



ORDR-2856940424-0518

Claim No. CA 003/2024

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF APPEAL

BETWEEN

**CARMON REESTRUTURA – ENGENHARIA E SERVIÇOS TÉCNICOS ESPECIAIS, (SU)
LDA**

Claimant/Appellant

and

ANTONIO JOAO CATETE LEPES CUENDA

Defendant/Respondent

ORDER WITH REASONS OF JUSTICE SIR PETER GROSS

UPON the Order of Justice Wayne Martin dated 27 December 2023 (the “Order”) granting the Claimant permission to appeal limited to the Grounds set out at paragraph 7 of the Order, and granting the Claimant leave to apply to the Court of Appeal for permission to appeal on the Grounds set out at paragraph 8 of the Order (the “Para. 8 Grounds”)

AND UPON the Reasons for the Order dated 16 January 2024

AND UPON the Claimant’s Appeal Notice dated 30 January 2024 seeking permission of the Court of Appeal to appeal on the Para. 8 Grounds (the “Application for Permission to Appeal on the Para 8. Grounds”)

AND UPON the Respondent’s submissions in opposition of the Application for Permission to Appeal on the Para 8. Grounds dated 5 March 2024

AND UPON reviewing all relevant material added onto the Court file

AND UPON reviewing Part 44 of Rules of the DIFC Courts (the “RDC”)

IT IS HEREBY ORDERED THAT:

1. The Application for Permission to Appeal on the Para. 8 Grounds is granted.
2. Costs shall be costs in the case.

Issued by:
Hayley Morton
Assistant Registrar
Date of Issue: 2 April 2024
At: 9am



SCHEDULE OF REASONS

1. By his Order dated 27 December 2023 (the “Order”), Justice Wayne Martin (the “Judge”) granted the Dismissal Application, dismissed the action, and vacated the Freezing Orders (the “Freezing Orders”) previously granted by the Judge against the Defendant.
2. As appears from the Reasons for the Order, themselves contained in a document dated 16 January 2024 (the “Judgment”), the Judge concluded that he was bound by the decision of the DIFC Courts Court of Appeal (the “CA”) in *Sandra Holding Ltd and Ors v Al Saleh and Ors* [2023] DICA CA 003 (6 September 2023) (“*Sandra Holding*”) to hold that that the DIFC Courts had no freestanding jurisdiction to grant freezing orders in support of the prospective enforcement of foreign proceedings in which judgment had not been entered; accordingly, he had had no jurisdiction to grant the Freezing Orders. In coming to that conclusion, the Judge loyally sought to follow the doctrines of precedent and *stare decisis*.
3. The Judge gave the Claimant permission to appeal (“PTA”) to the CA on the limited grounds set out in para. 7 of the Order, namely (the “para. 7 Grounds”):

“(a) The meaning and effect [of] paragraph 99 of the decision of the Court of Appeal in Sandra Holding.

“(b) Whether the rulings of the Court of Appeal in Sandra Holding with respect to the jurisdiction of the Court to make freezing orders in support of pending foreign proceedings were obiter dicta and therefore not binding on judges at first instance.”

4. By para. 8 of the Order the Judge gave the Claimant leave to apply for PTA to the CA (the “para. 8 Grounds”):

“...from the grant of the Dismissal Application and the dismissal of the Disclosure Application on grounds relating to the question of whether the rulings of the Court of Appeal in Sandra Holding with respect to the jurisdiction of the Court to make freezing orders in support of pending foreign proceedings should not be followed because:

[They] were per incuriam; and/or

They were wrong.”

5. RDC 44.19 provides that PTA to the CA may only be given, where:

“(1) The appeal would have a real prospect of success; or

(2) There is some other compelling reason why the appeal should be heard”

6. In deciding this PTA Application, I go no further than – and express no view going beyond – that which is required for a decision under RDC 44.19 (1) and/or (2).

7. In my judgment, there is, with respect, an arguable case that *Sandra Holding* was wrongly decided, broadly as contended by the Claimant in its Skeleton Argument.
8. On this footing, the question arises whether it is open to the CA to revisit and, if so minded, depart from its own previous decisions. In turn and depending on the answer to that question, the further question potentially arises as to the future course of DIFC law in this area (i.e., the width of the jurisdiction to grant freezing orders).
9. It will be apparent that a number of important policy issues arise:
 - (1) The power of the DIFC Courts, established (*inter alia*) to assist international trade, to grant freezing orders in circumstances where such relief could be crucial to avoid the dissipation of assets.
 - (2) The need to guard against the assertion by the DIFC Courts of an exorbitant jurisdiction.
 - (3) The proper limits of judicial (as distinct from legislative) development of the law by the DIFC Courts, whose jurisdiction is based on statute.
10. Enough has already been said of the potential general importance of this case to the jurisdiction and jurisprudence of the DIFC Courts, together with the development of DIFC law in this area, to provide ample justification for giving PTA in respect of the para. 8(b) Ground under both limbs of RDC 44.19.
11. Though my decision is not based on it, I additionally bear in mind the consideration that the CA will in any event be hearing an appeal on the para. 7 Grounds, for which the Judge gave PTA. In the circumstances of this important case, it would be convenient for the CA to be free to consider the matter in the round.
12. Given that there will be an appeal on the para. 8(b) Ground, the Claimant should not be precluded from contending that the decision in *Sandra Holding* was *per incuriam*, though had the para. 8(a) Ground stood alone I would not have granted PTA in respect of it.
13. PTA is accordingly granted for both para. 8 Grounds, under both limbs of RDC 44.19.
14. I underline that the grant of PTA does not, in any way, pre-judge the outcome of the Appeal.
15. I add this. Though directions for the Appeal will of course be considered further, it may be helpful for the parties to flag at this stage that the CA will benefit from comparative

common law authorities on issues relevant to the Appeal. This is not an invitation to cite a plethora of authorities of, at most, peripheral relevance. Instead, a careful, focused, small selection would be helpful. Further, a very small selection of relevant articles from journals such as the LQR, might be of assistance. So far as authorities are concerned, these should be in traditional law report format, with headnotes (rather than the internet versions).