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/ CFI 085/2020 AL Ahli Bank Of Kuwait K.S.C.P. v (1) Centurion Investments (2) Saeed Mohamed Butti
Mohamed Alqebaisi (3) Khaleefa Butti Omair Yousif Ahmed Almuhairi (4) Centurion Partners Investment LLC
(5) Infinite Partners Investments LLC (6) Infinite Investment LLC (7) Freshly Frozen Foods Factory Owned
By Infinite Partners Investment One Person Company LLC (8) Senora Foods (LLC) (9) Freshly Foods
Bakery LLC (10) Senora Quallity General Trading LLC

CFI 085/2020 AL Ahli Bank Of Kuwait K.S.C.P. v (1) Centurion Investments (2) Saeed Mohamed Butti Mohamed Alqebaisi (3) Khaleefa Butti Omair Yousif Ahmed Almuhairi (4) Centurion Partners Investment LLC (5) Infinite Partners Investments LLC (6) Infinite Investment LLC (7) Freshly Frozen Foods Factory Owned By Infinite Partners Investment One Person Company LLC (8) Senora Foods (LLC) (9) Freshly Foods Bakery LLC (10) Senora Quallity General Trading LLC

DECEMBER 20, 2022 COURT OF FIRST INSTANCE - ORDERS

Claim No. CFI 085/2020

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

AL AHLI BANK OF KUWAIT K.S.C.P.

Claimant



and

^

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- (1) CENTURION INVESTMENTS
 (2) SAEED MOHAMED BUTTI MOHAMED ALQEB AISI
 (3) KHALEEFA BUTTI OMAIR YOUSIF AHMED ALMUHAIRI
 (4) CENTURION PARTNERS INVESTMENT LLC
 (5) INFINITE PARTNERS INVESTMENTS LLC
 (6) INFINITE INVESTMENT LLC
 (7) FRESHLY FROZEN FOODS FACTORY OWNED BY INFINITE PARTNERS INVESTMENT
 ONE PERSON COMPANY LLC
 (8) SENORA FOODS (LLC)
 (9) FRESHLY FOODS BAKERY LLC
 (10) SENORA QUALLITY GENERAL TRADING LLC

Defendants

ORDER WITH REASONS OF JUSTICE SIR JEREMY COOKE

UPON reviewing the Claimant’s Application No. CFI-085-2020/6 dated 20 September 2022 seeking immediate Judgment on the Claim (the “Claimant’s Application”)

UPON reviewing the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and Tenth Defendants’ Application No. CFI-085-2020/2 dated 7 December 2020 and the Ninth Defendant’s Application No. CFI-085-2020/1 dated 24 November 2020 seeking that the Court has no jurisdiction over the Claimant’s Claims (the “Defendants’ Application”)

AND UPON hearing Counsel for the Claimant at the hearing on 19 December 2022 (the “Hearing”)

AND UPON the Defendants’ failure to appear at the Hearing

IT IS HEREBY ORDERED THAT:

1. The Defendants’ Application is dismissed.
2. The Claimant’s Application is granted.
3. Immediate Judgment is entered for the Claimant in the sums set out in (a) and (b) as set out below against the Defendants:

a. The Defendants shall pay to the Claimant the amount of USD 55,391,357.50 in respect of the Claim by 4pm on 2 January 2023; and



The Defendants shall pay to the Claimant the amount of AED 705,387 in respect of Co’s^ts by 4pm on 2 January 2023.

4. Interest shall accrue on the sums set out in paragraphs 3 above at the rate of 9% per annum from the date of this judgment.
5. For the avoidance of doubt, the Defendants are jointly and severally liable to pay the sums set out in at paragraphs 3 and 4 above.
6. This Order is final and may be executed in the Execution Courts.

Issued by:

Delvin Sumo

Assistant Registrar

Date of issue: 20 December 2022

Time: 1:20pm

SCHEDULE OF REASONS

1. The Claimant applies for immediate judgement against all the Defendants on the basis that there is no real prospect of successfully defending the claim and that there is no other good reason why the claim should continue to trial. The claim is made against the First Defendant ("Centurion") as the borrower under a Facility Agreement dated 2 August 2018 which was subsequently amended and restated on 19 February 2019 and 23 December 2019, as part of a rescheduling of the loans. Under the original Facility Agreement, the Claimant agreed to make available to the First Defendant a facility amounting to US \$48,423,000.

2. Centurion is a sole proprietorship established in Abu Dhabi and has no separate legal personality from the Second Defendant who is personally liable for Centurion's debts. The Second and Third Defendants are individuals who are business partners and owners of the KBBO Group and guarantors of the individual corporate entities within it including the Fourth – Tenth Defendants, all of whom have given cross guarantees in respect of the corporate indebtedness of Centurion and the other Defendants. In circumstances set out in the witness statements produced to the Court, it is said that the debt due under the Amended and Restated Facility Agreement exceeds US \$55 million and has been accelerated as a result of events of default.

Service of Proceedings

1. The Defendants did not appear at the Hearing. Their appointed lawyers came off the record on 12 July 2022 and service of documents in the proceedings has since then been effected on the Trustee in Bankruptcy who was originally appointed in respect of all the Defendants, whose address was given to the Court as the authorised recipient for service by those lawyers. I am aware of the evidence provided to the Court, the Defendants have been properly served aware of the Claimant's Application which is being pursued.



Jurisdiction

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2. The Defendants each took a point as to the jurisdiction of the Court. The Claim was commenced by a Claim Form dated 15 October 2020. Acknowledgements of Service contesting the jurisdiction of the Court were filed by the Ninth Defendant on 10 November 2020 and by the other Defendants on 23 November 2020. These were followed by Part 12 Applications made by the Ninth Defendant on 24 November 2020 and by the other Defendants on 7 December 2020. The evidence filed in support of those Part 12 applications were witness statements of the Second Defendant dated 6 December 2020 and the Third Defendant dated 23 November 2020 and 6 December 2020 in which they stated that signatures on all the loan documentation and security documentation which appeared to be made by them were not their signatures at all. On 4 January 2021, the Claimant filed the first witness statement of Jonathan Brooks and on 11 January, the Defendants filed an application with the JJC which led to a stay granted on 13 January 2021 which was lifted by my order of 1 June 2022.

3. The jurisdiction of this Court under Article 5A(1)(a) of the Judicial Authority Law is indisputable because the Claimant is a DIFC licensed establishment, and this is a commercial claim. Issues which could arise as to the existence of a contract under Article 5A (1) (b) are therefore beside the point but, in any event, as appears hereafter, the Claimant has more than a plausible case as to the validity of the Contracts which include jurisdiction clauses in favour of the DIFC. The Defendants' Applications based on want of jurisdiction of this Court are therefore dismissed.

The Application for Immediate Judgement

4. Subject to the issue raised as to the signatures to the loan and security documentation, the evidence of Ms Bahira Ibrahim in a witness statement of 19 September 2022 establishes that:

4.1. Loans were made under the Facility Agreement of 2 August 2018 as subsequently amended and restated (the "Facility Agreement").

4.2. Security Documentation in the form of Conditional Assignment of Shares Agreements was also concluded on 2 August 2018 with Amended and Restated agreements for those assignments consonant with the Amendment and Restatement of the Facility Agreement. The Facility was made available to the borrower and through it to the sixth Defendant which was the vehicle used for acquisition of the Frozen Foods Group, consisting of the 7th to 10th defendants. The sum advanced was US \$48,423,000.

4.3. The Second – Tenth Defendants each agreed, by clause 17 of the Facility Agreement, to guarantee, on a joint and several basis, the performance of Centurion under the Facility Agreement and the Finance and Security Documents described in it.



An Event of Default occurred on the failure by Centurion to make repayments in accordance with clause 6.1 of the Facility Agreement. ^

4.5. Further Events of Default have also occurred, the details of which appear in the Claim Form and her witness statement.

4.6. On 5 February 2020, the Claimant wrote pursuant to clause 22.14 (b) of the Facility Agreement, stating that Events of Default had occurred and that the entire amount of the loan was therefore immediately due and payable in the sum of US \$49,325,850.70.

4.7. Part of the security provided for the loan was then sold by the Claimant in exercise of rights given to it in reduction of the sum owing.

4.8. On 5 March 2020, a further notice was served by the Claimant on Centurion notifying it that the amount immediately due and payable was US \$48,875,780.05.

4.9. On the same day, demand was made of the other defendants as guarantors in accordance with clause 31 of the Facility Agreement.

4.10. At no time after drawdown of the loan and the events referred to above did Centurion or any of the other Defendants ever raise any issue about the validity of the Facility Documentation or Security Documentation nor suggest that the Claimant was not entitled to realise the security that it did in February/March 2020.

4.11. Each of the Defendants has failed to respond or to make repayment of the sums demanded as due and owing, both in respect of principal and default interest.

5. No defence has been filed by any of the Defendants with any statements of truth. No expert handwriting evidence has been adduced on the part of the Second and Third Defendants in relation to their signatures on a considerable number of documents signed as part of the original Facility Agreement, and the loan and security documentation and the two further Amended and Restated versions of it.

6. As established by the witness statement of Ms Ibrahim, the audited accounts of Centurion and the Sixth Defendant for the year ending 31 December 2018, which also appear to have been signed by the Second Defendant and/or the Third Defendant and are dated 30 September 1919, each referred to the borrowings from the Claimant supported by the personal guarantees of the Second and Third Defendants and the corporate guarantees of the other Defendants.

7. Further, Ms Ibrahim exhibits an organogram of the KBBO Group and a Power Point presentation prepared by it for its numerous lenders following a meeting on 6 July 2020. This refers to the indebtedness of the KBBO Group, including the debts which are the subject of this action. Reference is also made there to the cross guarantees between the various Defendants in this action.

the greater significance is the acknowledgement and reliance upon this indebtedness in the bankruptcy proceedings in Abu Dhabi which were commenced by the Third Defendant and in which each of the other Defendants applied for joinder. At paragraph 9 e. of Mr Brooks' witness




statement, he refers to the Second Defendant's Joinder Application where reference is made to six debts jointly guaranteed by him and the Third Defendant, including the debt which is the subject of the present claim. At paragraph and 9 f. Mr Brooks also referred to the clarification memorandum in the First Defendant's petition. In this memorandum the third defendant sought to clarify his *"inseparable correlation to such Applicant Companies (in terms of the reason for the debt, the relevant guarantees and the Original Applicant's capital share in the Companies applying for Joinder)"*. He went on to explain *"that all the Applicant Companies are borrowers and they, at the moment, are guarantors of each other's debts, which makes it practically impossible to separate between these Applications"*. As part of a table annexed to the memorandum, he noted his position as a guarantor of the loan to the Claimant, stating the debt to be AED 184,886,713 which is materially the same amount claimed in the Claim Form.

9. There is, here, no issue as to the grant of the loan and the receipt of the funds by Centurion and the Sixth Defendant. There is no suggestion of any other terms upon which the loans were made save that put forward by the Claimant and evidenced by Ms Ibrahim. There is again no issue as to the failure to repay the loans made.

10. The evidence regarding the details of the negotiation of the loan and its documentation and the security and its documentation which appear in the evidence of Ms Ibrahim are uncontested. The usual practice of the Claimant in ensuring that the signatures of authorised persons are witnessed by its representative is explained and the evidence is that such an authorised representative attended at the premises of the Defendants at the relevant time, albeit that no evidence appears from that representative personally.

11. The reality is that all parties have proceeded on the basis of the Facility Agreement and security documentation being binding and valid, with changes and amendments to the documents agreed as part of rescheduling arrangements. All of the relevant documentation appears to have been signed by the Second and Third Defendants. The Claimant's lawyers were paid as required by the Facility Agreement. Some repayments were made, and security rights were exercised, all without any suggestion that the signatures on the documentation were not those that they purported to be. All the Defendants have proceeded on the basis of the validity and binding nature of the Facility Agreement until this action was launched by the Claimant.

12. In my judgement, it is simply not open to Defendants who rely upon the existence of indebtedness in order to obtain relief in bankruptcy proceedings to contend, in proceedings begun by the creditor, that they are not so indebted. The two positions are self evidently mutually inconsistent.

 is worth drawing attention to the fact that, in a number of other actions brought by the Second Defendant and Third Defendant and companies in the KBBO Group, Centurion Group and Frozen Foods Group, the Second and Third Defendants have similarly

stated that loan and security documentation on which their signatures appear were not actually signed by them. The implausibility of every set of loan documentation with many different banks, apparently signed by these two defendants, containing forged signatures is obvious. The fact that no action has been taken by authorities responsible for investigation and prosecution of criminal offences is in itself significant in the context of such allegations relating to such large sums of money. If the loans had been made on the basis of forged documents, loud complaint would be expected when the facts came to light. Here, however the monies were received and administered in accordance with those documents and were the subject of renegotiation for better terms when liquidity problems arose.

14. Reference can be made to CFI-060-2020 and two judgements of Justice Wayne Martin of 20 December 2021 and 20 October 2022. The signature issue there arose for him, first in the context of an application for immediate judgement and secondly in the context of a trial, as reflected by the two judgements respectively. No purpose would be served by any repetition of the points made by the learned judge, but reference can be made to his decisions (and in particular [32] – [60] of the first decision) where he considered the denial of the validity of the signatures to be, in the context of all the surrounding facts, fanciful. He referred to the decision made by the Court of Appeal in *Saif Saeed Sulaiman Of Muhammad Al Mazrouei v Bankmed (Sal)* [2019] DIFC CA 011 at [38] where mere denials of signature/allegations of forgery fell to be considered against all the surrounding evidence which established all their validity.

15. Here, although the Second and Third Defendants have, in witness statements, confirmed that the signatures are not theirs, all the evidence points to the contrary conclusion. When each of the Defendants, including the Second and Third Defendants, have relied upon the indebtedness founded on these documents in their bankruptcy proceedings, have failed to produce any handwriting evidence to the Court to establish their forgery, have not appeared before the Court to contest the application for immediate judgement and have acted at all times prior to the launching of these proceedings on the basis of the validity of the Facility Agreement documentation, in circumstances where it is accepted that the loans were made and have not been repaid, the Court can only conclude that there was no forgery, the signatures were valid and the Facility Agreement and its accompanying documentation are enforceable.

16. In these circumstances and for these reasons, I conclude that none of the Defendants has a realistic prospect of successfully defending the claims made against it or him and immediate judgement should be given to the Claimant. The evidence establishes that the figure for which judgement should be given as at 19 December 2022 is US \$55,391,357.50. Interest will run on that sum at the judgement rate.



Under the terms of the Facility Agreement, the Claimant is contractually entitled to recover the costs incurred in enforcement of the proceedings and in those circumstances, having examined the Statement of Costs supplied by the Claimant, I find that it is entitled to the sum of AED

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705,387.

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