



ORDR-1514910224-0264

Claim No. CFI 041/2021

IN THE DUBAI INTERNATIONAL FINANCE CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

(1) **ABRAAJ INVEST MANAGEMENT LIMITED (in liquidation)**

(2) **ABRAAJ CAPITAL LIMITED (in liquidation)**

Claimants/Respondents

and

(1) **KPMG LOWER GULF LIMITED**

(2) **KPMG (a firm)**

(3) **KPMG LLP**

Defendants/Appellants

ORDER WITH REASONS OF THE CHIEF JUSTICE ZAKI AZMI

UPON the Part 7 Claim Form dated 29 March 2021 (the “Claim”)

AND UPON the Order of Justice Wayne Martin dated 8 September 2023 and the reasons issued on 24 November 2023 (the “Judgment”)

AND UPON the First Defendant’s Appeal Notice dated 27 November 2023 seeking permission to appeal the Judgment (the “First Permission Application”)

AND UPON reviewing the Order with Reasons of Justice Wayne Martin dated 28 November 2023 dismissing the First Permission Application


AND UPON the First Defendant's renewed Appeal Notice dated 25 December 2023 seeking permission to appeal the Judgment (the "Second Permission Application")

AND UPON reviewing the Judicial Authority Law, Dubai Law No. 12 of 2004, as amended (the "JAL")

AND UPON reviewing the Rules of the DIFC Courts (the "RDC")

IT HEREBY ORDERED THAT:

1. The Second Permission Application is dismissed.
2. The First Defendant shall pay the Claimants' costs of the Second Permission Application to be assessed by the Registrar unless agreed by the parties.

Issued by: 
Delvin Sumo
Assistant Registrar
Date of issue: 20 February 2024
At: 3pm

SCHEDULE OF REASONS

1. This is a renewed application (the “Second Permission Application”) to appeal against the decision of Justice Wayne Martin dated 8 September 2023 and the reasons issued on 24 November 2023 (the “Judgment”). I am not going to go into the detail of facts of the case as they can be found in the reasoning of the Judge and parties’ submissions, except to say that after cases were filed in this Court and the onshore courts of Dubai by opposing parties, they had agreed to enter into a consent order dated 19 January 2022 to stay the hearing of the claims in this Court (the “Consent Order”). The details of the orders can be found in the learned Judge’s Judgement.
2. Basically, the stay was to be until final determination of the first application to the Joint Judicial Committee (the “JJC”). Secondly, the Second Claimant’s claim against the Third Defendant is also stayed until the order in paragraph 1 is lifted and order was also that the First Claimant shall have 21 days from the stay being lifted to submit Respondent’s Submission pursuant to RDC 44.14 and lastly, the parties “shall have liberty to apply as to the implementation and timing of the terms of this Order”.
3. Unfortunately, as with so many other cases pending decision at the JJC, the application for determination by JJC as to which court has jurisdiction to hear the case has still not been determined by the JJC. Petition presented to the JJC was filed in April 2021. The Defendants tried but failed to obtain the stay at the DIFC under Article 5 of the Judicial Authority Law, Dubai Law No. 12 of 2004, as amended (the “JAL”). A challenge was made before Justice Wayne Martin as to the jurisdiction of the DIFC Courts to hear this Claim. It was rejected. It was then that the currently impugned Consent Order to stay was sought before the by the parties.
4. On 3 March 2023, the Claimant sought the Defendants’ consent to lift the stay. This was refused and on 8 September 2023, the Judge heard the application to lift the stay and granted it after a contested hearing.
5. For the purpose of this Second Permission Application, I am very sure that parties are quite familiar with the principles. I am not going to cite the very many often cited authorities. When such a permission is to be granted under RDC 44.19, permission to appeal will only be granted if there is a real prospect of success or there are other compelling reasons why the appeal should be heard.
6. I realize very much that the order which the learned Judge lifted was a consent order. It is just like a contract entered into by two parties which the court will be reluctant to

set aside or lift without very good reasons. I bear in mind the judgment of Justice Neuberger (as he then was) in *Ropac Limited v Inntrepreneur Pub Company (CPC) Limited* [2001] CP Rep 31. In that case Justice Neuberger said *“Further, the objective to deal with a case ‘justly’ must, as I see it, sometimes (albeit rarely) required the court to overrule an agreement made between the parties in the course of, and in connection with the litigation...where the parties have agreed in clear terms on a certain cost, then, while that does not take away its power to extend time, the court should, when considering an application to extend time, place very great weight on what the parties have agreed and should be slow, save in unusual circumstances, to depart from what the parties have agreed.”* [Ropac Limited is relating to whether the court should extend the time for certain compliances by parties, although the parties had agreed to certain time period]. There are other cases with similar rulings mentioned in parties’ submissions to which I do not need to cite them here.

7. The learned Judge in his decision ordering the lifting of the Consent Order had given careful considerations to the submissions put in by both parties. Again, in refusing the First Permission Application, he had again dealt at great length why he decided permission should not be given. He carefully considered the two grounds put in by the Applicant for permission to appeal. Ground 1 relates to the question of jurisdiction. Ground 2 on his exercise of discretion he lengthily justified, why he thinks the Court of Appeal would accept his decision. Particularly from paragraphs 36 to 42 of his grounds of refusal of the First permission Application, he gave very good reasons why even if permission is granted there is no real prospect of success at appeal.
8. In addition to what the Learned Judge had laid out, for myself, I am very strongly persuaded by the fact that the way and the regrettably extremely slow rate of disposal of petitions pending before the JJC, we are not sure when a decision will be made in this case. I tried on my own to find out from my own sources, but no one could give me any indication when that decision of the JJC will be issued. Secondly, the amount of claim involved is huge (USD 600m) and every day delay is injustice cost to the Claimants. Also, this decision relates to case management where the discretion of the Judge plays a very important role. Although at this stage, I am not to determine if the Judge is right or wrong but only if there is a real prospect of success at appeal, I find it difficult to rule that the Judge was wrong in arriving at his decision to lift the Consent Order. The Court of Appeal is normally reluctant to disturb a discretionary issue in a case management.

9. With that, I therefore dismiss this Second Permission Application with costs. Costs to be assessed by the Registrar unless agreed to by parties.