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Financial Services Limited v GSB Capital Ltd

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AUGUST 28, 2025 COURT OF FIRST INSTANCE - ORDERS

Claim No: CFI 060/2023

IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

(1) AES MIDDLE EAST INSURANCE BROKER LLC
(2) AES FINANCIAL SERVICES (DIFC) LIMITED
(3) AES FINANCIAL SERVICES LIMITED

Claimants

and

GSB CAPITAL LTD

Defendant



ORDER WITH REASONS OF H.E. JUSTICE RENE LE MIERE

UPON the Amended Judgment of Justice Rene Le Miere dated 9 July 2025 (the "Judgment")

AND UPON the Defendant's Statement of Costs dated 25 July 2025

AND UPON the Defendant's costs submissions dated 25 July 2025

AND UPON the Claimants' costs submissions dated 8 August 2025

AND UPON the Defendant's reply costs submissions dated 14 August 2025

AND UPON the Claimants' reply costs submissions dated 20 August 2025

IT IS HEREBY ORDERED THAT:

1. The Claimants shall pay the Defendant's costs of the proceedings, such costs to be assessed on the standard basis, if not agreed.
2. The costs shall be subject to detailed assessment by the Registrar, pursuant to RDC Part 40.
3. The Claimants shall pay the Defendant the sum of USD 1,000,000 on account of costs, such payment to be made within 14 days of the date of this Order.

Issued by:

Hayley Norton

Assistant Registrar

Date of Issue: 28 August 2025

At: 8am

SCHEDULE OF REASONS

Summary

1. In its substantive judgment, the Court dismissed the claims brought by the Claimants, AES Middle East Insurance Broker LLC ("AES"), and its affiliates, AES Financial Services (DIFC) Limited ("AES DIFC") and AES Financial Services Limited ("AES UK"), against the Defendant, GSB Capital Limited ("GSB").
2. The Claimants had alleged breaches of confidence, unlawful conspiracy, and inducement of breach of legal rights under The Law of Obligations 2005.
3. The Claimants contended that GSB orchestrated a coordinated departure of key employees from AES to GSB, resulting in significant financial losses through the transfer of clients and assets under management. They alleged that GSB, with the assistance of former employees of AES (the "Former Employees"), misused confidential information to solicit clients during the employees' non-solicitation periods, in breach of their employment contracts and confidentiality obligations.

4. The Court considered the enforceability of restrictive covenants under UAE Federal Law and found the non-solicitation clauses to be reasonable and appropriately limited to protect AES's legitimate interests. It held that one of the Former Employees, Yazmin Boden, had breached her non-solicitation covenant by attempting to solicit Mr. Robson, but found no other breaches of such covenants by the Former Employees.

5. The Court also upheld the confidentiality clauses in the Former Employees' contracts, finding them sufficiently certain and reasonable. However, it concluded that the Claimants had not proved any misuse of confidential information or breaches of confidentiality by the Former Employees. Nor had they established that GSB had induced any such breaches or misused confidential information itself.

6. Allegations that Stuart Ritchie, one of the Former Employees, breached his director's duties were partially upheld, but the Court found no evidence that GSB had induced or was aware of such breaches. The claim of unlawful conspiracy was dismissed, as the Claimants failed to prove the existence of an agreement to commit unlawful acts.

7. The Court also noted that the Claimants had not pleaded a case of vicarious liability for any breaches of confidentiality.

8. The Defendant's argument that the proceedings constituted an abuse of process due to prior litigation in the Dubai Courts was not determined.

9. The Court dismissed the Claimants' claims and directed the parties to file submissions on costs. Both parties subsequently filed their respective proposed orders and outline submissions, followed by reply submissions. This judgment addresses the Court's determination of the appropriate orders as to costs.

10. For the reasons below, the Court will order:

(a) Costs Liability

i. The Claimants shall pay the Defendant's costs of the proceedings, such costs to be assessed on the standard basis, if not agreed.

(b) Assessment of Costs

ii. The costs shall be subject to detailed assessment by the Registrar, pursuant to RDC Part 40.

iii. The Claimants shall pay the Defendant the sum of USD 1,000,000 on account of costs, such payment to be made within 14 days of the date of this Order.

Key disputes regarding costs orders

11. The key issues regarding costs orders are as follows.

Liability for Costs

12. The general rule under RDC 38.7(1) is that the unsuccessful party pays the successful party's costs. The Claimants were unsuccessful. The Claimants accept that the Court will order that they pay the Defendant's costs.

Basis of costs assessment

13. The Defendant argues that costs should be assessed on the indemnity basis, citing alleged dishonest and abusive conduct by the Claimants.

14. The Claimants submit that costs should be assessed on the standard basis, arguing that the threshold for indemnity costs is not met and that their conduct was not improper.

Procedure for assessment

15. The Defendant argues that costs should be assessed immediately by the trial judge, who is familiar with the case.

16. The Claimants' position is that immediate assessment is inappropriate under RDC 38.30(1), which limits immediate assessment to hearings of one day or less. They argue for a detailed assessment if costs are not agreed.

Interim payment on account of costs

17. The Defendant seeks an interim payment of 80% of claimed costs (USD 1,356,500), asserting this is reasonable and supported by verified evidence.

18. The Claimants argue that any interim payment should be capped at 30%, or at most 50%, citing a lack of precedent for such a high award and insufficient supporting documentation.

Evidence supporting claimed costs

19. The Defendant relies on a signed and verified witness statement and a schedule of costs, asserting that invoices would add little.



Claimants contend that the evidence is insufficient for either immediate assessment or a interim payment, and that proper substantiation (e.g., invoices, proof of payment) is required.

21. The Defendant claims its costs are proportionate, especially compared to the Claimants' estimated costs of USD 3.5 million.

22. The Claimants challenge the size of the Defendant's legal team, the inclusion of non-lawyers' time, and the hourly rates, and argue that a meaningful review is not possible without full disclosure.

Allegations of delay or strategic conduct

23. The Defendant suggests the Claimants are seeking to delay cost recovery by resisting immediate assessment and proposing a low interim payment.

24. The Claimants reject this, affirming their willingness to negotiate and asserting that their position is consistent with Court rules and practice.

Application for Indemnity Costs and Court's Findings

25. Indemnity costs orders are a departure from the usual practice, where costs are generally awarded on a standard basis. For an indemnity costs order to be made, there must be some special or unusual feature in the case justifying the Court exercising its discretion in that way. This can include improper, unreasonable, or delinquent conduct by a party, the making of false allegations (such as fraud), or the pursuit of hopeless claims. The power to order indemnity costs is discretionary and is exercised judicially, considering all relevant circumstances of the case.

26. Practice Direction No. 5 of 2014 ("PD 5/2014") provides that in determining whether costs should be assessed on the indemnity basis, the following factors, among others, will be taken into consideration in the exercise of a judge's discretion:

- (a) circumstances where the facts of the case and/or the conduct of the paying party are/is such as to take the situation away from the norm; for example, where the Court has found deliberate misconduct in breach of a direction of the Court or unreasonable conduct to a high degree in connection with the litigation; or
- (b) otherwise inappropriate conduct in its wider sense in relation to a paying party's pre-litigation dealings with the receiving party, or in relation to the commencement or conduct of the litigation itself; or
- (c) where the Court considers the paying party's conduct to be an abuse of process.

27. The Defendant seeks an order for indemnity costs on the basis that the Claimants conducted the litigation improperly and unreasonably.

28. First, the Defendant alleges that the Claimants brought the proceedings with an improper motive –to prevent competition by intimidating former employees, the Defendant, and others. The Court found that Mr Instone engaged in a sustained campaign to prevent the Former Employees from working for the Defendant, involving threats, visa cancellations, and unsupported police complaints. However, the Court also found that the conduct of the Former Employees was suspicious and that Mr Instone acted to protect his business from perceived wrongdoing. The Court is not satisfied that the Claimants' motives in bringing the proceedings were improper.

29. Second, the Defendant alleges dishonest and inappropriate conduct during and before trial. While Mr Instone was found to have fabricated an email in communications with Dimensional and was an unsatisfactory witness, there was no finding that evidence presented to the Court was fabricated. The Claimants' unsupported reports to Dubai police occurred prior to the proceedings and do not materially affect the litigation. The Court does not find that the Claimants' conduct meets the threshold for indemnity costs.

30. Third, the Defendant alleges misuse of injunctions and contempt proceedings. Although the Defendant criticises the Claimants' presentation of evidence in support of the injunction, it did not seek to set the injunction aside. Costs in respect of the committal application have already been determined on the standard basis and do not justify indemnity costs.

31. Fourth, the Defendant alleges that the proceedings constituted an abuse of process by seeking to re-litigate matters previously decided by the Dubai Courts. The Defendant did not plead abuse of process, and the Court declines to consider that issue in the context of costs.

32. Fifth, the Defendant alleges that the Claimants' conduct of the litigation was unreasonable, citing wasteful disclosure demands, excessive witness evidence, disproportionate aggression, lack of cooperation, failure to narrow expert issues, unjustified engagement of a forensic IT expert, abandonment of key case elements, and strategic missteps. The Court finds that the document production was ordered by the Court and that the narrowing of issues reflected the natural progression of a complex case. The Claimants' conduct, including updates to expert reports and client lists, was not outside the norm. The engagement of a forensic IT expert was not unreasonable, and the Claimants were entitled to rely on the evidence available in support of the inferences they sought to draw. The Court does not find that these matters justify indemnity costs.

33. In conclusion, while aspects of the Claimants' conduct justify criticism, the Court is not satisfied that the conduct was improper, unreasonable, or exceptional to warrant an award of costs on the indemnity basis. Costs are to be assessed on the standard basis. ^

34. The Defendant submits that costs should be assessed immediately by the trial judge, who is familiar with the case.

35. The Claimants oppose this, relying on RDC 38.30(1), which restricts immediate assessment to hearings lasting one day or less. They argue that, absent agreement, a detailed assessment is appropriate.

36. In support of its position, the Defendant relies on a witness statement from Mr Ben Brown, a partner at Clyde & Co with conduct of the proceedings. Mr Brown states that the Defendant has incurred costs of USD 1,695,625.12 in defending the claim, excluding certain applications. The Defendant asserts that its approach was cost-effective, involving discounted hourly rates and the use of junior counsel and fee earners where appropriate. Specific costs are detailed across various stages of the litigation, including the injunction, pleadings, expert evidence, document production, and trial preparation, with trial-related costs totalling USD 433,522.86. The Defendant contends that its costs are reasonable and seeks an order that the Claimants pay 100% of those costs.

37. The Court, however, orders a detailed assessment of costs for the following reasons:

38. First, RDC 38.30(1) provides that immediate assessment is generally limited to hearings of one day or less. This case involved a two-week trial and a substantial costs claim of nearly USD 1.7 million, rendering immediate assessment inappropriate.

39. Secondly, the Court has consistently declined immediate assessment following multi-day trials or high-value claims, even after shorter hearings. Precedent does not support immediate assessment in circumstances comparable to this case.

40. Thirdly, the proceedings were factually and procedurally complex. The quantum of costs claimed is significant and warrants detailed scrutiny to ensure fairness and proportionality.

41. Fourthly, the Court cannot undertake a detailed assessment itself. Such an assessment involves a two-stage process: (1) line-by-line scrutiny of the bill to determine whether each item was reasonably and necessarily incurred, and (2) an evaluation of whether the total costs are proportionate to the nature, complexity, and value of the proceedings. While the Defendant has provided detailed evidence supporting its claim and demonstrated cost-effective conduct, including discounted rates and appropriate delegation, the Court cannot perform the necessary line-by-line analysis

12. It is not appropriate for the Court to conduct an oral hearing to assess the Defendant's costs. A detailed assessment procedure under Part 40 of the Rules is the proper mechanism for such an



43. Fifthly, detailed assessment is the standard approach in complex, high-value cases. It ensures due process and mitigates the risk of unjustified awards. Immediate assessment in this context would undermine the integrity of the process.

44. For these reasons, the Court declines to proceed with immediate assessment and directs that costs be subject to detailed assessment.

Interim payment on account of costs: quantum and discretion

45. The Defendant seeks an interim payment of 80% of claimed costs (USD 1,356,500), asserting this is reasonable and supported by verified evidence.

46. The Claimants do not object in principle to an interim payment of costs but oppose the quantum sought by the Defendant. The Claimants argue that any interim payment ordered by the Court should be no more than 30% of the Defendant's claimed costs and, in the alternative, no more than 50% of their claimed costs. The Claimants refer to the lack of sufficient evidentiary support for the Defendant's claimed costs as a key reason for this position and submit that the Defendant seeks an unprecedentedly high interim payment (80% of claimed costs).

47. Although the Court has directed that costs be subject to detailed assessment, it is appropriate to order an interim payment on account of costs. The Defendant has provided credible evidence of costs incurred and has demonstrated that its conduct of the proceedings was cost-effective and proportionate. To mitigate prejudice to the Defendant pending detailed assessment, the Claimants shall pay the Defendant a reasonable proportion of the costs likely to be recovered. This order is made pursuant to the Court's discretion under RDC Part 25 and reflects the principle that a successful party should not be unduly delayed in recovering a fair portion of its costs

48. The Claimants rely on *Rafed Al Khorafi v Bank Sarasin* [2009] DIFC CFI- 26 (30 October 2014) and *Hussain Saleh-Farid Al-Awlaqi v Tabarak Partners* [2009] DIFC CFI 023 (22 December 2010) to assert that interim payments should be limited to amounts not exceeding what would be obtained on assessment. While this principle is acknowledged, the cited cases reflect a more nuanced judicial approach.

49. In both decisions, the DIFC Courts emphasised that interim payments are discretionary and context-sensitive. The courts did not impose a rigid cap but rather sought to estimate a reasonable and conservative figure based on the circumstances, including the scale of litigation and the judge's familiarity with the case.

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Jacob J's dicta in *Mars UK Ltd v Teknowledge*, [2000] FSR 138, while supportive of a cautious approach, also affirms the court's ability to make a rough but fair estimate of recoverable costs. The overarching aim is to ensure procedural efficiency and fairness, not to constrain interim

awards artificially.

51. Accordingly, the correct approach is not merely to limit the amount, but to exercise informed discretion in determining a fair and proportionate interim payment.

52. Pursuant to PD 5/2014, paragraph 5, the Court will ordinarily order 50% of the amount claimed in the statement of costs to be paid on account, unless it sees fit to order otherwise. This provision establishes a guideline rather than a binding rule, and the Court retains discretion to depart from the 50% figure where appropriate. The amount ordered must reflect a reasonable and conservative estimate of what the receiving party is likely to recover on assessment, considering the nature of the proceedings, the conduct of the parties, and the Court's familiarity with the case.

53. This approach was applied in *Limsa v Lordon* [2020] DIFC ARB 008, where the Court ordered a 50% interim payment based on the specific procedural posture and factual context of that case. However, the judgment does not establish 50% as a default percentage but rather illustrates the Court's discretionary power to determine a fair and proportionate interim award considering the circumstances.

54. The Defendant has provided detailed evidence in support of its claim. That evidence satisfies me that the Defendant has taken steps to conduct the proceedings as cost- effectively as possible, including applying discounts to standard hourly rates and using junior counsel and fee earners where appropriate. The Defendant's total costs claimed in these proceedings are proportionate to the nature, complexity, and value of the proceedings and are significantly lower than the Claimants' estimated costs.

55. The Claimants raised objections to the size of the Defendant's legal team, the inclusion of time spent by non-lawyers, and the hourly rates claimed. The Court accepts the Defendant's response that, even if the Claimants' concerns regarding team size and potential inefficiencies are accepted, the financial impact is minor. The Defendant's illustrative calculation—assuming 5 hours of "reading in" per additional lawyer at USD 275 per hour—yields a maximum of USD 23,375, and most lawyers worked at lower rates. The Court also accepts the Defendant's submission that the disclosure process was conducted with high accuracy, as evidenced by the minimal number of additional documents disclosed following review.

56. Regarding the inclusion of time spent by Mr. Forrester, a non-lawyer, the amount in dispute is USD23,902. The Defendant's response to the challenge on hourly rates— indicates that the



approximately USD 68,612, representing only 4% of the Defendant's total costs claim. The Court finds that these challenges do not materially undermine the reasonableness of the costs claimed and are best addressed during detailed assessment.

57. I consider the appropriate amount to order to be paid on account of the Defendant's costs is USD 1,000,000, which is approximately 60% of the costs claimed by the Defendant.

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