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 / CFI 043/2020 Bank of Baroda (DIFC Branch) v (1) Neopharma LLC (2) NMC Healthcare LLC (3) New Medical Centre LLC (4) Bavaguthu Raghuram Shetty (5) Bakertilly JFC Law Corporation (Trading as baker tilly solicitors and legal consultants) (6) Mr Ahmed Al Bah

CFI 043/2020 Bank of Baroda (DIFC Branch) v (1) Neopharma LLC (2) NMC Healthcare LLC (3) New Medical Centre LLC (4) Bavaguthu Raghuram Shetty (5) Bakertilly JFC Law Corporation (Trading as baker tilly solicitors and legal consultants) (6) Mr Ahmed Al Bah

AUGUST 22, 2025 COURT OF FIRST INSTANCE - ORDERS

Claim No. CFI 043/2020

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

BANK OF BARODA (DIFC BRANCH)

Claimant/Applicant

and

(1) NEOPHARMA LLC

(2) NMC HEALTHCARE LLC

(3) NEW MEDICAL CENTRE LLC

(4) BAVAGUTHU RAGHURAM SHETTY



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Defendants

(5) BAKERTILLY JFC LAW CORPORATION
(TRADING AS BAKER TILLY SOLICITORS AND LEGAL CONSULTANTS)
(6) MR AHMED AL BAH

Respondents

ORDER WITH REASONS OF H.E. CHIEF JUSTICE WAYNE MARTIN

UPON the Claimant's Application No. CFI-043-2020/17 dated 10 February 2025 seeking an order that the Respondents are jointly and severally liable to pay the Claimant the whole of its costs of its Claim since the hearing of the immediate judgment application on 15 January 2024 (the "Application")

AND UPON the First Respondent's Evidence in Answer dated 24 February 2025 and 22 May 2025

AND UPON hearing Counsel for the Claimant and Counsel for the First Respondent in an application hearing held before H.E. Chief Justice Wayne Martin dated 18 June 2025 (the "Hearing")

AND UPON the First Respondent's submission on cost dated 25 June 2025

AND UPON the Claimant's submission on costs dated 30 June 2025

AND UPON the First Respondent's Response to the Claimant's submission on costs dated 3 July 2025

IT IS HEREBY ORDERED THAT:

1. The Application is dismissed.
2. There is no order as to costs.

Issued by:

Delvin Sumo

Assistant Registrar

Date of issue: 22 August 2025

At: 11am



1. The Bank of Baroda (DIFC Branch) (the “Bank”) commenced proceedings against Neopharma LLC and various guarantors including the Fourth Defendant, Mr Shetty, in respect of funds which the Bank advanced to Neopharma LLC and which have not been repaid. On 25 November 2024, judgment was entered in favour of the Bank and against Mr Shetty in the amount of USD 33,248,029.70.¹

2. On 10 February 2025, the Bank brought an application against the lawyers who had represented Mr Shetty in these proceedings, Baker Tilly JFC Law Corporation (“Baker Tilly”) and Mr Ahmed Al Bah, an expert in the analysis of handwriting who was engaged by Mr Shetty and who gave evidence in these proceedings (the “Application”). The Bank claims orders that each of Baker Tilly and Mr Al Bah, jointly and severally, pay all the costs incurred by the Bank in respect of its claim against Mr Shetty after the hearing of an unsuccessful application for immediate judgment against Mr Shetty on 15 January 2024. The Bank asserts that Baker Tilly caused the relevant costs to be incurred by improper and/or unreasonable conduct and that Mr Al Bah caused the costs to be incurred by “his reckless and flagrant breach of his duties to the DIFC Court”.²

3. For the reasons which follow, the Bank has failed to establish that the conduct of either Baker Tilly or Mr Al Bah of which it complains caused the relevant costs to be unnecessarily incurred. The Application must therefore be dismissed.

The Application against Baker Tilly - jurisdiction

4. The Application against Baker Tilly is made pursuant to the jurisdiction conferred upon the Court by the Rules of the DIFC Courts (“RDC”). The relevant Rules are contained in Part 38 and provide:

“38.59

The Court may, in connection with an immediate or detailed assessment, make an order under Rule 38.60 where:

- (1) a party or his legal representative fails to comply with a Rule, Practice Direction or Court order; or
- (2) it appears to the Court that the conduct of a party or his legal representative, before or during the proceedings which gave rise to the assessment proceedings, was unreasonable or improper.

38.60



Where Rule 38.59 applies, the Court may:

- (1) disallow all or part of the costs which are being assessed; or

(2) order the party at fault or his legal representative to pay costs which he has caused any other party to incur.

38.61

Where:

- (1) the Court makes an order under Rule 38.60 against a legally represented party; and
- (2) the party is not present when the order is made;

the party's legal representative must notify his client in writing of the order no later than 7 days after the legal representative receives notice of the order and either in the order under Rule 38.60 or in a subsequent order, require the legal representative to produce to the Court evidence that he took reasonable steps to do so.

38.62

Before making an order under Rule 38.60 the Court must give the party or legal representative in question a reasonable opportunity to attend a hearing to give reasons why it should not make such an order.

38.63

Conduct before or during the proceedings which gave rise to the assessment which is unreasonable or improper includes steps which are calculated to prevent or inhibit the Court from furthering the Overriding Objective.

...

38.83

The Court shall have power to disallow or, (as the case may be) order the legal or other representative concerned to meet, the whole of any wasted costs or such part of them as may be determined.

38.84

The Court must give the legal representative a reasonable opportunity to attend a hearing to give reasons why it should not make such an order.

38.85



When the Court makes a wasted costs order, it must:

(1) specify the amount to be disallowed or paid; or

(2) direct the legal representative to pay the amount to be disallowed or paid.

38.86

- (1) of any hearing under Rule 38.84; or
- (2) of any order made against his legal representative.

38.87

The Court may refer the question of wasted costs to the Registrar instead of making a wasted costs order.”

5. As the RDC are “DIFC Regulations” within the meaning of Article 14 of the DIFC Courts Law³ the Court has jurisdiction to make wasted cost orders against legal practitioners pursuant to Article 14.7 of the Courts Law.

6. It will be noted that the issue of wasted costs caused by the conduct of legal practitioners is dealt with in two separate and distinct portions of RDC Part 38. RDC 38.60 empowers the Court to order a party’s legal representative to pay costs which that representative has caused any other party to incur “where Rule 38.59 applies”. However, RDC 38.59 provides that the power may be exercised “in connection with an immediate or detailed assessment”. The Bank’s Application has not been made in connection with any immediate or detailed assessment of costs, which raises a question as to whether Rule 38.60 applies in the circumstance of this case. That question was not addressed by either party in the course of submissions and does not need to be determined for the purpose of resolving this Application.

7. RDC 38.59 also requires that it appear to the Court that the conduct of the relevant legal representative “was unreasonable or improper”. This raises a question as to whether the ambit of the power conferred by this portion of RDC Part 38 is narrower than that exercised by the English Courts which, as will be seen, extends to conduct which was unreasonable, improper or negligent (although in this context the English Courts have given a particular meaning to the word “negligent”).

8. This is another question which neither party addressed in the course of submissions and which need not be determined in order to resolve this Application.

9. The power conferred by RDC 38.83 is not expressly conditioned by the circumstances in which the power is to be exercised (eg. in the course of immediate or detailed assessment), nor does the Rule specify the conduct which must be established in order to justify the making of an order.

10. This raises a question as to whether RDC 38.83 should be construed consistently with RDC 38.60, and as being subject to the same constraints and conditions, or whether, as a grant of power it should be construed as adding to the powers conferred by the earlier Rules, by expanding the potential scope of a wasted costs order.



11. This is another issue which was not addressed by either party in their submissions and which need not be determined in order to resolve this Application

12. Both of RDC 38.62 and RDC 38.84 require the Court to give a legal representative against whom such an order might be made “a reasonable opportunity to attend a hearing to give reasons why [the court] should not make such an order”. The duplication of these provisions might shed some light on the question of whether the ambit of the powers conferred upon the Court by each portion of RDC Part 38 should be construed as co-extensive or as different in scope, but that is a question for another day.

13. The obligation to provide the relevant legal representative with a reasonable opportunity to attend a hearing before an order is made was one of the issues which arose in the first of what appear to be only two cases in this Court dealing with wasted costs orders. In *Bocimar International NV v Emirates Trading Agency LLC*⁴ permission to appeal against such an order was granted on the basis that it was arguable that a reasonable opportunity to attend a hearing had not been provided to the relevant legal practitioner. Other grounds upon which permission to appeal was granted included:

- (a) The asserted lack of evidence of wasted costs having been incurred as a result of the lawyer’s conduct;
- (b) Justice did not require the making of an order in view of the history of the proceedings as a whole; and
- (c) The order should not have been made until after the conclusion of the proceedings.

14. It doesn’t appear that the appeal was ever determined and so the case sheds no real light on the resolution of these issues.

15. The only other case in this Court dealing with a wasted costs order which was identified by the parties or which is known to the Court is *Greenwood v ISA Bin Haider and Bin Haider Advocates and Legal Consultants*.⁵ In the unusual circumstances of that case, H.E. Justice Black referred to the terms of a Practice Direction (“PD”) dealing with wasted costs issued in 2014 to which reference will shortly be made. In the factual circumstances established by the evidence before the Court, it was held that the relevant lawyer’s conduct had been improper and unreasonable and had caused another party to incur unnecessary costs and that it was just in all the circumstances to order the legal representatives to compensate that party for the whole of those costs.



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refers only to RDC 38.83 and does not refer to RDC 38.59 or RDC 38.60. The Court asserts that an order can be made pursuant to RDC 38.83 at any stage in the proceedings

up to and including detailed assessment but goes on to state that in general, applications are best

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left until after the end of the trial.

17. The PD identifies the circumstances in which it will be appropriate for the Court to make such an order in accordance with the principles established by the English authorities to which reference will be made – that is, only if:

- (a) The legal representative has acted improperly, unreasonably or negligently;
- (b) The legal representative's conduct has caused a party to incur unnecessary costs, or has meant that costs incurred by a party prior to the improper unreasonable or negligent act or omission have been wasted;
- (c) It is just in all the circumstances to order the legal representative to compensate that party for the whole or part of those costs.

18. Of course, the PD cannot alter rights and obligations – that can only be done by the Rules. It follows that the question of whether the Court has power to make a wasted costs order against a legal representative who has acted negligently without acting improperly or unreasonably remains a live issue for future determination.

19. The PD deals with the procedure to be followed when applications are made for wasted costs orders and provides that the Court will give directions “in order to ensure that the issues are dealt with in a way which is as fair and as simple and summary as the circumstances permit”.⁶

20. The PD goes on to provide that as a general rule the Court will consider whether to make such an order in two stages, consistently with the English practice, the first stage being the “show cause” stage, which requires the Court to be satisfied that there is evidence or other material which, if unanswered, will be likely to lead to a wasted costs order being made and the wasted costs proceedings are justified notwithstanding the likely costs involved. The second stage is the determination of the application.

21. The PD goes on to provide that when an application for a wasted costs order is made, the application and materials in support must identify what the legal representative is alleged to have done or failed to do and the costs that are sought against the legal representative.

The Application against Mr Al Bah - jurisdiction

22. The Application against Mr Al Bah is said to be made pursuant to paragraph 4.7 of the Protocol which forms part of RDC Part 31 and paragraph 9 of DIFC PD No. 2 of 2017.



31 of the RDC is concerned with experts and assessors. RDC 31.2 provides:

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Parties are referred to the English “Protocol for the Instruction of Experts to give evidence in civil claims” which is reproduced at Schedule A to this Part as amended from time to time. Not all parts of the Protocol are applicable to litigation before the DIFC Courts but the Protocol provides valuable practical guidance both to those who instruct experts and experts themselves as to what they are expected to do in civil and commercial proceedings before the Court. The Court will expect legal practitioners and experts to have read the Protocol.”

24. Consistently with RDC 31.2, the Protocol which is a schedule to RDC Part 31 is a copy of the English Protocol. It contains references to English Rules, which obviously have no application in this Court. When the Protocol is read in conjunction with RDC 31.2, it is difficult to construe the Protocol as imposing specific rights and obligations, or as a source of jurisdiction.

25. The Bank relies on paragraph 4.7 of the Protocol which provides:

“4.7 Experts should be aware that any failure by them to comply with the Civil Procedure Rules or court orders or any excessive delay for which they are responsible may result in the parties who instructed them being penalised in costs and even, in extreme cases, being debarred from placing the experts’ evidence before the court. In *Phillips v Symes Peter Smith J* held that courts may also make orders for costs (under section 51 of the Supreme Court Act 1981) directly against expert witnesses who by their evidence cause significant expense to be incurred, and do so in flagrant and reckless disregard of their duties to the Court.”

26. Given that the paragraph refers to an English authority which relied upon power conferred by an English statute, it is difficult to see how this paragraph of the Protocol can be construed as a source of jurisdiction for this Court.

27. The Bank also relies on paragraph 9 of DIFC PD No. 2 of 2017. However, obviously a PD cannot be a source of jurisdiction as it is not a legislative instrument falling within the scope of Article 14.7 of the Courts Law. In any event, PD No. 2 of 2017 is concerned with third party funding. It contains the assertion that:

“9. The DIFC Courts have inherent jurisdiction to make costs orders against third parties, including Funders, where the Court deems it appropriate given the circumstances of the case.”

28. The extent of this Court’s “inherent jurisdiction” has been the subject of recurrent controversy. It is not a controversy which can be resolved by a PD. Of course, that is not to say that it is not arguable that the Court has an inherent jurisdiction which could extend to the making of costs orders

persons who, although not party to the proceedings, are involved in proceedings within the jurisdiction in some other capacity, such as funder, lawyer or expert witness. However, that question should only be determined after fully developed argument on both sides, and that has not

occurred in this case as Mr Al Bah has taken no part in these proceedings. [Login](#) 



29. As there has been no joinder of issue on the question of the Court's jurisdiction to make wasted costs orders against experts and as it is unnecessary to determine that issue in order to resolve this Application, that is another question which must stand over for future determination.

The English authorities

30. Both parties relied upon the decision of the Court of Appeal of England and Wales in *Ridehalgh v Horsefield*⁷ which is generally regarded as the leading English authority in this area. In that case, after hearing argument in relation to six appeals relating to wasted costs orders the Court published reasons setting out the general principles which should be applied, together with reasons specifically related to five of the appeals (one having been compromised).

31. The Court observed that the jurisdiction to make a wasted costs order against a legal practitioner has been recognised since at least the decision of the House of Lords in *Myers v Elman*.⁸ In that case, it was held that the Court's jurisdiction to make a wasted costs order against a legal practitioner is compensatory, rather than disciplinary, and is founded on breach of the duty owed by the lawyer to the Court to perform his duty as an officer of the Court. It was further held that while mere mistake or error of judgment would not justify an order, misconduct, default or even negligence is enough if the negligence is serious or gross.

32. In *Ridehalgh* the Court of Appeal adopted the principles enunciated in an earlier case⁹ which involved a three stage test:

“(1) Has the legal representative of whom complaint is made acted improperly, unreasonably or negligently?

(2) If so, did such conduct cause the applicant to incur unnecessary costs?

(3) If so, is it in all the circumstances just to order the legal representative to compensate the applicant for the whole or any part of the relevant costs?”¹⁰

33. The Court went on to provide content to the words used to describe the conduct which must be established in order to satisfy the first stage of the test. The word “improper” was said to cover:

“Any significant breach of a substantial duty imposed by a relevant code of professional conduct. But it is not ... limited to that. Conduct which would be regarded as improper according to the consensus of professional (including judicial) opinion can be fairly stigmatised as such whether or not it violates the letter of a professional code.”¹¹



“... reasonable” is said to aptly describe:

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“Conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently. The acid test is whether the conduct permits of a reasonable explanation.”¹²

35. The Court rejected the notion that the expression “negligent” was limited to cases in which the practitioner had committed an actional breach of the duty owed to the client, given that the basis for a wasted costs order is the practitioner’s breach of duty owed to the Court. The Court considered that “negligent” should be understood “in an untechnical way to denote failure to act with the competence reasonably to be expected of ordinary members of the profession”.¹³

36. The Court rejected the suggestion that the three expressions should be construed as mutually exclusive, observing “conduct which is unreasonable may also be improper, and conduct which is negligent will very frequently be (if it is not by definition) unreasonable. We do not think any sharp differentiation between these expressions is useful or necessary or intended.”¹⁴

37. The Court also emphasised that:

“A legal representative is not to be held to have acted improperly, unreasonably or negligently simply because he acts for a party who pursues a claim or a defence which is plainly doomed to fail.”¹⁵

38. The Court emphasised that demonstration of a causal link between the improper, unreasonable or negligent conduct and the costs said to have been wasted is essential.¹⁶

39. In relation to the timing of applications for wasted costs, the Court observed:

“It is impossible to lay down rules of universal application ... but speaking generally we agree that in the ordinary way applications for wasted costs are best left until after the end of the trial.”¹⁷

40. The Court also observed that while the relevant English Rules empowered the Court to initiate an enquiry as to whether a wasted costs order should be made, save in the most obvious case courts should generally be slow to initiate the enquiry, for reasons which are developed in the judgment.¹⁸



It is in this procedure the Court observed that:

“The overriding requirements are that any procedure must be fair and that it must as simple and summary as fairness permits. Fairness requires that any respondent lawyer should be very clearly told what he is said to have done wrong and what is claimed. But the requirement of simplicity and summariness means that elaborate pleadings should in general be avoided. No formal process of discovery will be appropriate. We cannot imagine circumstances in which the applicant should be permitted to interrogate the respondent lawyer or vice versa. Hearings should be measured in hours, and not in days or weeks.”¹⁹

42. The Court went on to describe the “show cause” process which would generally be followed, as described above. The Court observed that at each stage in that process, the Court had a discretion to dismiss the application which might be exercised for a variety of reasons, including the likelihood of disproportionate costs being incurred.²⁰

43. The Court also observed that when a wasted costs order is under consideration, the Court must bear in mind that the lawyer may be constrained in responding to the application by obligations of confidentiality owed to the client and the obligation to maintain the client’s privilege.

44. The Court deprecated the threat of proposed applications for wasted costs as a means of intimidation but did not consider it objectionable to alert the other side to the view that the conduct of the other is likely to result in a waste of costs, in order to put the other side on notice. As the Court observed “drawing the distinction between unacceptable intimidation and acceptable notice must depend on the professional judgment of those involved”.²¹

45. In *Mengiste and Anor v Endowment Fund for the Rehabilitation of Tigray and Ors*²² Justice Peter Smith made some helpful observations in relation to the procedure to be adopted when dealing with a wasted costs application. After describing the summary procedure as “a blunt instrument”, he observed:

“It requires a certain amount of robustness and it has to be borne in mind that it must be determined without the need for formal pleading, disclosure or witness evidence, on a summary basis without cross-examination, in hours not days and at a cost that is proportionate to the sums at stake. Finally it must be fair, just and reasonable for the jurisdiction to be exercised.”²³

Causation – an Australian view

46. *Mitry Lawyers v Barnden*²⁴ concerned a wasted costs order made pursuant to a rule of the Federal Court of Australia empowering the making of such orders. It was submitted that the question of causation necessarily required the Court to address a counterfactual: would the costs have been incurred by the other party if the lawyers had not engaged in the improper conduct? That proposition was rejected on the basis that the test proposed was unnecessarily complex, observing that:

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“It may not be necessary in all cases to approach or express the test in terms of a counterfactual.”²⁵

47. Other common law courts have had much greater experience in the development of jurisprudence relating to wasted costs orders than this Court. While it may be that there are particular aspects of practice in this jurisdiction which justify modification of the principles evolved in those common law courts, for the time being it is appropriate to adopt and apply the principles enunciated in those courts, and which are set out above. There are no circumstances of this case which would justify departure from those principles.

The procedural context

48. The Bank applied for immediate judgment against Neopharma LLC and Mr Shetty. That application was heard on 15 January 2024. On 12 March 2024 I published orders with reasons in which I entered judgment against Neopharma LLC, struck out all grounds of Mr Shetty’s Defence other than his assertion that his signature on the personal guarantee was forged on the basis that they disclosed no reasonable ground of defence, but otherwise dismissed the application for Judgment against Mr Shetty.

49. The history of the proceedings up to that point is set out in detail in my reasons, for that decision which should be read with these reasons. Those reasons speak for themselves and it is sufficient for present purposes to refer only to the aspects of those reasons that are pertinent to the issues raised by the Application.

50. On 2 June 2023, Justice Sir Peter Gross ordered that various documents, including the original versions of the security documents held by the Bank be produced for inspection by Mr Shetty’s lawyers and the handwriting expert engaged on behalf of Mr Shetty on condition that those persons give undertakings in satisfactory terms to the effect that the original documents will be safeguarded, preserved and neither lost nor damaged, and (following their examination) returned in their original state.²⁶

51. In answer to the Bank’s application for immediate judgment Mr Shetty relied upon, *inter alia*, a witness statement dated 6 October 2023 from Mr Sheheen, who is the Managing Partner of Baker Tilly. In that statement, Mr Sheheen stated that having providing undertakings in the approved form, he, a colleague from Baker Tilly, and Mr Al Bah attended the Bank’s premises on 22 June 2023 in order to inspect the documents pursuant to the orders made by Justice Sir Peter Gross. Mr Sheheen

Mr Al Bah was given limited time (2 hours) within which to inspect the documents at the Bank. He stated that a request for



further inspection over one or more additional days was refused by the Bank. Mr Sheheen stated that another request for inspection was made to the Bank on 4 July 2023, which was refused on 7 July 2023, after the Bank had filed its Application for Immediate Judgment.

52. This evidence has never been contradicted by the Bank in the various hearings which have taken place since the witness statement was filed. In these circumstances there is no reason to doubt the accuracy of Mr Sheheen's evidence relating to the inspection of the documents.

53. In his statement Mr Sheheen also asserted:

"27. It is also pertinent to note that in the Disbursement Request, as mentioned in the table above, the Expert has determined that Mr. Shetty's signature is forged and electronically copied/pasted. It is certain that if the Claimant's counsel had complied with the overriding objective of DIFC Courts and afforded additional time to the Expert for inspection, the Expert would have reached the same conclusion regarding Mr. Shetty's signature on the Disputed Personal Guarantee as well. Therefore, the defence raised by Mr. Shetty with respect to the forgery of his signatures has now been proven to be true to a great extent. This in itself proves that Mr Shetty has real prospects of successfully defending the current Claim."

54. I will return to these assertions in due course, as the Bank places particular emphasis upon them in support of its Application.

55. Mr Shetty also relied upon a report from Mr Al Bah which was belatedly provided to the Court shortly before the hearing of the Application for Immediate Judgment. As I observed in my reasons, that report was unsatisfactory in a number of respects, including most pertinently the apparent contradiction between an assertion at one point of the report to the effect that the signature on the relevant Guarantee "mostly has been signed by Dr Shetty" and the assertion elsewhere in the report to the effect that "the signatures on this document does not appear to be genuine, and raises suspicious concerns. It may be forged or placed electronically on this document".

56. In the course of argument on the immediate judgment application, Counsel for the Bank was heavily critical of various aspects of Mr Al Bah's report. It was contended that I should resolve the Immediate Judgment Application by accepting expert handwriting evidence adduced by the Bank from Mr Abdelmajid and by rejecting the evidence of Mr Al Bah. The reasons for rejecting that submission are contained in the following passage from my reasons:

"199. Senior Counsel for the Bank was extremely critical of Mr Al Bah's report in the course of argument and reference has been made to some of the ambiguities and inconsistencies in that report. Prominent in those ambiguities is the apparent contradiction between the assertion that



the signature on the Personal Guarantee “mostly has been signed by Dr Shetty” and the assertion that “the signatures on this document does not appear to be genuine, and raises suspicious concerns. It may be forged or placed electronically on this document”.

200. However, as I have already noted, there is uncontradicted evidence from Mr Sheheen relating to the circumstances in which Mr Al Bah inspected the documents and the constraints which those circumstances necessarily imposed upon the terms of his report. As already noted, it is appropriate to determine the Application on the basis that between now and any trial the evidence of Mr Al Bah would be clarified and likely augmented.

201. The question posed by the criticisms of Mr Al Bah’s report presented by Senior Counsel for the Bank is whether I should resolve the claim against Dr Shetty by determining the issues with respect to the forgery of his signature on the Personal Guarantee on the papers, by comparing the expert evidence adduced on behalf of the Bank with the expert evidence adduced on behalf of Dr Shetty, without hearing from either expert. I have concluded that proceeding in this way would, in effect, be to conduct a “mini trial”, contrary to the principles established by the authorities to which I have referred.

202. In the particular circumstances of this case, the possibility that Dr Shetty might establish that his signature on the Personal Guarantee was forged cannot be entirely excluded at this stage of the proceedings. Unlike the forgery issues raised on behalf of Neopharma, if it were established that Dr Shetty did not sign the Personal Guarantee, that would arguably be a complete defence to the Bank’s claim against him.

203. Of course, I take account of the fact that Dr Shetty has not provided a witness statement denying execution of the Personal Guarantee, however, he did apparently sign a statement of truth in relation to the Defence in which that assertion is made, so there must be some prospect that such a witness statement would be provided if the matter goes to trial.

204. I have therefore concluded that there is a real prospect that Dr Shetty might be able to establish a defence to the Bank’s claim, and that prospect should be determined by a trial.”

57. The procedural steps which followed the dismissal of the Application for Immediate Judgment against Mr Shetty have been recounted in my reasons for ultimately entering judgment against Mr Shetty²⁷ which should be read with these reasons.

58. In general terms orders were made requiring the production of documents bearing Mr Shetty’s signature which he concedes are authentic to the Bank’s expert witness and requiring the Bank to produce to Mr Shetty’s expert witness the originals of the Personal Guarantee, the Facility Agreement and the associated banking documents. It was also ordered that expert reports on handwriting were to be filed and exchanged no later than 11 October 2024 and the experts were to



produce a joint report no later than 8 November 2024. The trial was listed to commence on 25 November 2024. By consent order issued on 1 October 2024, the timetable was amended by extending some of the times set out above.

59. The expert reports were filed and served on 1 November 2024. The Bank filed a report by Ms Ellen Radley. Inexplicably, Baker Tilly filed another copy of the report which Mr Al Bah had produced in July 2023 and which had been presented in response to the Application for Immediate Judgment.

60. On 7 November 2024, an application was made on behalf of Mr Shetty for orders revising the timetable for exchange of expert evidence and adjourning the trial listed for 25 November 2024. The evidence produced in support of that application made it clear the reason for Mr Shetty's failure to comply with the orders made with respect to the exchange of a further expert report was because Mr Shetty had taken personal control of the instructions given to Mr Al Bah and apparently did not understand what was required. For some inexplicable reason, Mr Shetty asserted that he believed that on 1 November 2024 he was required to resubmit the report which had been prepared in July 2023.

61. On the evidence presented to me at the trial, I concluded that Mr Shetty had assumed personal responsibility for the provision of instructions to Mr Al Bah, rather than Mr Sheheen – a conclusion which was relevant to the assessment of Mr Al Bah's independence.²⁸

62. At the hearing on 7 November 2024, a direction was made requiring Mr Shetty to file and serve any expert evidence upon which he wished to rely at trial no later than 2.00pm on 14 November 2024, and a further report from Mr Al Bah dated 13 November 2024 was filed in accordance with that order. Directions were then made for the provision of a responsive report from the Bank's expert witness.

63. During the trial, Mr Sheheen attempted to explain his failure to secure the availability of Mr Al Bah to give evidence at an appropriate time, and his inability to provide any information in relation to whether an interpreter was to be used in relation to the evidence of Mr Al Bah on the basis that all the arrangements had been left to Mr Shetty and the expert. During the trial, and again during his submissions in response to the Application, Mr Sheheen purported to justify his abdication of his responsibilities to the Court on the spurious basis that leaving the client to provide all the relevant instructions to the expert and make the arrangements for the expert's testimony somehow improved the independence of the expert's evidence. Mr Sheheen denied the proposition that as counsel it was his obligation to form a view on the question of whether the witness he was calling required an interpreter and, if so, to arrange for an appropriately qualified interpreter to attend the hearing. ^



64. Mr Al Bah's second report followed the same format as his first report – namely, a table in which conclusions were expressed without any elucidation whatever of the process of reasoning leading to the relevant conclusion.

65. I reviewed Mr Al Bah's written and oral testimony in detail in my reasons and little purpose would be served in reiterating my criticisms of his testimony which resulted in my rejection of his evidence in its entirety. His oral evidence was entirely inconsistent with the previously uncontradicted evidence that the only opportunity he had to examine the original documents held by the Bank was over a limited period in the offices of the Bank and did not involve microscopic examination. According to his oral testimony, when the original documents were presented to him in October 2024, he did not undertake any further examination of them, but for the purposes of his second report relied entirely upon the photographs which he had taken in 2023. However, it is difficult to place any weight on the oral testimony given by Mr Al Bah, given my conclusion that he was making up his evidence as he went along in an attempt to sustain his support for Mr Shetty's case. Accordingly, I rejected Mr Al Bah's oral testimony to the effect that the Bank provided the original documents to him for scrutiny in his laboratory over a long period in 2023.

66. I concluded that Mr Al Bah had either no understanding of an expert's duties to the Court or had chosen to breach those duties.²⁹

The grounds for the Application against Baker Tilly

67. The Bank relies upon two grounds of misconduct for its claim against Baker Tilly:

(a) Misrepresentations made by Mr Sheheen in his witness statement and submissions in opposition to the Application for Immediate Judgment which resulted in the Application being dismissed; and

(b) Continued reliance upon Mr Al Bah as an expert when Baker Tilly should have known that he was incompetent.

68. Dealing first with the opposition to the Application for Immediate Judgment, the Bank's case is put on the basis that Mr Sheheen's evidence is the only reason that the Application for Immediate Judgment failed. That contention rather overstates the position, as there was conflicting and inconsistent expert testimony on the question of the authenticity of Mr Shetty's signature on the Guarantee, albeit that the evidence of Mr Al Bah was unsatisfactory, as was noted in the reasons.

69. Nevertheless, while it can be accepted that the evidence given by Mr Sheheen was significant in the process of reasoning that led to the dismissal of the Application for Immediate Judgment, it is important to identify what the significant evidence was. The relevant evidence was the evidence

given by Mr Sheheen in relation to the limited opportunity which the Bank provided to Mr Al Bah to



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inspect the original documents and the Bank's refusal to permit further inspection of the documents in apparent breach of the orders made by the Court, which clearly contemplated the original documents passing into the possession of Mr Shetty's legal advisors and his handwriting expert, to be dealt with in accordance with the undertakings provided.

70. As already noted, the Bank places particular reliance upon [27] of Mr Sheheen's witness statement, which is set out above. However, that paragraph obviously has no evidentiary value whatever. Most of Mr Sheheen's witness statements are indistinguishable from skeleton arguments and this paragraph is one of many examples of this characteristic. It contains speculation as to what would have been found if the expert had been given greater opportunities for examination of the documents and contains the extraordinary assertion that the defence raised by Mr Shetty with respect to the forgery of his signature had been proven to be true to a great extent. No reference was made to this portion of Mr Sheheen's statement in the reasons for dismissing the Application for Immediate Judgment because the assertions made are quite obviously of no evidentiary value whatever

71. Put another way, the significant evidence given by Mr Sheheen was his uncontradicted testimony as to the Bank's refusal to produce the documents to Mr Shetty's expert for lengthy examination or for examination in the expert's laboratory. In those circumstances, the inadequacy of the expert testimony available to Mr Shetty at the time of the hearing of the Application for Immediate Judgment was explicable. Obviously, it was not possible for me, Mr Sheheen (or anyone) to predict what testimony might emerge from a proper examination of the original documents held by the Bank or to predict which experts would conduct such examinations. The Bank instructed a different handwriting expert for the trial, and given the criticisms of Mr Al Bah in the context of the Immediate Judgment Application, many of which were accepted, a change in the identity of the expert engaged by Mr Shetty would not have been at all surprising.

72. The Bank contends that Mr Sheheen's testimony and submissions were a "cynical ploy" designed to defeat the Application for Immediate Judgment at a time when Mr Sheheen had no basis for a belief that further inspection of the Bank's documents would improve Mr Shetty's prospects of defending the claim.

73. The fundamental problem with this submission is that it relies upon subsequent events to support the inference that Mr Sheheen knew at the time he signed his witness statement in October 2023 and defended the Application for Immediate Judgment in early 2024 that the events which occurred in October/November 2024 were likely to occur, and in particular, that Mr Al Bah would not make any further examination of the documents.



74. Senior counsel for the Bank accepted that the Bank carried the burden of proving that Mr Sheheen had no reasonable grounds for expressing the view that further examination of the documents might improve Mr Shetty's defence to the claim. That burden is not discharged by relying upon events which took place almost a year later to sustain an inference that Mr Sheheen had no reasonable grounds to believe that proper inspection of the documents by Mr Al Bah might have improved Mr Shetty's prospects of defending the claim. It is highly improbable that Mr Sheheen could or should have foreseen the manner in which Mr Al Bah would deal with the documents when presented to him at a time when he was under direct instruction by Mr Shetty

75. The contention by Senior Counsel for the Bank to the effect that an inference can be drawn from Mr Sheheen's failure to give evidence of his communications with Mr Al Bah so as to establish reasonable grounds for a belief that further inspection of the documents would improve Mr Shetty's prospects of establishing a defence to the Bank's claim:

- (a) Reverses the onus of proof, and
- (b) Overlooks the constraints imposed upon Mr Sheheen by the duty of confidentiality owed to Mr Shetty, and the privilege attached to communications between Mr Sheheen and Mr Shetty and the possible privilege attached to communications between Mr Sheheen and Mr Al Bah, and
- (c) Overlooks the possibility that engagement of another expert on behalf of Mr Shetty may have improved his prospects of defending the Bank's claim.

76. The Application for Immediate Judgment failed because:

- (a) The Bank failed to comply with the orders made by the Court to permit full inspection of the original documents by Mr Shetty's expert witness; and
- (b) On the basis of the limited opportunity for inspection provided to Mr Shetty's expert witness there was conflicting expert testimony in relation to the authenticity of the signature on the Guarantee; and
- (c) The prospect that Mr Shetty's defence to the claim might be strengthened by a proper examination of the original documents by Mr Al Bah or some other qualified expert witness could not be excluded; and
- (d) In these circumstances conducting a "mini trial" on the basis of the veracity to be attached to conflicting expert reports was inappropriate.



77. Mr Sheheen's contribution to this process of reasoning was limited to the provision of uncontradicted testimony as to the Bank's refusal to allow Mr Shetty's expert to undertake a proper examination of the original documents. The provision of testimony which has never been contradicted (except by Mr Al Bah, whose testimony I rejected) cannot be said to be improper, unreasonable or negligent.

78. It is also significant that, in the way events unfolded, it cannot now be said that there was no prospect that inspection of the original documents by a competent handwriting expert engaged on behalf of Mr Shetty might not have improved his defence. That is because the documents have never been subjected to such an examination. All that can be said is that no evidence from a competent handwriting expert who had thoroughly examined the original documents on behalf of Mr Shetty was adduced at the trial, as a result of which Mr Shetty's defence failed.

79. Although not put quite in these terms, the Bank's claim against Baker Tilly is in substance based upon the proposition that events which occurred in the weeks preceding the trial can be used to sustain the conclusion that Baker Tilly misled the Court almost a year earlier in such a way that the Immediate Judgment Application would otherwise have succeeded. That process of reasoning is unsustainable.

80. Put in terms of the three stage test enunciated in Ridehalgh, the only conduct on the part of Baker Tilly which caused the Immediate Judgment Application to fail was to provide evidence of the Bank's failure to provide an adequate opportunity for inspection of the documents which the Bank held. The Bank has therefore failed to establish any conduct on the part of Baker Tilly which was improper, unreasonable or negligent which caused the failure of the Immediate Judgment Application and therefore caused the Bank to incur the costs which were incurred as a consequence of that failure.

81. The second ground of the Bank's application against Baker Tilly rests on the proposition that it was a breach of Baker Tilly's duties to the Court to persist with the defence of Mr Shetty's claim in reliance upon Mr Al Bah's testimony when it should have been known that he was incompetent, based upon the inadequacy of his first report.

82. There are a number of significant obstacles in the path of this proposition. The first is that Mr Al Bah's first report was produced under difficult circumstances, given his very limited opportunity to inspect the documents. In those circumstances, it could not be concluded that Mr Al Bah was incapable of producing an adequate expert report if given the opportunity to do so and in particular if



laboratory. As with the first ground, this proposition seems to rely heavily upon hindsight, and what Mr Al Bah actually did or did not do in late 2024 to support conclusions as to Baker Tilly's knowledge at or about the time the Immediate Judgment Application was dismissed.

83. The second obstacle lies in the area of causation. Once the Immediate Judgment Application had been dismissed the matter had to proceed to trial and the Bank was committed to incurring the costs necessary to take the matter to trial. The fact that Baker Tilly persisted in the engagement of an incompetent expert had no impact on the costs incurred by the Bank. The real impact of that forensic course was to make it easier for the Bank to establish its case at trial.

84. The third obstacle in the path of this proposition is that perseverance in the engagement of Mr Al Bah could not be said to be improper or unreasonable. At its worst it was an error of judgment. Even if a wasted costs order can be made in this jurisdiction on the basis of negligence (and I make no ruling on that subject), the continued engagement of Mr Al Bah could not be said to be of such a serious or gross character as to enliven the jurisdiction to make a wasted costs order.

The grounds for the claim against Mr Al Bah

85. As already noted, the grounds for the claim against Mr Al Bah are essentially to the effect that he breached his duties to the Court because of the deficiencies in his evidence. As the claim is for all costs incurred following the hearing of the Application for Immediate Judgment, the only report from Mr Al Bah which can be relied upon in support of the claim is his first report. His second report wasn't provided until shortly before trial, by which time almost all of the Bank's costs would have been incurred and the inadequacies of that report added nothing to the Bank's costs but made it easier for the Bank to succeed at trial.

86. In order to succeed in the claim against Mr Al Bah, it is necessary for the Bank to establish that the inadequacies of his first report caused the Immediate Judgment Application to fail, when it would otherwise have succeeded. There are a number of reasons why the Bank has failed to establish that case.

87. First, Mr Al Bah's first report must be construed in the context in which it was prepared, on the basis of a very limited opportunity for inspection. Second, the circumstances in which the report was prepared were established during the hearing of the Immediate Judgment Application, from which it followed that the weight to be given to the report was obviously significantly diminished.

88. Third, the inadequacies and contradictions in the first report were obvious to any reader, and were identified in the reasons for dismissing the Application for Immediate Judgment. It was sufficient for that purpose to note that there was conflicting expert testimony from which the prospect

that Mr Shetty's defence might be improved by a proper examination of the documents could not be

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excluded. As already noted, in the events which unfolded, that prospect has never been excluded, because the documents have never been subjected to appropriate scrutiny by an expert witness engaged on Mr Shetty's behalf.

89. Put in more general terms, the inadequacies of Mr Al Bah's first report were evident on their face and were recognised by the Court at the time the Immediate Judgment Application was dismissed. Given the constrained circumstances in which Mr Al Bah prepared that report it cannot be inferred that there was absolutely no basis for his expression of an opinion that the signature on the Guarantee might have been forged, and as neither Mr Al Bah nor any other expert engaged on behalf of Mr Shetty has subjected the Guarantee to detailed examination that possibility hasn't been excluded on the evidence.

90. It is incontrovertible that I found that Mr Al Bah breached his duties to the Court as an expert witness, but that finding was made in relation to his second report and the oral testimony which he provided to the Court. Those breaches of duty had no impact upon the costs incurred by the Bank, but made it easier for the Bank to succeed at trial.

Summary and conclusion

91. For these reasons the Bank has failed to establish that any improper or unreasonable conduct on the part of either Baker Tilly or Mr Al Bah caused it to incur costs which would not otherwise have been incurred. The Application must therefore be dismissed.

Costs

92. The Bank accepts that if its Application fails, it has no entitlement to an award of costs. However, it contends that no order should be made in favour of Baker Tilly. Obviously, no question of an order for costs in favour of Mr Al Bah arises, because he took no part in the proceedings. Baker Tilly have filed a statement of costs which claims USD 349,749 in respect of 427 hours of work said to have been done by a significant number of personnel within that firm.

93. To put that claim in context, the amount claimed is approximately three times the costs claimed by the Bank for preparing and conducting the trial against Mr Shetty. 427 hours is the approximate equivalent of 53 working days. The product of all the time which has been claimed is two witness statements and a skeleton argument which are largely repetitive. The hearing of the Application lasted approximately 3 hours.

94. I have no hesitation in concluding that the costs claimed are manifestly excessive. There is no basis upon which an award of anything approximating the amount claimed could possibly be



95. The more pertinent question is whether Baker Tilly should be awarded any costs at all. That question has a number of components.

96. The first is whether Baker Tilly can claim costs as a self-represented litigant, given that the costs claimed were not paid to any external lawyers engaged to represent the firm in these proceedings, but are essentially costs claimed on the basis that Baker Tilly is the relevant client. In England there is express provision for the payment of costs to self-represented litigants, but as far as the Court is aware, there is no equivalent provision in the DIFC. In the absence of such a provision, the traditional position at common law, as I understand it, is that self-represented litigants are not entitled to an award of costs in their favour.

97. However, it is not necessary to dismiss Baker Tilly's claim for costs on that basis, as there are other grounds upon which I consider that I should exercise my discretion against the award of costs in their favour.

98. The first is that the materials and arguments presented to the Court were of little or no assistance. As already noted, the witness statements were almost entirely argumentative and, like the skeleton, replete with baseless allegations of improper conduct by the Bank and its legal representatives expressed in pejorative and hyperbolic terms. Of the 25 pages of skeleton argument, only six paragraphs occupying approximately one page in length were directed to the issue of causation which has been critical in the failure of the Bank's Application. More words in the firm's skeleton were directed to criticising the Bank for quite properly enunciating the basis of its claim in the skeleton rather than in a witness statement and on various other alleged procedural irregularities which were completely without substance. The oral argument presented on behalf of the firm was prolix and repetitive, and consumed the majority of the time at the hearing.

99. Second, although the Application has failed, it was encouraged by conduct on the part of Baker Tilly and Mr Sheheen which I have criticised in previously published reasons. Although I have found that the firm's conduct did not cause the Bank to incur any costs that could have otherwise been avoided, my findings with respect to the firm's conduct are relevant to the exercise of my discretion with respect to costs.

100. Accordingly, there will be no order as to costs.



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