

<p><u>In Name of His Highness Sheikh Mohammed bin Rashid Al Maktoum, Ruler of Dubai</u></p> <p>In the session held in Dubai Courts building, Chief Justices Meeting room, on Wednesday 11th July 2018.</p> <p>Presided by Dr. Ali Ibrahim Al Imam, Chief Justice of the Cassation Court, and Chairman of the Judicial Tribunal for Dubai Courts and Dubai International Financial Center Courts;</p> <p>and membered by Mr. Michael Hwang, Chief Justice of Dubai International Financial Center Courts;</p> <p>Mr. Khalifa Rashid bin Dimas, The Secretary-general of the Judicial Council;</p> <p>Mr. Essa Mohammad Sharif, Chief Justice, of the Appeal Court;</p>	<p>بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ</p> <p>باسم صاحب السمو الشيخ محمد بن راشد آل مكتوم حاكم دبي</p> <p>بالجلسة العلنية المنعقدة يوم الأربعاء 11- 7-2018 بمقر محاكم دبي - قاعة رؤساء المحاكم الابتدائية.</p> <p>برئاسة السيد الدكتور/ علي إبراهيم الإمام - رئيس محكمة التمييز ورئيس الهيئة القضائية لمحاكم دبي ومحاكم مركز دبي المالي العالمي،</p> <p>وعضوية السيد / مايكل هوانج - رئيس محاكم مركز دبي المالي العالمي،</p> <p>وعضوية المستشار / خليفة راشد بن ديماس - أمين عام المجلس القضائي،</p> <p>وعضوية السيد / عيسى محمد شريف - رئيس محكمة الاستئناف،</p>
--	--

د. علي إبراهيم الإمام
رئيس الهيئة القضائية لمحاكم دبي
ومحاكم مركز دبي المالي العالمي
Dr. Ali Ibrahim Al Imam,
Chairman of the Judicial Tribunal for
Dubai Courts and DIFC Courts



Mr. Omar Juma Al Muhairi, Appeal Court Judge at DIFC;	وعضوية السيد / عمر جمعة المهيري - قاضي محكمة الاستئناف بمركز دبي المالي العالمي،
Mr. Jasim Mohammad Baqer, Chief Justice of the First Instance Court,	وعضوية المستشار / جاسم محمد باقصر - رئيس المحكمة الابتدائية - عضو الهيئة،
Sir David Steel, Judge of the First Instance Court, DIFC;	وعضوية السيد / سير ديفيد استيل - قاضي المحكمة الابتدائية بمركز دبي المالي العالمي،
And in the presence of Mr. Abdul Rahim Mubarak Al Bolooshi, Registrar of the JT.	وبحضور السيد/عبدالرحيم مبارك البلوشي - مسجل الهيئة
<u>Cassation No. 3/2018 (JT)</u>	<u>الطعن رقم 3 لسنة 2018 (هيئة قضائية)</u>
Appellants: Farkhad Taymour Ogly Akhmedov	الطاعن، فرخاد تيمور أو علي أحمدوف
Respondents:	المطعون ضدهم،
(1) Tatiana Mikhailovna Akhmedov	(1) تاتيانا ميخايلوفنا أحمدوفا
(2) Straight Establishment	(2) ستريت استابليشمنت
<u>Judgement</u>	<u>الحكم</u>
Having perused the file and documents and after deliberation.	بعد الاطلاع على الأوراق والمداولت.
The cassation had satisfied the necessary	حيث أن الطعن استوفي مقوماته الشكلية فهو

د. علي إبراهيم الإمام
رئيس الهيئة القضائية لمحاكم دبي
ومحاكم مركز دبي المالي العالمي
Dr. Ali Ibrahim Al Imam,
Chairman of the Judicial Tribunal for
Dubai Courts and DIFC Courts



<p>requisites of form; hence it is accepted in form.</p> <p>The relevant facts - in brief - are as follows:-</p> <p>The appellant filed this application seeking the decision of the JT to decide that Dubai Courts are the only competent courts for the trial of this case. The DIFC courts are not competent to determine it and should cease from entertaining it and the freezing injunction ordered by it should be cancelled. The appellant says that he and the first respondent are Russian citizens who were previously married. He proceeds to say that he does not have a place of business or any assets in the DIFC.</p>	<p>مقبول شكلاً.</p> <p>تتحصل الوقائع - بإيجاز - في أن الطاعن قدم هذا الطلب طالباً من الهيئة القضائية أن تحكم بأن محاكم دبي هي الجهة المختصة بالحكم في هذا القضية وأن محاكم مركز دبي المالي العالمي ليست مختصة بنظرها ويجب عليها أن تتوقف عن نظرها بما في ذلك أمر المنع التجميدي (الحكم الوقتي) وإلغاء هذا الأمر - وقال الطاعن إنهما هو والمطعون ضدها الأولى مواطنان روسيان كانا سابقاً متزوجين ببعضهما وإضافة بأنه ليس لديه محل عمل أو أي موجودات بمركز دبي المالي العالمي.</p>
<p>The second respondent is a corporation registered in the Principality of Liechtenstein. On August 8, 2000, the appellant and the first respondent terminated their marriage. In 2015 the first respondent obtained an English court</p>	<p>وأن المطعون ضدها الثانية مؤسسة مسجلة في إمارة ليختنشتاين وبتاريخ 2000/8/8 أنهى الطاعن والمطعون ضدها الأولى علاقتهما الزوجية وحصلت المطعون ضدها الأولى في عام 2015 من محكمة إنجليزية على حكم يلزم الطاعن بأن يدفع للمطعون ضدها الأولى</p>

<p>judgment against the appellant to pay her £ 638,000 as part of the divorce proceedings filed by her in the English Court (Family Court).</p>	<p>مبلغ 638000 جنيه استرليني كجزء من إجراءات الطلاق المرفوعة منها أمام تلك المحكمة (محكمة الأسرة).</p>
<p>On 18/2/2018, the first respondent filed the case No. (CFT-011-2018) in the DIFC Court against the Appellant and the second respondent requesting the Court to decide: (1) The second respondent holds the whole of its interest in a yacht (The Luna) on trust for the first defendant (the appellant) (2) The English court judgment of Mr. Justice Haddat Cayef delivered on 20/12/2016 is enforceable against the second respondent. (3) Payment of £ 380,278.19 by the defendants (Appellant and second defendant) jointly and severally. The respondent also obtained a freezing order from the DIFC Court which was enforced by Dubai Courts by attaching the yacht (the Luna). The second respondent challenged the jurisdiction of the DIFC courts to entertain this case.</p>	<p>بتاريخ 2018/2/18، تقدمت المطعون ضدها بالدعوى رقم CFT-011-2018 أمام محكمة مركز دبي المالي العالمي ضد الطاعن والمطعون ضدها الثانية طالبة من المحكمة أن تحكم بأن (1) المطعون ضدها الثانية تمتلك كامل مصالحها في اليخت (لونا) على سبيل الأمانة لصالح المدعى عليه الأول (الطاعن) (2) الحكم الصادر من محكمة إنجليزية برئاسة القاضي هادوت كيف بتاريخ 2016/12/20 قابل للتنفيذ ضد المدعى عليها الثانية المطعون ضدها الثانية (3) دفع مبلغ 380.278/19 جنيه استرليني من قبل المدعى عليهما الطاعن والمطعون ضدها الثانية وقد حصلت المطعون ضدها أيضاً على أمر تجميد من محكمة مركز دبي المالي العالمي والتي نذبت للتنفيذ محاكم دبي بالحجز على اليخت (لونا). وقد اعترضت المطعون ضدها الثانية على اختصاص محاكم مركز دبي المالي العالمي بنظر الدعوى.</p>

د. علي إبراهيم الإمام
رئيس الهيئة القضائية لمحاكم دبي
ومحاكم مركز دبي المالي العالمي
Dr. Ali Ibrahim Al Imam,
Chairman of the Judicial Tribunal for
Dubai Courts and DIFC Courts



On 2/5/2018, the appellant filed the case No. 257/2018 before the Dubai Court seeking to prevent the enforcement of the English Family Court judgment and to decide that Dubai Courts have the original and exclusive jurisdiction over the matter, and to appoint a maritime technical expert to quantify the damages caused as result of the attachment of the Yacht (The Luna). He stated that his case shows how the first respondent is attempting to use the DIFC Courts as a conduit jurisdiction to enforce the English Family Court judgment to avoid the stringent tests for recognition and enforcement as a foreign judgment under Article 235 of the UAE Federal Civil Procedure Code to enforce a foreign judgment which violates public policy and public order in the United Arab Emirates and Islamic Shariah. The application of the conduit mechanisms to this matter conflicts with the Federal Laws of the United Arab Emirates as well as public order and Shariah law principles. The jurisdiction of the DIFC is

بتاريخ 2018/5/2 رفع الطاعن الدعوى رقم 2018/257 أمام محكمة دبي ملتصقاً بعدم تنفيذ الحكم الصادر من محكمة الأسرة الانجليزية وأن تقضي بأن محاكم دبي هي صاحبة الاختصاص الاصيل والحصري في هذا الأمر، وأن تعين خبيراً بحرياً لتقدير الأضرار الناشئة عن حجز اليخت (لونا) وقال إن المطعون ضدها الأولى في قضيتها تحاول استخدام محاكم مركز دبي المالي العالمي كسلطة اختصاص قضائي وسيط لتنفيذ الحكم الاجنبي وفقاً للمادة 235 من قانون الاجراءات المدنية الاتحادي لانتهاكه السياسة العامة والنظام العام في دولة الامارات العربية المتحدة، ولمخالفة الشريعة الاسلامية. إن تطبيق آليات الاختصاص الوسيط في هذا الأمر يتعارض مع القوانين الاتحادية في دولة الامارات العربية المتحدة كما يتعارض مع القوانين الاتحادية والنظام العام ومبادئ الشريعة الاسلامية، وإن

7 / 5

د. علي إبراهيم الإمام
رئيس الهيئة القضائية لمحاكم دبي
ومحاكم مركز دبي المالي العالمي
Dr. Ali Ibrahim Al Imam,
Chairman of the Judicial Tribunal for
Dubai Courts and DIFC Courts



<p>restricted to civil and commercial matters. They are not competent in family and marital matters.</p> <p>The rules and procedures laid down in the Federal Maritime Law should be followed and applied by civil courts ordering or executing an attachment order of a vessel. The appellant asserts that there is a positive conflict of jurisdiction between the two courts since there is a substantive claim in the DIFC Court of Appeal (CA-003-2018) and a substantive claim in Dubai Court, namely the Case No. (257/2018). The dispute between the appellant and the respondent in UAE is limited to whether the appellant owes the first respondent any monies and consequently whether the first respondent is entitled to enforce this debt against the Yacht.</p> <p>The first respondent lodged its memorandum of defense requesting the dismissal of the cassation. The second respondent requested the JT to exempt</p>	<p>اختصاص محاكم دبي المالي العالمي يقتصر على الأمور المدنية والتجارية، وهي ليست مختصة بالشئون العائلية والزوجية.</p> <p>وان القواعد والإجراءات المنصوص عليها في القانون التجاري البحري هي واجبة التطبيق والتنفيذ في حالة ايقاع أمر الحجز على السفينة. ويدعي الطاعن أن هناك حالة تعارض إيجابي فيما بين المحكمتين طالما كانت هناك دعوى موضوعية أمام محكمة استئناف المركز المالي العالمي (CA003-2018) ودعوى موضوعية أمام محكمة دبي (الدعوى رقم 257-2018)، وأن النزاع بين الطاعن والمطعون ضدها في دولة الإمارات العربية المتحدة ينصب ويدور حول ما إذا كان الطاعن مديناً للمطعون ضدها الأولى بأية أموال وما إذا كان كنتيجة لذلك يحق للمطعون ضدها الأولى تنفيذ هذا الدين على اليخت المحجوز.</p> <p>أودعت المطعون ضدها مذكرة بدفاعها طلبت فيها رفض الطعن، كما التمس المطعون ضدها الثانية نقل اليخت لونا المحجوز عليها</p>
--	--

<p>the order of the move of the vessel from its present location in DDD to Port Rashid.</p>	<p>من منطقة الأحواض الجاهزة العالمية إلى ميناء راشد.</p>
<p>It is obvious from the forging facts that the dispute concerns two matters, viz: (1) The attachment of the vessel - Luna - i.e. interim order. (2) The divorce between the appellant and the first respondent, and its consequences regarding the attached vessel. Since two cases are raised before the two courts, in addition to the attachment of the said vessel, then, to avoid contradiction of judgments, one court should entertain the whole dispute. Dubai Court has the general jurisdiction, then it is the competent court to entertain the whole dispute.</p>	<p>يتضح من الوقائع السالفة أن النزاع يتعلق بأمرين هما (1) حجز اليخت - لونا - بموجب حكم وقتي. (2) الطلاق الذي وقع بين الطاعن والمطعون ضدها الأولى وما ترتب عليها من حجز اليخت. وطالما رفعت دعوتان أمام المحكمتين بالإضافة إلى حجز اليخت فإنه لتفادي صدور أحكام متعارضة من المحكمتين يتعين نظر كل النزاع أمام إحدى المحكمتين، وطالما أن لمحكمة دبي السلطة الأصلية والولاية العامة فإنها تكون هي المختصة بنظر هذا النزاع.</p>
<p><u>For the reasons set out above, the Judicial Tribunal decides:</u></p> <p>(1) Dubai Court is the competent court to entertain the dispute, including the attachment of the yacht.</p> <p>(2) The DIFC Courts must cease from entertaining the whole dispute.</p> <p>(3) The first respondent must pay the JT fees AED 2000 as advocate costs.</p>	<p><u>للأسباب المبينة بعاليه حكمت الهيئة القضائية:-</u></p> <p>(1) محكمة دبي هي المختصة بنظر هذا النزاع بما في ذلك طلب الحجز على اليخت لونا .</p> <p>(2) يجب على محاكم مركز دبي المالي العالمي أن تكف عن نظر كافة هذا النزاع.</p> <p>(3) تلزم المطعون ضدها الأولى بالمصروفات ومبلغ ألفي درهم مقابل اتعاب المحاماة.</p>

CASSATION NO.3/2018

Applicant: FARKEHAD TEIMAR BELY AKHMEDOV

Respondents: (1) TATIANA MIKHAILOVNA AKHMEDOVA

(2) STRAIGHT ESTABLISMENT

RULING

The Background

1. The application to the Tribunal arises in the following circumstances. On 13 December 2016 a judgment of the English Courts in the form of a Financial Remedy Order was made in the course of divorce proceedings between the applicant and his former wife the first respondent. The judgment was in the sum of £453,579,152. The applicant had expressly accepted the jurisdiction of the English courts.
2. By the terms of the judgment the applicant was ordered to pay the first respondent £350,050,000 and to transfer certain property. Various other Panamanian and Liechtenstein entities (Cotor, Qabo 1 and Qubo 2) were made jointly and severally liable for the lump sum. The English judge having found that Cotor was a nominee and bare trustee (i.e. a person with nominal ownership but obliged to act on the directions of the true owner) and Qubo 1 and Qubo 2 were no more than "ciphers" (i.e. a code for the true owner).
3. On 7 February 2018 the first respondent commenced enforcement proceedings in relation to the judgment in the DIFC Court of First Instance. This was in part prompted by the discovery of the presence of the yacht Luna in dry dock in Port Rashid undergoing repairs. The yacht – a large pleasure yacht - had been acquired by the applicant in 2014. Its insurance value is over US\$ 480 million.
4. It had emerged that the applicant had purported to assign or transfer his interest in the yacht to a series of different entities including Tiffany, Avenger, Stern, Qubo 2 and

finally the second respondent, Straight Establishment a Lichtenstein Anstalt in March 2017. The transfer to Straight appears to have been in breach of a freezing order (i.e. an order barring the disposal of assets) issued by the English Courts and in any event, was held to be a deliberate attempt to evade enforcement.

5. In response to the enforcement application the DIFC Court also issued a freezing order restraining the applicant and Straight from removing any assets which were in Dubai up to a value of US\$ 540,136,876.71 including the Luna until further order.
6. The return date for the full hearing on the injunction was 8 March 2018. At the hearing, the applicant did not appear but Straight did participate and contended that the court lacked jurisdiction to continue the injunction because it was not a party to the English judgment. The court of first instance nonetheless continued the injunction primarily on the grounds that Straight was simply an alternative personality of the applicant.
7. On 19 April 2018 Straight was made a party to the English proceedings and were made jointly and severally liable with the applicant for the payment of the lump sum.
8. The issue of jurisdiction over Straight went to the Court of Appeal in the DIFCC. In a judgment dated 19 June 2018 (providing the reasons for allowing the appeal at the hearing on 9 May 2018) it was held that the jurisdiction to enforce a foreign judgment under Article 5 (A) (1) (e) and Article 7 (6) of the Judicial Authority Law and Article 24 (f) of the DIFC Court Law is limited to parties against whom the judgment was made. It was no answer to this point to contend that another party with separate juridical personality should be treated as the equivalent of the party against whom the judgment was given.
9. The Court of Appeal nonetheless continued the freezing order in the light of the subsequent joinder of Straight to the English proceedings and the notice of an application by the first respondent to amend the DIFC proceedings to join Straight.

10. In the meantime, by virtue of the Judicial Authority Law, the Dubai courts on the application of the first respondent had granted a provisional attachment of the yacht pursuant to Article 252 of the Civil Procedure Code preventing the vessel from leaving Dubai pending resolution of the first respondent's claim.

11. On 2 May 2018 (prior to the appeal hearing) the applicant apparently filed proceedings with the Dubai courts against the respondents. These proceedings were not notified to (let alone served on) the respondents. No mention of the proceedings was made to the Court of Appeal.

12. The applicant describes these proceedings in his application as follows:

"On 2 May 2018 the Applicant filed E-request No. 43509/2018 with the Dubai Court against the First and Second Respondents registered in Case No. 257/2018 Civil Plenary to be considered by the Cases Management Bureau Seventh Circuit seeking to prevent the enforcement of the English Family Court Order, to determine that the Dubai Courts have original and exclusive jurisdiction over the matter and to appoint a maritime technical expert to quantify the damage caused as a result of the arrest of the vessel."

None of the material filed with the Dubai Courts has been served with the application.

13. On 6 May 2018 (once again before the hearing in the Court of Appeal) the applicant issued the present application. Likewise it was not served on the first respondent nor any mention of it made to the Court of Appeal.

14. During the appeal hearing, the Acting Chairman of the Tribunal issued an order to the effect that *"the freezing order issued on 8 February 2018, the seizure warrant issued pursuant to this order, if any, and any other orders in this regard shall be ceased until the final decision issued by the Judicial Tribunal to determine the court competent to*

consider it in accordance with the provision of the law." This order was not provided to the first respondent.

15. It is of some concern that this application has been brought forward as described above. The Tribunal might want to consider whether its processes have been abused by the applicant particularly in regard to the absence of appropriate notice to the first respondent and to the DIFC Court and that consequently the order of 9 May should be treated as invalid.

Discussion

16. The application made by the applicant and the response from the respondents are very long and full of irrelevant matters such as comments on the merits of the divorce proceedings. The important starting point is that it is accepted that the first respondent has obtained an English Court judgment. The fact that it was made by the Family Court is of no significance. It is a money judgment to the same effect as such a judgment from the Commercial Court or the Chancery Division.
17. The suggestion that the enforcement of a money judgment issued by the Family Court is contrary to Federal laws, public order, morals and Sharia law principles is wholly unsound. The jurisdiction of the DIFC Courts extends to all civil matters within the scope of Art. 3.2 of Federal Law No. 8 of 2004 regarding Financial Free Zones.
18. It is equally unsound to assert the proceeding for enforcement of the judgment involves matters covered by Federal Maritime law. The judgment of the English Court is in personam (i.e. against the applicant personally) and not in rem (i.e. against the yacht). Likewise the recognition and enforcement of that judgment under Article 24 (1) of the DIFC Court law creates a local judgment of the DIFC court which again is in personam. It can in turn be enforced pursuant to Art. 7 of the Judicial Authority Law as may be decided upon by the Dubai Court. There has been no arrest merely a provisional attachment.
19. The fact that there is non-binding Memorandum of Guidance between the DIFC Court and the London Commercial Court is irrelevant in considering the scope of the DIFC

Courts jurisdiction to enforce judgments under the Judicial Authority Law and the DIFC Court law. They expressly encompass ratification and enforcement of any judgment or award. Notably whilst Straight challenged the jurisdiction of the DIFC Court to enforce a judgment (or issue a freezing order) because they were not parties to the English judgment, there was no suggestion that jurisdiction was also challengeable on public policy grounds or by virtue of inconsistencies with maritime law provisions.

20. In any event the issue of jurisdiction is not a matter for the Tribunal but for the DIFC Court as regards recognition within the DIFC and for the Dubai courts as regards recognition and enforcement in Dubai. Indeed the proceedings in Dubai are not substantive but merely appear to seek to prevent enforcement of the DIFCC order. But any challenge to original jurisdiction should be raised before the DIFCC. As regards enforcement in Dubai (including any claim for appointment of a maritime experts), these topics can be properly and safely left to the Dubai court. There is no conflict within the meaning of Decree 19 upon which the Tribunal can act.

21. The Cassation should be dismissed with costs.

22 July 2018

Chief Justice Michael Hwang

Justice Sir David Steel

H.E. Justice Omar Al Muhairi