

Client Alert



DIFC Court of Appeal to revisit its jurisdiction to grant freezing orders in support of foreign proceedings

By Mevan Bandara, Sulakshana Senanayake and Lee Schama | 03 April 2024

On 2 April 2024, the DIFC Court of Appeal granted permission to appeal to determine whether the recent case of *Sandra Holding* [2023] DIFC CA 003 (6 September 2023) was wrongly decided. Permission was granted to appeal on 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:

- (a) *[They] were per incuriam; and/or*
- (b) *They were wrong.”*

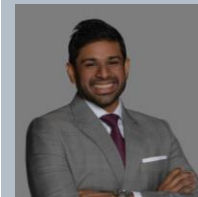
In *Sandra Holding*, the Court of Appeal held that the DIFC Court does not have jurisdiction to grant a freezing order in support of proceedings which are pending before a foreign court unless it has jurisdiction over the defendant under Article 5A(1)(a) to (e) of the Judicial Authority Law (JAL).

The appeal arises from a judgment of the DIFC Court of First Instance which held (when determining an application to set aside a freezing order) that it was bound by the decision of *Sandra Holding*. The Court of First Instance, while allowing the defendant’s set-aside application, stayed the operation or effect of the set-aside application and granted permission to appeal its own decision on the following 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.

The Court of First Instance also granted the claimant leave to apply

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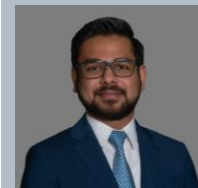
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to the Court of Appeal for permission to appeal on the additional ground as to whether Sandra Holding was wrongly decided and/or *per incuriam*.

Justice Sir Peter Gross, in his reasons for granting permission, noted that a number of important policy issues arise from the appeal:

- 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.”*

Justice Sir Peter Gross also highlighted the potential general importance of the appeal to the jurisdiction and jurisprudence of the DIFC Courts, together with the development of DIFC law in this area, as reasons for granting permission to appeal and directed that the Court would benefit from considering comparative common law authorities on the relevant points.

The Court of Appeal will now hear the appeal on all grounds for which permission has been granted, and will also consider (arguably for the first time) whether it is open to the Court of Appeal to revisit and, if so minded, depart from its own previous decisions.

Afridi & Angell acts for the Claimant-Appellant in the proceedings. ■



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Lee handles a broad range of litigation and specialises in complex and high value disputes. He has significant experience across a broad range of commercial law including international and multi-jurisdictional banking, corporate and personal insolvency, money laundering and asset tracing, commercial and white-collar crime, and residential and commercial property law. Lee's practice also encompasses several niche areas including defamation, aviation, competition, intellectual property and trademark infringement, and taxation.

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