Omid, an equipment hire company based in Dubai, supplied Orah with construction equipment under a hire contract (DB/1265375) for use on a project in Bahrain. The hire was on a temporary basis. When the equipment was moved to the project, documentation was prepared declaring the export as permanent, which incurred additional customs duties of USD 16,078. Omid claimed the hire charges (USD 34,559.76) and the customs duties, together with a delay penalty and contractual interest.

2. The first-instance judge found against Omid on the customs duty claim and allowed Orah's counterclaim for lost rental days and truck hire costs arising from delays at the Bahrain border. On appeal, Omid challenged the findings on customs duty and agency.

3. Justice Bathurst upheld the first-instance reasoning. The hire contract did impose customs duty liability on Orah, but only in respect of duty arising in the ordinary performance of a temporary hire. Orah could not be liable for additional duty generated by documentation declaring the goods as permanently exported unless Orah had authorised that documentation or it had been prepared by an agent acting within authority conferred by Orah. The evidence showed Orah had not instructed Orren (the freight broker) to make any permanent export declaration; indeed, a WhatsApp message from Orah's representative expressly stated that he had no knowledge of the shipment documentation and instructed others to "sort it out." Whoever had prepared the permanent export documentation had done so without Orah's authority.

4. An email from Orah's representative authorising Omid to pay the duty "on its behalf" was relied upon by Omid as an admission of liability. The court declined to treat it as such. The email was written in circumstances of urgency—to prevent the trucks from being sent back by customs—and did not constitute an unqualified acknowledgment that Orah was legally responsible for the additional duty. Context is material to the significance of such communications.

5. Orah's settlement offer, although not headed "without prejudice," was made in an endeavour to resolve the proceedings and accordingly attracted without prejudice protection. It was not to be treated as an admission of liability.

CASES CITED/RELIED UPON BY THE COURT:

General principles of agency: scope of authority; without prejudice rule and settlement communications; principles of contractual construction in hire agreements.

LINK:

https://www.difccourts.ae/rules-decisions/judgments-orders/small-claims-tribunal/omid-v-orah-2025-difc-sct-011

CASE NAME:

Olia v Onawa

CASE REFERENCE:

SCT 333/2025 (DIFC Court of First Instance, 6 November 2025)

COURT:

Court of First Instance: H.E. Justice Roger Stewart KC

KEY ISSUES ADDRESSED:

Whether temporal proximity between an employee's filing of an SCT claim against an employer and the employer's subsequent summary dismissal creates a realistic prospect of success on a retaliatory dismissal ground. Whether a failure to investigate harassment allegations before dismissal constitutes a serious procedural irregularity warranting a grant of permission to appeal with re-hearing. The employer's obligation to provide written itemised pay statements. Construction of a complex employment contract containing minimum hours obligations and a three-year repayment provision.

KEY ISSUE DECIDED:

Permission to appeal granted. Justice Roger Stewart KC found that two grounds had a real prospect of success: first, the retaliatory dismissal ground, where the employee had filed an SCT claim against the employer and was dismissed immediately afterwards, creating a strong prima facie inference of retaliation; and second, a serious procedural irregularity in the first-instance proceedings arising from the complete failure to investigate the employee's harassment allegations. The dismissal findings, the notice entitlement, and the repayment claims were all potentially infected by those irregularities. The only effective remedy was a full re-hearing of the case by way of appeal.

SUMMARY OF THE CASE:

1. Olia was employed as a senior pilates instructor by Onawa, a pilates studio located in the DIFC, under a contract of employment dated 26 September 2024. The contract was complex: it provided for a minimum number of hours with a provision for repayment of sums paid for hours not worked if the employment was terminated within three years. Onawa failed to provide Olia with written itemised pay statements for each pay period, which it conceded at the hearing before Justice Stewart. During the employment, Olia filed a claim in the SCT. Shortly thereafter, Onawa summarily dismissed her.

2. The first-instance judgment upheld the dismissal as fair, found no notice was due, and ordered Olia to make repayments to Onawa under the minimum hours provision. Olia appealed on nine grounds, including alleged misapplication of the termination law, retaliatory dismissal, harassment and coercion, failure to pay for all hours worked, and miscalculated deductions.

3. On the retaliatory dismissal and harassment grounds, Justice Stewart found that there appeared to have been no investigation of Olia's allegations of harassment or the possible role those allegations played in Onawa's decision to dismiss her. The sequence of events—filing an SCT claim followed immediately by dismissal—was itself a matter

requiring proper investigation and consideration. The failure to address it was a serious procedural irregularity that may directly have caused the findings on the fairness of dismissal, notice entitlement, and repayment liability. These grounds were held to have a real prospect of success.

4. The remaining grounds—raising alleged calculation errors—proceeded on the premise that there was an entitlement in principle for repayment. Their resolution was hindered by a lack of clarity in the first-instance record as to what sums had been deducted, when, and for what purpose. Those grounds were accordingly treated as contingent on the outcome of the re-hearing.

5. Permission was granted and a re-hearing of the entire matter was ordered before the CFI, with a time estimate of half a day. This was the most appropriate remedy given the seriousness of the procedural irregularities identified.

CASES CITED/RELIED UPON BY THE COURT:

DIFC Employment Law No. 2 of 2019 (as amended); Article 21 of DIFC Courts Law No. 2 of 2025 (SCT appeal grounds); RDC 53.87 (test for allowing SCT appeal); RDC 53.91 (permission to appeal test: real prospect of success or compelling reason); RDC 53.51 and 53.53 (SCT informality; relaxed rules of evidence).

LINK:

https://www.difccourts.ae/rules-decisions/judgments-orders/small-claims-tribunal/olia-v-onawa-2025-difc-sct-333

CASE NAME:

Olexa v Odon

CASE REFERENCE:

SCT 295/2025 (DIFC Court of First Instance, 10 December 2025)

COURT:

Court of First Instance: H.E. Justice Sapna Jhangiani

KEY ISSUES ADDRESSED:

The Article 10 time-bar in the DIFC Employment Law (6 months from termination) and the Article 20(2)(a) extension for claims arising from a series of deductions. The construction of a Release Agreement and its effect on further entitlement claims: whether clear and unambiguous release language bars claims for additional payments allegedly promised orally and in correspondence. Promissory estoppel as a route around a signed Release Agreement. The obligation to plead and quantify a statutory Article 19 penalty in the claim form, and the consequences of failure to do so. Construction of the "Good Leaver" definition in a senior employee's contract.

KEY ISSUE DECIDED:

Permission to appeal refused. On the time-bar, the court upheld the first-instance finding. Article 10 of the Employment Law requires claims to be brought within six months of the termination date; Article 20(2)(a) extends this to six months from the last in a series of deductions only where those deductions amount to ongoing unlawful deductions from remuneration. On Release Agreement construction, the document was clear and unambiguous in fixing the employee's terminal entitlements. Clear release language binds the employee even where oral promises of a higher sum were allegedly made before signing; promissory estoppel requires sufficient evidence of a conditional promise upon which the employee demonstrably relied, and that standard was not met on the evidence. On Article 19 penalties, a claimant who fails to quantify the penalty in the Claim Form and pay a fee uplift cannot recover more than the sum originally pleaded. The Article 19 penalty is not an automatic entitlement awarded at the court's initiative without pleading; it must be claimed and quantified.

SUMMARY OF THE CASE:

1. Olexa, a senior employee of Odon, resigned after being offered additional compensation incentives. He signed a Release Agreement on 10 May 2024 in exchange for four months' salary, releasing all claims arising from his employment. He subsequently claimed the employer owed him further "Additional Salary Payments" on the basis of oral promises allegedly made before he signed the Release Agreement, and that those promises gave rise to a binding contractual obligation or a promissory estoppel.

2. The time-bar issue arose because the employer argued that the claim was brought outside the six-month period in Article 10 of the DIFC Employment Law. The employer denied that Article 20(2)(a) was engaged, since the Additional Salary Payments had never become due. The first-instance judge agreed, and the permission judge upheld that conclusion: the Article 20(2)(a) extension applies to a series of unlawful deductions

from, or non-payments of, remuneration, not to optional or discretionary payments that were never contractually due.

3. On the Release Agreement, the court applied the canons of construction in Articles 49 to 55 of the DIFC Contract Law No. 6 of 2004. The Release Agreement was clear in its terms: Schedule 1 set out the payments to which the employee was entitled on termination, and clause 4(b) identified any further payments as discretionary. Having signed a document with that clear meaning, the employee could not rely on prior oral representations to the contrary, and his promissory estoppel case failed for want of evidence that the alleged promise was sufficiently certain and that his resignation was induced by reliance on it.

4. On the Article 19 penalty, the court held that the penalty is not an automatic judicial award. A claimant who wishes to recover a statutory penalty must plead and quantify it in the Claim Form and pay the corresponding fee uplift. The claimant's failure to do so meant his claim was properly confined to the amount set out in the original Claim Form (AED 174,790). The argument that Article 19 penalties are akin to interest and arise automatically was rejected.

5. The "Good Leaver" argument—that the employee should have been treated as a Good Leaver under the contractual definition—was also rejected. He did not satisfy the contractual definition of a Good Leaver, and his argument that he "must have been" one had no prospect of success.

CASES CITED/RELIED UPON BY THE COURT:

DIFC Employment Law No. 2 of 2019 (as amended), Article 10 (time-bar: 6 months from termination); Article 19 (penalty for late payment of wages: must be pleaded and quantified); Article 20(2)(a) (extension for series of deductions); DIFC Contract Law No. 6 of 2004, Articles 49–55 (canons of contractual construction); Article 21 of DIFC Courts Law No. 2 of 2025 (SCT appeal grounds); RDC 53.87, 53.89, 53.91 (permission to appeal standards).

LINK:

https://www.difccourts.ae/rules-decisions/judgments-orders/small-claims-tribunal/olexa-v-odon-2025-difc-sct-295

CASE NAME:

Obasi v Oreana

CASE REFERENCE:

SCT 169/2025 (DIFC Court of First Instance, 24 December 2025)

COURT:

Court of First Instance: H.E. Justice Roger Stewart KC

KEY ISSUES ADDRESSED:

The scope of the SCT appeal jurisdiction: whether there is any right of appeal on questions of fact from an SCT judgment. The standard of review applicable on appeal and the rationale for confining appeals to questions of law, miscarriages of justice, procedural fairness, and DIFC law matters. The construction of a real estate brokerage agreement: whether the broker "introduced" the relevant property for the purposes of a commission entitlement clause; and whether a clause prohibiting direct landlord contact after introduction (Clause 4) is engaged even if the tenant conducted independent parallel negotiations before signing.

KEY ISSUE DECIDED:

Permission to appeal refused. The court reaffirmed that under Article 21 of DIFC Courts Law No. 2 of 2025 (previously Article 28 of the DIFC Court Law No. 10 of 2004) and RDC 53.87–53.91, there is no right of appeal from SCT judgments on questions of fact. The restriction is deliberate: SCT proceedings are informal (RDC 53.51) and not governed by strict rules of evidence (RDC 53.53), and an unrestricted right of factual re-examination on appeal would undermine the tribunal's purpose. Both proposed grounds of appeal—whether the broker "introduced" the property within the meaning of Clause 2 of the brokerage agreement, and whether direct landlord contact occurred in the face of Clause 4—were pure questions of fact on which the first-instance judge had considered and weighed all relevant evidence, including WhatsApp communications. No error of law was identified.

SUMMARY OF THE CASE:

1. Obasi, a commercial real estate brokerage company, filed an SCT claim for AED 391,123.45 representing commission due under a lease brokerage agreement with Oreana. The first-instance judge (SCT Judge Hayley Norton) found in favour of Obasi, holding that the broker had introduced the relevant unit to the tenant and that Clause 4 of the agreement—which prohibited the tenant from making direct contact with the landlord or owner after the broker's introduction—had been breached. Oreana sought permission to appeal.

2. The first proposed ground was that the first-instance judge had misinterpreted Clause 2 of the brokerage agreement by finding that Obasi had "introduced" the relevant unit. Oreana argued that prior WhatsApp communications showed it had already been in direct contact with the landlord's representative (Ofir) regarding the same development from January to May 2024, well before the broker's involvement. Justice Stewart noted that the judge had specifically considered this evidence and had found that the earlier discussions concerned a different property from that ultimately agreed upon. There was

no basis for suggesting the judge had overlooked relevant material or reached a legally unsustainable conclusion.

3. The second proposed ground was that the broker had not been the effective cause of the lease, the argument being that Oreana's independent negotiations with Ofir had led directly to the transaction without any contribution from Obasi. Clause 4 of the agreement addressed this directly: it prohibited any direct contact with the landlord or owner after the broker's introduction. The judge had found Clause 4 to have been breached, and that conclusion was a factual one supported by the evidence.

4. Both grounds were characterised as factual appeals dressed up as questions of law. Justice Stewart dismissed the application, emphasising that the absence of a right of appeal on facts is not incidental but is integral to the SCT's function as a forum for swift and proportionate resolution of lower-value commercial disputes.

CASES CITED/RELIED UPON BY THE COURT:

DIFC Courts Law No. 2 of 2025, Article 21 (SCT appeal grounds); DIFC Court Law No. 10 of 2004, Article 28 (predecessor provision, same material terms); RDC 53.51 (SCT informality); RDC 53.53 (relaxed rules of evidence); RDC 53.87, 53.89, 53.91 (SCT appeal standards).

LINK:

https://www.difccourts.ae/rules-decisions/judgments-orders/small-claims-tribunal/obasi-v-oreana-2025-difc-sct-169

VOLUME VI — COURT OF APPEAL 2026

Covers all Court of Appeal judgments and orders published on the DIFC Courts website in 2026 (to 1 March 2026).

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1. LXT Real Estate Broker LLC v SIR Real Estate LLC [CA 005/2025]

Court of Appeal (Chief Justice Wayne Martin, Justice Sir Peter Gross and Justice René Le Miere). Order: 13 January 2026; Reasons: 21 January 2026.

Subject Matter

Security for costs. Appeal against a first-instance order requiring the Claimant to provide security in a specified sum and on specified terms. The Court of Appeal allowed the appeal and remitted the application to the CFI for fresh determination, providing definitive guidance on the two-stage analytical framework for security for costs applications under the RDC.

Key Facts

1. The Claimant (LXT Real Estate Broker LLC) brought a Part 7 claim against the Defendant (SIR Real Estate LLC). The Defendant applied for security for costs. At first instance, the Judge ordered security in the sum of USD 250,499.26, but only to cover costs up to the hearing of the Defendant's strike-out application. The Judge further provided that the "level and quantum of Security is not subject to change".
2. The Defendant appealed on the grounds that the security was limited to a fraction of the projected total costs to trial (estimated at USD 2.5 million), and that the Order impermissibly capped its right to seek further security. The Claimant cross-applied for permission to cross-appeal on the basis that the Crabtree principle (that security should not ordinarily be ordered where a counterclaim is based substantially on the same facts as the claim) should have been applied.
3. The strike-out application had been determined by the time of the appeal hearing, materially changing the procedural landscape. The Court of Appeal allowed the appeal, set aside the Security Order, and remitted the application to the CFI for fresh determination.

Legal Framework: Two-Stage Test (RDC 25.102)

4. The Court of Appeal confirmed and articulated the two-stage analytical framework for security for costs:

   Stage 1 — Gateway (RDC 25.102): The applicant must establish that at least one of the conditions specified in RDC 25.102 is satisfied. This is a mandatory jurisdictional prerequisite. Unless a gateway condition is satisfied, the Court has no power to order security. It is a question of fact. The gateway most frequently invoked is RDC 25.102(2): that the Claimant is a company and there is reason to believe it will be unable to pay the Defendant's costs if ordered to do so.

   Stage 2 — Discretion: Once a gateway is established, the Court proceeds to determine whether, in all the circumstances, it is just to order security. This is a discretionary assessment that considers factors including: whether security would stifle a genuine claim; the parties' conduct; proportionality; and the overriding objective. A satisfied

gateway does not entitle the applicant to security; it merely permits the Court to consider it.

Key Holdings

5. Order construction: Reading the operative order and the Schedule of Reasons together, the first-instance Order confined security to the period up to and including the determination of the Strike-out Application and expressed that the "level and quantum of Security is not subject to change", thereby preventing the Defendant from applying for further security after that stage. The Court of Appeal found this construction to be correct on the face of the Order.
6. Impermissible cap: However, the Court held that the Judge erred in imposing this cap. A defendant's right to apply for further security for costs arises as a matter of law, and a court order cannot remove or extinguish that right. The Judge's Order was accordingly wrong.
7. Staging: There is no presumption or default position that security should be ordered in stages or in one instalment. The appropriate approach depends on the facts of the particular case. A first-instance judge must consider all relevant circumstances without applying any default rule.
8. Third-party funding: Where litigation is funded by a third party, Practice Direction 2 of 2017 requires disclosure of the funder's identity and the existence of the funding agreement (though not its terms, unless ordered). The DIFC Courts may take the funding into account on security applications, but the mere fact that a party is funded is not by itself determinative.
9. Crabtree principle: The Court confirmed that the Crabtree principle — derived from BJ Crabtree (Insulations) Ltd v GPT Communications Systems Ltd (1990) 59 BLR 43 — is recognised in the DIFC. Where a counterclaim is based wholly or substantially on the same facts as the claim, the court will not ordinarily order security. However, since no counterclaim had yet been filed at the date of the original application, the cross-appeal was premature. The CA reserved the Claimant's right to raise the Crabtree principle if and when a counterclaim was filed.
10. Appellate standard for discretionary case-management decisions: Under RDC 44.117, an appeal against a discretionary case-management decision will only be allowed where the decision was "wrong" or "unjust because of a serious procedural or other irregularity". The appellate court will interfere if the judge: (a) erred on a question of law; (b) took into account irrelevant factors; (c) failed to take into account relevant factors; or (d) reached a conclusion outside the range of reasonable outcomes open to the judge.
11. Remittal: Given the passage of nearly 11 months, the determination of the Strike-out Application (altering the cost landscape), and the fact-sensitive nature of the quantum and staging assessment, the Court remitted the security application to the CFI for rehearing and fresh determination rather than substituting its own assessment.

Link: https://www.difccourts.ae/rules-decisions/judgments-orders/court-appeal/ca-0052025-lxt-real-estate-broker-llc-v-sir-real-estate-llc-1

VOLUME VII — COURT OF FIRST INSTANCE 2026

Covers substantive Court of First Instance judgments and orders published on the DIFC Courts website in 2026 (to 1 March 2026). Purely procedural and costs orders are excluded.

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1. BAM Higgs & Hill LLC v (1) Affan Innovative Structures LLC (2) Amer Affan [2021] DIFC CFI 106

Court of First Instance (Justice Michael Black). Judgment: 23 February 2026. Trial: 21 October – 1 November 2024. Counsel: Lord Jonathan Marks KC (DLA Piper) for the Claimant; Riaz Hussain KC (Horizons & Co) for the Defendants.

Subject Matter

Construction — subcontract — instructed variation — wrongful call of performance guarantees — valuation on a fair and reasonable basis — personal liability of director. The judgment concerns a specialist façade subcontract for the Museum of the Future (MOTF) in Dubai, a geometrically complex torus structure clad in 1,024 GFRP panels. BAM was the Main Contractor; AFFAN was the specialist façade subcontractor. BAM counterclaimed against AFFAN for 15 alleged breaches and separately claimed against the Second Defendant, Dr Affan, in his personal capacity under UAE Commercial Companies Law.

Key Facts

1. The MOTF façade works were subject to a significant design development after contract award, involving panelisation, hexagonalisation and LED integration of the panels (collectively the "Variation"). BAM instructed AFFAN to carry out the Variation. The works were executed. However, following a dispute with the Employer, BAM sought to avoid paying AFFAN for the Variation and instead relied upon the original subcontract BQ rates.
2. BAM took over AFFAN's works pursuant to Addendum Clauses B1/B2/B5/C7 (not under the default termination regime in Subcontract Clause 26) and called on three performance guarantees totalling AED 31,250,000.
3. AFFAN counterclaimed for the full value of the Variation and for repayment of the called guarantees.
4. BAM separately claimed AED 20,566,242 against Dr Affan personally on the basis that he had committed fraud or abused his powers as a director under UAE Federal Law No. 32 of 2021 (Commercial Companies Law), Arts 84 and 162.

Key Holdings

5. Instructed variation: BAM had validly instructed a contractual variation. Having instructed the Variation and received the benefit of the works, BAM was not entitled to refuse payment on the basis that the Employer had declined to fund the additional cost. The Employer's refusal was not a condition precedent to BAM's payment obligation to its subcontractor.
6. Valuation — fair and reasonable standard: The subcontract provided that variations were to be valued on a "fair and reasonable" basis in all the circumstances. The Court rejected valuation by reference to the accepted subcontract BQ rates (Method 1) or the

accepted subcontract amount (Method 2) as these failed to capture the true scope and cost of the Variation. The Court adopted Method 3 — the as-built element valuation of AFFAN's variation claims — as the most appropriate reflection of what was fair and reasonable. AFFAN was awarded AED 28,284,022.86 for the varied works.

7. Performance guarantees: BAM had no contractual right to call the guarantees in the circumstances. The guarantees were required to be repaid. The Court awarded AFFAN 70% of the total guarantee sums called (AED 31,250,000), producing a further recovery element of AED 21,875,000.
8. Total award to AFFAN: AED 50,159,022.86 in total, inclusive of the valuation recovery and guarantee repayment.
9. Personal liability — director: BAM's claim against Dr Affan personally under Arts 84 and 162 of the UAE Commercial Companies Law failed. Personal liability of a director for the debts of a company requires proof of fraud, abuse of power, or conduct beyond the scope of authority. BAM did not establish the requisite elements and the claims were dismissed.
10. Browne v Dunn in the DIFC: The Court applied the rule in Browne v Dunn, confirming that a party is required to put its case on any material matter to a witness during cross-examination before the Court can act upon it in its findings. The principle has been applied in the DIFC: see Amira C Foods International LLC v IDBI Bank Ltd [2018] DIFC CFI 027.
11. Interest: Interest was awarded under Article 72 of the UAE Commercial Transactions Law (Federal Decree-Law No. 50 of 2022).

Link: https://www.difccourts.ae/rules-decisions/judgments-orders/court-first-instance/bam-higgs-hill-llc-v-1-affan-innovative-structures-llc-2-amer-affan-2021-difc-cfi-106

Aptiva Technologies FZE v Liberty Steel Group Holdings (EMEA) Ltd [2024] DIFC CFI 076

Court of First Instance (Justice Roger Stewart). Judgment: 2 February 2026. Trial: 27 January 2026. Counsel: Sethu Nandakumar Menon (Menons Legal FZE) for the Claimant. The Defendant did not appear at trial.

Subject Matter

Software supply agreement — repudiation — debt v. damages — mitigation — admissibility of absent party's witness statements — penalty interest clause. Aptiva (a software reseller) claimed for unpaid licence fees under a three-year non-cancellable software supply agreement with Liberty Steel (part of the Gupta Family Group Alliance). Liberty Steel did not attend trial.

Key Facts

1. By a software supply agreement of 13–15 February 2024, Aptiva agreed to supply OpenText software to Liberty Steel for three years at a total price of USD 476,768.68 payable in three annual instalments. The agreement was expressed to be non-cancellable. The interest rate on overdue sums was 1.5% per month (18% per annum).
2. Liberty Steel, citing financial difficulties arising from the collapse of Greensill Capital, gave notice purporting to cancel the agreement in March and April 2024. Liberty Steel did not attend trial; its solicitors filed a skeleton argument but withdrew witness attendance.
3. Aptiva continued to press for performance but ultimately accepted the repudiation by amending its claim in February 2025 to seek payment of all three invoices.

Key Holdings

4. Absent party's witness statements — inadmissibility (RDC 29.41): Where a party has served witness statements but neither applies to adduce the evidence as hearsay nor attends to give oral evidence, the witness statements are entirely inadmissible and must be disregarded. RDC 29.41 provides that a party who wishes to rely on a witness's statement must call the witness to give oral evidence unless the Court orders otherwise or the statement is put in as hearsay evidence. No such application was made. The Court accordingly paid no attention whatever to Liberty Steel's two witness statements. Documents in an agreed trial bundle remain admissible as evidence of their contents (RDC 29.122), and the Court took account of written submissions to the extent that they relied upon matters established by the admissible documentary evidence.
5. Debt v. damages — no mitigation on debt claims: The first invoice was a liquidated debt accrued upon formation of the contract. No question of mitigation arises in relation to a debt. Liberty Steel's argument that Aptiva had an obligation to mitigate by renegotiating its payment obligations to OpenText (the sub-supplier) was rejected in its entirety.
6. Repudiation and mitigation: Once Aptiva accepted Liberty Steel's repudiation (by its February 2025 amendment), the second and third invoices became claims for damages rather than debt. Mitigation principles applied. However, Aptiva had no legal obligation to seek to reduce or cancel its own contract with OpenText: (a) OpenText was entitled to the benefit of its agreement; (b) OpenText could supply as much software as it had orders for; (c) there was no legal basis on which Aptiva could reduce its obligations to OpenText; and (d) Aptiva was acting as a reseller and had no obligation to reduce amounts due to OpenText any more than OpenText was obliged to reduce the benefit

of its own bargain. By the time of judgment the second invoice date had passed and the third was imminent, making any discount for early receipt de minimis (citing Interoffice Telephones Ltd v Robert Freeman Co Ltd [1958] 1 QB 190).

7. Penalty interest at 18% per annum: The Court noted the divergence between the approach of the UKSC in Cavendish Square Holding BV v Makdessi [2015] UKSC 67 ("extravagant and unconscionable") and the High Court of Australia in Andrews v Australia and New Zealand Banking Group Ltd (2012) 247 CLR 205 ("in terrorem") but declined to resolve the conflict on a default judgment. On either test, 18% per annum on an unsecured commercial debt was not penal. The rate mirrored Aptiva's own obligation to OpenText, reflected the credit risk of unsecured late payment, and was broadly equivalent to consumer credit rates.

8. Interest: Contractual interest at 18% per annum was awarded on the first invoice (debt) from the date of contract formation (15 February 2024) to judgment. Interest at 9% per annum under Article 118 of the DIFC Contract Law (DIFC Law No. 6 of 2004) was awarded on the second invoice amount as damages (the third not yet being due at the date of award). Total judgment: USD 542,798.42 (principal USD 476,768.68 plus interest USD 66,029.74).

Link: https://www.difccourts.ae/rules-decisions/judgments-orders/court-first-instance/aptiva-technologies-fze-v-liberty-steel-group-holdings-emea-ltd-2024-difc-cfi-076

Omar Ben Hallam v Natixis [CFI 016/2025]

Court of First Instance (H.E. Deputy Chief Justice Ali Al Madhani). Order with Reasons: 3 February 2026.

Subject Matter

Employment costs — Practice Direction No. 1 of 2025 — no adverse-costs general rule in CFI employment proceedings — no retrospective effect — confidentiality of employment proceedings. The Claimant sought to vary a costs order made in a dismissed employment claim by invoking the new Practice Direction introduced in October 2025 introducing a no-costs default rule for CFI employment disputes.

Background

1. The Claimant (Mr Ben Hallam) brought an employment claim valued at AED 4.2 million against Natixis. His claim was struck out on three heads and dismissed by immediate judgment on the fourth. Costs were ordered against him. The Claimant applied to vary the costs order, relying on Practice Direction No. 1 of 2025 ("PD 1/2025") which came into force on 9 October 2025, after the judgment of 19 September 2025.

Practice Direction No. 1 of 2025

2. PD 1/2025 provides (at para 3) that the general rule in CFI employment disputes is that each party bears its own legal costs. An adverse costs order may only be made by discretion where: (a) a party has brought or conducted proceedings unreasonably; (b) a party has acted vexatiously or in bad faith; or (c) it is otherwise in the interests of justice to do so.
3. PD 1/2025 also provides (at para 4) that CFI employment proceedings are, by default, conducted in private, with final judgments publishable in anonymised form unless the Court determines otherwise.

Key Holdings

4. No retrospective effect: PD 1/2025 came into force on 9 October 2025. It contains no provision granting retrospective power. The Judgment was issued on 19 September 2025, before the PD came into effect. The costs order was therefore made under the law applicable at the time and PD 1/2025 could not operate to vary it. This reflects the general principle that Practice Directions do not have retrospective effect unless expressly so provided.
5. No immunity from costs: Even if PD 1/2025 applied, it does not immunise parties to employment proceedings from adverse costs orders. It establishes a starting point (each party bears own costs) with defined discretionary exceptions. The Court's case management powers to make adverse costs orders remain intact, circumscribed only by the grounds in para 3.2.
6. Costs quantum: AED 70,000 awarded on the standard basis to Natixis. The claim was struck out at the earliest opportunity following a short (two-hour) hearing with no complex evidence. Liberty Steel's total costs claim of AED 390,910.77 was disproportionate: the practitioner time of over 154 hours was excessive given the seniority of the lawyers (9–18 years' experience) and the modest complexity of the proceedings.
7. Indemnity costs threshold: An adverse costs order on the indemnity basis requires that the paying party's conduct was "unreasonable to a high degree", amounting to

deliberate misconduct in breach of a Court direction or otherwise taking the circumstances out of the norm: Practice Direction 5 of 2014. Although the Claimant's claim was weak and should not have been pursued (as he had been advised), his conduct did not meet this elevated threshold.

8. Confidentiality / anonymisation: Given the PD's lack of retrospective effect, there was no obligation to anonymise the proceedings or remove prior public reporting.

Link: https://www.difccourts.ae/rules-decisions/judgments-orders/court-first-instance/cfi-0162025-omar-ben-hallam-v-natixis-2

Clyde & Co LLP v (1) Union Properties PJSC (2) UPP Capital Investment LLC [CFI 057/2025]

Court of First Instance (H.E. Justice Roger Stewart KC). Order with Reasons: 2 February 2026.

Note: Union Properties PJSC is the first defendant in a separate active matter in Sean Brannigan KC's practice (Union Properties — appeal against a strike-out by Sir Andrew Smith J). This is a distinct proceeding (Clyde & Co LLP's fees claim under a professional services agreement) but involves the same entity.

Subject Matter

Construction and effect of a Professional Services Agreement ("PSA") — permission to appeal refused — contra proferentem — PTA standard equivalent to immediate judgment test. Clyde & Co LLP claimed against Union Properties PJSC for fees due under a PSA. Justice Roger Stewart KC granted declarations as to the construction of the PSA in Clyde & Co's favour by immediate judgment under RDC 24.1(b). The Defendant applied for permission to appeal.

Background

1. By Order of 9 December 2025, Justice Roger Stewart KC granted declarations as to the meaning of the PSA substantially as sought by Clyde & Co, under RDC 24.1(b) (immediate judgment where the defendant has no real prospect of defending). No immediate money judgment was granted. The Defendant applied for permission to appeal the construction declarations.

Key Holdings

2. Permission to appeal — standard (RDC 44.19): Permission to appeal will be granted where the appeal would have a real prospect of success (i.e. a realistic rather than fanciful prospect, requiring more than mere arguability) or where there is some other compelling reason why the appeal should be heard.
3. Equivalence of PTA and immediate judgment tests: The test for granting permission to appeal against an immediate judgment under RDC 24.1(b) is materially the same as the test for granting immediate judgment in the first place (no real prospect of defending/succeeding). Where the Judge was required to be satisfied that there was no real prospect of defending the issues of construction before granting the declarations, the same analysis substantially governs the PTA. The Court found that the conclusions on construction were clear once the rival arguments were considered; none of the three grounds of appeal afforded a realistic prospect of success.
4. Ground 1 — commercial common sense: The Defendant argued that the construction reached lacked commercial common sense and that a different construction should have been preferred. The Court rejected this: the bargain made was unique and each party's case involved some possibly surprising commercial consequences. The language was clear, and a clear language analysis was plainly in favour of Clyde & Co.
5. Ground 2 — termination provisions as "boilerplate": The Defendant contended that the Court had misconstrued the termination provisions, characterising them as boilerplate. The Court rejected this: the relevant language was completely clear and there was no occasion to imply any term.
6. Ground 3 — contra proferentem: The Defendant sought to invoke the contra proferentem rule. The Court confirmed that the contra proferentem rule has no

application where the terms of the agreement are clear. The rule operates only where genuine ambiguity cannot otherwise be resolved.

Link: https://www.difccourts.ae/rules-decisions/judgments-orders/court-first-instance/cfi-0572025-clyde-co-llp-v-1-union-properties-pjsc-2-upp-capital-investment-llc-1

VOLUME VIII — COURT OF ARBITRATION 2026

Covers all Court of Arbitration judgments and orders published on the DIFC Courts website in 2026 (to 1 March 2026).

Oswin v (1) Otila (2) Ondray [ARB 032/2025]

Court of Appeal (H.E. Chief Justice Wayne Martin). Order with Reasons: 23 January 2026.

Subject Matter

Renewed permission to appeal refused. DIFC Court supervisory jurisdiction over DIFC-seated arbitration; injunctive relief; stay application; new evidence application; appeal by way of review. The Chief Justice dismissed all four applications brought by the Second Defendant, holding that the DIFC Court's supervisory jurisdiction over an arbitration seated in the DIFC cannot be ousted by a contractual clause purporting to refer interim relief applications to the courts of another emirate.

Background

1. The parties are joint venturers in a company (the First Defendant, Otila) incorporated to operate a medical and hazardous waste treatment and disposal facility in Abu Dhabi (the "Plant"). The JVA records that the Second Defendant (Ondray) holds 51% of the share capital of the First Defendant and the Claimant (Oswin) holds 49%, and that the parties agreed to collaborate for the purpose of carrying on the JV business. The project contract was signed with a third party (Olwen) on 28 December 2017.
2. JVA Clause 9.3 required unanimous Board resolutions for specified management decisions. JVA Clause 10.3 prescribed voting thresholds for shareholder resolutions. JVA Clauses 21.2 and 21.3 provided for arbitration seated in the DIFC. JVA Clause 21.4 purported to refer applications for interim measures to the courts of Abu Dhabi, but was expressed to be "subject to" Clauses 21.2 and 21.3.
3. On 29 August 2025, Justice Sir Jeremy Cooke granted an ex parte injunction restraining the Second Defendant from: (a) purporting to act on behalf of the First Defendant in relation to the management or operation of the Plant without a unanimous Board resolution (Clause 9.3) or a shareholder resolution satisfying the thresholds in Clause 10.3; (b) altering bank mandates or signatories; (c) soliciting or procuring the transfer of the Claimant's employees; and (d) taking any action reserved to the Claimant under Annexure C of the JVA. The injunction preserved the status quo to protect against significant risk to the public if the Claimant ceased to operate and manage the Plant.
4. The injunction was continued at a return hearing and the Reasons were issued on 16 September 2025. On 10 November 2025 Justice Cooke refused the Second Defendant's first application for permission to appeal. On 3 December 2025 the Second Defendant filed: (a) a Renewed Application for permission to appeal; (b) a Stay Application; (c) an Authorisation Application; and (d) a New Evidence Application. All four were dismissed by the Chief Justice on 23 January 2026.

Key Holdings

(i) DIFC Supervisory Jurisdiction

5. The second-instance Judge had correctly rejected the Second Defendant's submission that Clause 21.4 divested the DIFC Court of jurisdiction. Clause 21.4 was expressly subject to Clauses 21.2 and 21.3. By agreeing to DIFC as the seat of the arbitration, the parties agreed to the supervisory jurisdiction of the DIFC Court. Clause 21.4 therefore applied only to disputes which were, for one reason or another, not arbitrable under Clauses 21.2 and 21.3. The disputes identified in the written Notice of Dispute were, on their face, arbitrable under those provisions.
6. The legislative basis for the Court's jurisdiction was Articles 14 and 15 of the DIFC Courts Law 2025 and Article 24 of the DIFC Arbitration Law. Counsel for the Second Defendant was unable to articulate how the courts of Abu Dhabi could effectively exercise supervisory powers over an arbitration seated in the DIFC.
7. The JVA was the governing instrument for the dispute: it concerned the governance of the First Defendant. The O&M Agreement (which contained different dispute resolution provisions and which had expired on 21 August 2025) was concerned with the operation and management of the Plant — a different subject matter with different parties. The Second Defendant's assertion that the dispute arose exclusively under the O&M Agreement was unsupported by evidence and contradicted by the Dispute Notice, all of which concerned governance.

(ii) Appeal by Way of Review

8. Any appeal of the first-instance Order would be by way of review, not rehearing. A party cannot raise on appeal a proposition it did not advance at first instance. Ground 2 (which challenged the Judge's finding that there was a serious issue to be tried) and Ground 3 (which challenged the findings on adequacy of damages and balance of convenience) were both fatally defective on this basis: both sought to advance arguments that were never put to the Judge at first instance and raised issues of fact that an appeal court would not entertain.

(iii) Injunction Upheld

9. The three-stage American Cyanamid test was satisfied. First, there was a serious issue to be tried concerning the governance of the First Defendant under the JVA. Second, damages would be an inadequate remedy: the status quo required preservation given the significant public risk arising from any interruption to the operation and management of the hazardous waste Plant. Third, the balance of convenience favoured continuance of the injunction, with the Claimant remaining as operator pending the arbitration.

(iv) Full and Frank Disclosure

10. Ground 4 contended that the injunction should have been discharged at the return hearing because of the Claimant's breach of the duty of full and frank disclosure at the ex parte hearing. This ground failed for three reasons. First, all matters relied upon were in evidence before the Judge at the ex parte hearing; the complaint was only that they had not been sufficiently highlighted by counsel. Second, and more fundamentally, if the Second Defendant considered that matters had not been properly disclosed, the return hearing was the appropriate occasion to raise this — the Court would give "extremely short shrift" to a contention that an applicant should have drawn matters to the court's attention at an ex parte stage when the other party failed to raise them at the return hearing. Third, none of the matters complained of had any material bearing on the question of whether the injunctive relief should have been granted.

(v) New Evidence

11. The New Evidence Application sought admission of three categories of material: (a) Abu Dhabi court judgments in proceedings between the parties; (b) a memorandum served by the Claimant in those proceedings; and (c) a letter from Olwen. The Abu Dhabi court judgments were irrelevant: those proceedings concerned different disputes, and observations made in relation to Abu Dhabi court jurisdiction said nothing about the DIFC Court's supervisory jurisdiction over its own arbitrations. The other two documents, even if admitted, could not affect the outcome. New evidence is only admissible on a renewed PTA application where it would have made a difference; none of the proposed evidence crossed that threshold.

(vi) Costs

12. The Second Defendant was ordered to pay the Claimant's costs of all four applications on an indemnity basis, to be assessed following exchange of a Statement of Costs and any opposing submissions.

Link: https://www.difccourts.ae/rules-decisions/judgments-orders/arbitration/arb-0322025-oswin-v-1-otila-2-ondray-2

VOLUME IX — SMALL CLAIMS TRIBUNAL 2026

Covers all Small Claims Tribunal judgments and orders published on the DIFC Courts website in 2026 (to 1 March 2026).

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1. Okpara v Oralee [2025] DIFC SCT 514

Small Claims Tribunal (H.E. Justice Sapna Jhangiani). Permission to Appeal: 7 January 2026 (hearing: 5 January 2026).

Subject Matter

Permission to appeal refused. Visa consultancy agreement; construction of refund and exclusion clauses; outcome-determinative error test on SCT permission to appeal. The Tribunal confirmed that a party seeking permission to appeal must demonstrate not only that an arguable error exists but that the error would have been determinative of the outcome. Where the applicant conceded at the hearing that the clause on which it relied was inapplicable, any arguable error in the construction of a related clause could not alter the result.

Key Facts

1. The Claimant (Okpara) entered into an agreement with the Defendant (Oralee), a visa consultancy, for assistance in obtaining a Portuguese D2 visa. The fee was payable within 24 hours of visa approval. The agreement contained the following relevant clauses: (a) Clause 5 — no refund if the client revoked the agreement, changed his or her mind, or was found to have a criminal record; (b) Clause 7 — no refund if the visa application was refused or delayed due to an error attributable to the applicant (failure to provide documents, provision of false information, change of mind, etc.), and also if the Hosting Country made an enquiry to another authority whose response was unsatisfactory; (c) Clause 8 — which the first-instance Judge construed as guaranteeing a refund where the visa was refused for reasons not attributable to the applicant.
2. The Claimant's Portuguese D2 visa application was refused. The refusal was not attributable to any act or omission by the Claimant but was the result of a sovereign and discretionary decision by the Portuguese visa authorities. The first-instance Judge (Justice Maha Al Mheiri) held in the Claimant's favour and ordered the Defendant to refund the fee. The Defendant (Oralee) applied for permission to appeal.
3. At the permission to appeal hearing on 5 January 2026, the Defendant conceded that Clause 7 did not apply in the circumstances. The only circumstance provided for in Clause 7 that is not attributable to the applicant is where the Hosting Country makes an enquiry to another authority and that authority does not reply to a satisfactory level. There was no evidence that any such enquiry had been made in respect of the Claimant's application, and the Defendant acknowledged this.

Legal Framework

4. SCT permission to appeal is governed by Article 21 of the DIFC Courts Law No. 2 of 2025 and RDC 53.87, 53.89, and 53.91. Permission may be granted only where: (a) the appeal would have a real prospect of success; or (b) there is some other compelling reason why the appeal should be heard. The "real prospect" test requires a realistic (as opposed to fanciful) prospect of persuading an appellate court that the first-instance

Judge was wrong in what she decided, or that the decision was unjust because of a serious procedural or other irregularity.

Key Holdings

5. The core dispute turned on the construction of Clause 8, which in turn depended on the construction of Clause 7. Justice Jhangiani found that there was a prospect of an appellate court holding that the first-instance Judge had erred in her construction of Clause 8 — specifically, in finding that Clause 8 guaranteed a refund where the visa was refused for reasons not attributable to the Claimant.
6. However, that arguable error was not outcome-determinative. Even if Clause 8 did not guarantee a refund in those circumstances, the outcome remained the same: the Defendant had conceded at the hearing that Clause 7 was inapplicable. Clause 7 was the only provision that could have operated to exclude the Defendant's liability. With Clause 7 conceded not to apply, the Defendant had no contractual basis for retaining the fee regardless of how Clause 8 was construed.
7. The controlling principle, established in Miret v Musto [2023] DIFC SCT 177 and Mudro v Mahan [2023] DIFC SCT 266, is that it is not enough to show that the first-instance Judge made an error: the error must have been determinative of the outcome. An error that would not have changed the result affords no basis for granting permission to appeal.
8. The remaining grounds of appeal were irrelevant. The first-instance Judgment did not address misrepresentation under UAE law or make any finding on that issue. No other ground disclosed an arguable error affecting the outcome. Permission to appeal was accordingly refused.

Link: https://www.difccourts.ae/rules-decisions/judgments-orders/small-claims-tribunal/okpara-v-oralee-2025-difc-sct-514
