QB-2019-002345

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

[2021] EWHC 50 (QB)

18 January 2021

Royal Courts of Justice
Strand, London, WC2A 2LL

Before :

MASTER DAVISON

- -

Between :

AHMAD ABDEL RAHMAN NIMER	**Claimant**
- and -	
(1) UNITED AL SAQER GROUP LLC **(2) H.E. SHEIKH MOHAMMED BIN BUTTI AL HAMED** **(3) THE PRIVATE OFFICE OF H.E. SHEIKH MOHAMMED BIN BUTTI AL HAMED** **(4) SHEIKH SAIF BIN MOHAMMED BIN BUTTI AL HAMED** **(5) SHEIKH ZAYED BIN MOHAMMED BIN BUTTI AL HAMED** **(6) SHEIKH ABDALLA BIN MOHAMMED BIN BUTTI AL HAMED**	**Defendants**

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Mr Andrew Ayres QC and **Ms Gabriella McNicholas** (instructed by **Bird & Bird LLP**) for the **Claimant**
Mr John Taylor QC and **Mr Christopher Langley** (instructed by **Hogan Lovells International LLP**) for the **Defendants**

Hearing dates: 15, 16 & 17 December 2020

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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Introduction

1. This is my reserved judgment on (a) the fifth defendant's application to stay the claim against him and (b) the other defendants' applications to set aside an order giving permission to serve proceedings on them outside the jurisdiction. Both applications have been made on the grounds of *forum non conveniens*. At the outset of the hearing, I rejected an application by the claimant for permission to cross-examine three of the defendants' factual witnesses and the defendants' expert witness, Dr Al Mulla. My reasons for doing so were given orally at the time. For completeness and for convenience, they are summarised in the postscript to this judgment.

2. The claimant is an accountant of dual Jordanian and Canadian nationality. In November 2011, when he was 49 years of age, he was appointed CEO of United Al Saqer Group LLC ('UAS'), an Abu Dhabi conglomerate with a valuation in excess of US$8 billion. Prior to his appointment, he had worked with UAS in his capacity as a partner of Deloitte, the international accountancy firm. He was recruited by the second and fourth defendants, who are father and son and who I will refer to as HE Sheikh Mohammed and Sheikh Saif. They are respectively the chairman and vice-chairman / joint managing director of UAS. The fifth and sixth defendants are Sheikh Mohammed's sons also. The fifth defendant, Sheikh Zayed, is the other managing director and a director of UAS. The sixth defendant, Sheikh Abdalla, is a director of UAS.

3. As well as being the chairman of UAS, HE Sheikh Mohammed is the head of Al Qubaisat, a prominent tribe in the UAE and is, on any view, an important, well-connected and influential Emirati.

4. On the claimant's case, he had the benefit of a written employment contract dated 1 October 2011 countersigned by Sheikh Mohammed, which provided for consecutive 5 year fixed terms and very generous entitlements to salary and bonuses. By clause 7, it contained provisions which gave the claimant the right to receive five times his gross salary (and last annual bonus) upon early termination.

5. The claimant worked very closely with Sheikh Mohammed and his sons. From around 2015 relationships deteriorated. The claimant was transferred to RIC, a subsidiary corporation within UAS. He claims he was denied access to UAS's headquarters and sidelined or 'frozen out' of the business, ultimately signing a termination contract dated 29 June 2016 under which he received only a fraction of what was due to him under the written employment contract. He says that he was subjected to various threats and that these included denying the validity of the contract, (falsely) alleging that Sheikh Mohammed's signature on it was a forgery and threatening to instigate criminal proceedings against him whereby he would in consequence be detained or deported or both. The claimant claims that the termination contract is unenforceable pursuant to Abu Dhabi law because he did not truly consent to it and/or that it is voidable on account of duress, intimidation, and/or improper threats and pressure. He seeks compensation for the loss and damage which he has suffered, totalling in excess of AED 111,000,000 (roughly £24 million).

6. These proceedings were issued on 28 June 2019. The claim form was served on the fifth defendant, Sheikh Zayed, on 8 September 2019 when he was visiting London. Having served Sheikh Zayed and thereby established him as what is commonly called 'an anchor defendant', the claimant applied for permission to serve the other defendants out of the jurisdiction in the UAE. Permission was granted by order of Master Sullivan dated 28 February 2020 on the basis that they were 'necessary and proper parties'. These other defendants have applied to set aside that order. They say that the court should decline jurisdiction on the same basis that the fifth defendant seeks a stay, namely that the UK is not a convenient forum for the claim and that it should be heard in Abu Dhabi.

7. The applications engage the three issues identified by the Privy Council in the case of *Altimo Holdings and Investment Ltd v Kyrgyz Mobil Tel Ltd* [2011] UKPC 7:

i) Is there a serious issue to be tried on the merits?

ii) Does the claimant have a good arguable case that the claim (against all defendants save the fifth defendant, who was served in England) falls within one of the gateways for service out of the jurisdiction?

iii) Is England 'clearly or distinctly the appropriate forum for the trial of the dispute'?

8. The third question involves a two-stage approach. First, the court must determine the 'natural forum' for the dispute – the one with which it has the most real and substantial connection. Second, the court then has to consider whether, despite a foreign jurisdiction being the natural forum to resolve the dispute, England is the 'appropriate forum' for the trial. The burden is on the claimant to show that there are 'special circumstances by reason of justice which require that the trial should nevertheless take place in this country'. This approach derives from the well-known case of *Spiliada Maritime Corp v Cansulex Ltd* [1984] 1 AC 460 and the more recent case of *Cherney v Deripaska* [2008] EWHC 1530 (Comm) and [2009] EWCA Civ 849.

9. In this case, there is no issue about questions i) and ii) above. There is also no dispute that the natural forum for the dispute is Abu Dhabi. The witnesses, other than the claimant, are all based in Abu Dhabi. (The claimant is based in Quebec, Canada.) The relevant events took place in Abu Dhabi. The contract is governed by Abu Dhabi law. The first language of the witnesses is Arabic and there are disputes about the interpretation and nuances of conversations conducted in Arabic. For these reasons, Abu Dhabi is indeed overwhelmingly the most natural forum for the dispute.

10. The issue between the parties is whether there are 'special circumstances by reason of justice' requiring that the case is tried here. The claimant says that those circumstances exist because (a) he has 'well-founded reasons' why he will not bring his claim in Abu Dhabi and (b) he has shown 'on cogent evidence' that there is a 'real risk' that he will not get a fair trial there. These words derive from a line of authority culminating most recently in *Cherney v Deripaska*; see in particular paragraph 29 of the judgment of Waller LJ:

> '[The court] has to make an evaluation taking account of all factors as to whether the claimant (despite [another forum] being the "natural forum") has discharged the burden of showing that England is "clearly the proper forum". That involves (1) assessing whether on the evidence a trial would be likely to take place in [the natural forum]; (2) if not, because [the claimant] says he will not go there, whether [the claimant] *has shown that he has well-founded reasons why he will not go* to [the natural forum] and (3) whether in any event [the claimant] *has shown on cogent evidence that there is a real risk he will not get a fair trial* there.' (My italics.)

11. The evidence has focused on these two questions. The authorities already mentioned and some further ones provide a useful framework for the approach that I must take. But before coming to them, I will set out, in a condensed form, the propositions and evidence upon which the claimant relied.

The claimant's case
Fears for personal safety

12. The claimant's case had two broad strands.

13. Firstly, he pointed to the threats made against him in the context of his forced demotion and the termination of his employment. Further threats were made when he instructed lawyers in Abu Dhabi to enforce the settlement agreement (albeit that he now repudiates that agreement as having been entered into under duress). The general tenor of these threats was that he was 'not equal to' the defendants in terms of power, status or wealth and it would be better for him if he toed the line. He said that he was subjected to threats of harm, that these extended to his family (of whom he was very protective) and that his wife's health was affected. He said that his lawyer in the UAE, Mr Al Otoom, was also threatened. He said that he believed

the defendants to be well capable of resorting to unlawful conduct, including the use of force, because they had, on his evidence, directly contemplated the kidnapping and rendition from Canada of Mr Jamal Shehadeh; (see further below).

14. Secondly, the claimant maintained that the defendants had threatened to instigate criminal proceedings against him for forging Sheikh Mohammed's signature on his employment contract. This carried with it the corresponding risk of detention in prison or deportation. As with the more general threats, the claimant said that he had reason to take this seriously because of the examples of the cases of Mr Hussein and Mr Al Qubaisi; (see also further below). In relation to this part of his case, the claimant said that the defendants had been and were willing to lie, for example in relation to the issue of his written contract of employment and the presence of Sheikh Mohammed's signature upon it. If they were willing to lie about that, then they were quite capable of repeating those, and other, lies in order to manipulate the criminal justice system or other arms of the state against him.

Risk that claimant would not get a fair trial

15. The claimant disclaimed a general attack on Abu Dhabi's system of justice. He acknowledged that in the ordinary run of cases Abu Dhabi offered a well-functioning, fair and independent system for resolving civil disputes. But in the case of these particular defendants, his submission was their indisputable power, notoriety, wealth and influence would combine to deprive an opponent such as him of any prospect of a fair trial. He relied upon the matters set out in the following paragraphs.

16. In five specific cases of which the claimant had some direct knowledge, he alleged that the defendants had manipulated the criminal and civil justice systems in order to advance their own interests.

Moshin Raslan

17. The first case was that of Mr Moshin Raslan. Mr Raslan was formerly the CEO of UAS. In 2000 / 2001 an investigation established that he had diverted the benefit of certain business contracts and opportunities to a company registered in the name of his father-in-law. The claimant alleged that Sheikh Mohammed had 'secured the necessary approval to dispense with the need to prepare and file a legal case and to detain Mr Raslan to put pressure on him to settle'. In this, Sheikh Mohammed had the assistance of Mr Ahmad Mubarak Al Kindi, who was an undersecretary at the Ministry of Justice. Mr Raslan was not released until he had signed a settlement agreement and returned the funds, which he did only under duress. Mr Al Kindi was then rewarded with the gift of a parcel of land and shares in a company within the UAS Group.

Jamal Shehadeh

18. The second case was that of Mr Jamal Shehadeh, who replaced Mr Raslan as CEO of UAS. In about September 2011, an internal audit revealed that he had misappropriated assets on a large scale. A criminal petition was filed by Sheikh Mohammed against Mr Shehadeh, which included the charge of forging Sheikh Mohammed's signature. But, in contrast to the case of Mr Raslan, Mr Shehadeh was not detained nor called in for questioning. On this occasion, the claimant alleged that Sheikh Mohammed used his influence to delay the formal steps in the criminal prosecution because that would have jeopardized the settlement and return of funds that he was in the process of arranging. Once a satisfactory settlement had been agreed with Mr Shehadeh, the prosecution was dropped or terminated on favourable terms notwithstanding that Mr Shehadeh had confessed to forgery – a crime punishable by imprisonment. When Mr Shehadeh subsequently brought proceedings in Abu Dhabi to impugn the settlement agreement, the defendants threatened his lawyer and filed a defamation claim against him.

19. Mr Shehadeh subsequently moved to Canada. UAS brought proceedings against him and other family members in Canada. The claimant claimed that in January 2015 there was a plot to kidnap Mr Shehadeh and 'render' him to the USA and thence to the UAE. In support of this

allegation, the claimant relied upon conversations with a Mr Wael Al Taweel (said to be a friend and business partner of Sheikh Saif) and with Mr Mohammad Rateb Al Juneidi, UAS's chief legal officer. A conversation with the latter was secretly recorded. The claimant also relied upon an email sent by Mr Al Juneidi on 1 February 2015, the terms of which were said to be only consistent with the claimed plot.

Waleed Butti Al Qubaisi

20. The third case was that of Mr Waleed Butti Al Qubaisi, who was the adopted son of Sheikh Mohammed's aunt – Sheikha Fakhera. Sheikha Fakhera had executed powers of attorney in favour of Mr Al Qubaisi. These were dated May 2005, December 2012 and January 2013. According to medical records, by 22 February 2013 she had advanced dementia. On 26 July 2015, Sheikh Mohammed became her legal guardian. He looked into her property and affairs and discovered that certain properties and assets had been transferred into the name of Mr Al Qubaisi. He instigated both criminal and civil proceedings against him. An issue in the criminal proceedings was Sheikha Fakhera's mental capacity at the time that she signed the powers of attorney. The claimant alleged that Sheikh Mohammed had suppressed medical evidence relevant to this issue. He also alleged that a court appointed committee, whose task was to investigate and report on the financial aspects of the case, had exonerated Mr Al Qubaisi. But his long detention and the prosecution itself continued. Even though the prosecution ultimately resulted in Mr Al Qubaisi's acquittal, a civil claim followed and this, contrary to the weight of the evidence, was resolved against him.

Alaa Abu Saoud

21. The fourth case was that of Mr Alaa Abu Saoud, who was the operations manager of a company called Global Catering Services LLC. He was dismissed (by way of forced resignation) with three months' notice. But this was not honoured, leading to Mr Saoud bringing a claim in the Labour Court. The claim, though said to have been well-founded, was dismissed. Mr Saoud informed the claimant afterwards that the case had commenced with the advocate for GCS informing the court that the company was owned by Sheikh Mohammed. The claimant drew the conclusion that this was an example of a court simply bending to the will of the Sheikh.

Subhi Fahkri Hussein

22. In much the same vein, there was a witness statement from Mr Subhi Fahkri Hussein, the general manager of Safe Travel (owned by Sheikh Saif) who claimed that he was forced to resign and threatened with adverse consequences, which included that he would be accused of forgery of Sheikh Saif's signature on his 'employment documents', if he resisted. He complied – thinking it pointless to take a claim to the Labour Court. He referred to two other employees (additional to Mr Saoud) who suffered similar treatment.

23. In addition to the examples set out above, the claimant alleged that the defendants were able to influence deportations and visas. He cited an example from 2009. The allegation was that a colonel in the Abu Dhabi Police was prevailed upon to cancel deportation orders that had been made against the brother and two nephews of Mr Shehadeh, following their convictions for road traffic offences. A further example given was the case of Mr Hussein, an employee of Abu Dhabi Motors LLC – a UAS owned corporation. The renewals of his visa and those of his family were on one occasion delayed and, on a further occasion, refused on arbitrary grounds. The person behind the decisions was said to be a Mr Mattar Al Shamsi, the Director General of the State Security Department and a friend and associate of Sheikh Mohammed and Sheikh Saif, whose influence was procured by the grant of large discounts from the price of cars he purchased.

24. Lastly, the claimant relied upon wider examples of the influence and connections of persons such as Sheikh Mohammed. Relevantly, Sheikh Mohammed's sons-in-law included three of 'the most powerful men in Abu Dhabi', HH Sheikh Mansour, Sheikh Hazaa Bin Zayed and Sheikh Nahyan Bin Zayed. These persons all held high office, including 'Head of the Judiciary' (HH Sheikh Mansour). It was said that Sheikh Mohammed was in a position to ask

them to do him personal favours, bypassing, if necessary, the strict requirements of the law. The claimant referred to two cases which have attracted public attention. The first was the case of Sheikh Issa bin Zayed al-Nahyan (the half-brother of the Ruler of Abu Dhabi) who, after delay, was prosecuted for the abuse and torture of an Afghan man, but acquitted on what the claimant (and many others) regarded as dubious grounds. The second was the judgment of Sir Andrew McFarlane in the case brought by Princess Haya against the Ruler of Dubai, in which the judge found that the Ruler had orchestrated the kidnap and rendition to Dubai of two of his daughters. In support of the proposition that such persons were, effectively, above the law, the claimant also referred to a meeting with an unnamed Abu Dhabi judge, whom he visited at home in the company of Mr Subhi Hussein in June 2016. The judge advised him against challenging the defendants and instead to try to maintain a good relationship with them, to take what payments he could and then to attempt to enforce his rights once he was out of the UAE.

The defendants' case

25. The evidence was disclosed sequentially and the defendants responded in detail to that of the claimant. The thrust of the response was to deny the claimant's many allegations and to present a different factual account. All the individual defendants gave witness statements, save that in the case of Sheikh Mohammed, who was 76 years old and shielding from coronavirus, his statement was a hearsay statement from Sheikh Saif. The defendants also deployed expert evidence from Dr Habib Mohammad Sharif Al Mulla, the executive chairman of Baker & McKenzie Habib Al Mulla, whose offices are in the UAE. He is a lawyer of 36 years standing with long experience of Abu Dhabi's law and legal institutions. He subjected the claimant's allegations, so far as they concerned the legal system, to a searching and detailed analysis, the general effect of which was to refute all the criticisms. (In circumstances which I will come back to, the claimant had no independent expert evidence of his own.)

Discussion

26. The oral submissions at the hearing, which occupied three days of court time, consisted of a minute examination of the factual and expert evidence which I have tried to summarise above. I am extremely grateful for the clarity and (given the sheer volume of material) relative economy of these submissions.

27. Much of the claimant's evidence and many of the specific examples he gave did double service in the sense that they went both to the reasons why he feared to return to the UAE and also to the risk that he would not get a fair trial there. I will deal firstly with the latter aspect, (not forgetting or overlooking that this requires 'cogent evidence', whilst the claimant's reasons for not returning must only be 'well-founded', (a slightly less rigorous standard)).

28. It is appropriate to begin with an overview of the courts of the UAE. The claimant did not dispute that the legal system of the UAE was, in general terms, well-regarded. The separation of powers in the UAE is a constitutional principle. Article 94 of the Constitution expressly states that 'Justice is the basis of authority. Judges shall be independent and shall be subordinate to no authority but the law and their own consciences in the performance of their duties'. Transparency International's Corruption Perceptions Index ("CPI") scores 180 countries on their perceived levels of public sector corruption based on expert assessments and opinion surveys. The UAE ranks 21st out of 180 on the latest 2019 list, above countries such as the USA, France and Spain. The World Justice Project's Rule of Law Index ("RLI") seeks to measure the 'rule of law' by scoring countries on what the Project considers the 8 factors most relevant to the rule of law, including "Absence of Corruption". In 2020, the UAE ranked 30th out of 128 on the overall list, and 16th out of 128 in the "Absence of Corruption" list. In this latter category the UAE again ranked above the USA, France and Spain. Considerations such as these very recently led Saini J to reject a submission that there was a real risk of injustice before the UAE courts; see *Qatar Airways Group QCSC v Middle East News FZ LLC & Ors* 2020] EWHC 2975 (QB). Saini J had cited to him various examples of cases where the courts of the UAE had found against the state and organs of the state. In

this case, I too was referred to examples of findings against the Royal Family of Abu Dhabi and of successful claims against UAS and its associated companies.

29. There are, in my view, some fundamental difficulties with the claimant's attack.

30. The first difficulty is that when the claimant's evidence and that of his witnesses was subjected to close scrutiny and, particularly, when it was compared with the documentary evidence, it was often shown to be unreliable:

i) The claimant alleged that Mr Raslan had been detained merely on the 'say so' of Sheikh Mohammed and before criminal proceedings had been commenced against him. The claimant's first witness statement stated that 'directions were given for Mr Raslan and his wife to be detained in the Khalidya Police Station pending settlement despite the fact that no legal claim had been filed' against him. Documents emanating from the claim which Mr Raslan himself later filed against Sheikh Mohammed and others in Switzerland demonstrated this to be incorrect. Mr Raslan was detained after a criminal prosecution had been commenced against him. This led Mr Ayres to alter or nuance the claim that his client had been making. In place of alleging that Mr Raslan's detention had preceded the instigation of proceedings, it was said that the Sheikh had secured approval for this step – albeit that this (it seems) had proved unnecessary. This represented a somewhat unconvincing shift of position from the clear sense of paragraph 18 of the claimant's first witness statement.

ii) The claimant alleged that, in contrast to Mr Raslan, Mr Shehadeh had, at Sheikh Mohammed's bidding, been treated 'softly' by the prosecution and criminal courts because it suited the Sheikh's purposes for that to happen. Two specific instances were given: (i) that Mr Shehadeh was not detained and (ii) that the criminal complaint of forgery was not pursued despite an admission of guilt. The response offered to (i) was that the public prosecutor had a discretion to detain or not to detain and in this case elected not to detain but instead to require Mr Shehadeh to give up his passport. The claimant's answer to this was that any surrender of the passport was 'wholly contradicted' by an acknowledgement which Mr Shehadeh signed in the course of the proceedings and which stated that 'his original passport was with him all the time and that he used it before the notary public to notarize [a power of attorney]'. But close examination of the acknowledgement revealed that the place where Mr Shehadeh had apparently signed the relevant documents was the public prosecutor's office, which is where his passport would have been held. This effectively negated the claimant's point. As to (ii), again a close textual examination of the relevant document – the 'order of dismissal' of the criminal complaint – did not support the claimant's allegation that Mr Shehadeh had admitted to the crime of forgery. The document appeared to record a *complaint* that he had forged documents. But it went on to note that, when interviewed, he denied forgery (though he admitted embezzling funds) and that the charges of forgery 'could not be substantiated'. The criminal complaint was ultimately dismissed on the ground of 'amicable settlement', which was an available outcome in the particular circumstances.

iii) The claimant's allegations about the case of Mr Al Qubaisi were also somewhat at variance with the documentary evidence. The record of Mr Al Qubaisi's interview showed that he accepted that he had transferred properties and assets of Sheikha Fakhera into his own name. He maintained that she had consented. He did not, or did not fully, answer questions regarding the need for or purpose of the transfers. Further, it was not in question that a medical examination on 22 February 2013 demonstrated that Sheikha Fakhera was then suffering from 'advanced dementia'. This was only two months after she had signed the two most recent Powers of Attorney in favour of Mr Al Qubaisi, calling into question her capacity to have done so. It seems clear that there was an evidential foundation for Mr Al Qubaisi's detention and prosecution. The record of the interview of Sheikha Fakhera's treating clinician was also produced. The record showed no internal evidence that there was another doctor interviewed at the same time whose evidence was somehow suppressed and

this allegation amounted to bare assertion. Although the actual report of the financial committee was not in evidence, it was evident from Mr Al Qubaisi's answers to questions based upon their report that the committee had not exonerated him and that there was still a case to answer. It is not clear why he remained in custody for as long as he did (though the defendants say that this was because of a fear that he would interfere with witnesses rather than because he was a flight risk). The most salient fact is that he was acquitted after a vigorous defence was put forward on his behalf by his lawyers. This is flatly contrary to the claimant's case that Sheikh Mohammed was able to interfere with the criminal process. Civil proceedings followed and it is true that these were resolved against Mr Al Qubaisi. But the laws of the UAE (as in the UK) apply a different standard of proof to criminal proceedings and there was nothing sinister or untoward in civil proceedings being maintained. The judgment of the civil court runs to 40 pages. It is coherent and rational and (as with the criminal proceedings) it is apparent that Mr Al Qubaisi was efficiently and competently represented by local lawyers.

iv) One specific aspect of Mr Al Qubaisi's case requires further mention. The claimant alleged that *after* Sheikh Mohammed had become his aunt's guardian and had investigated the property transfers into Mr Al Qubaisi's name, he threatened Mr Al Qubaisi with criminal proceedings unless he surrendered the powers of attorney and reversed the transfers. The claimant said that he was present at this conversation. But the criminal complaint is dated 26 July 2015, which is the same day that the Sheikh became her guardian. The criminal proceedings had already begun and it follows that the Sheikh could not have uttered this threat – or not at the time and in the way that the claimant has stated.

v) The claimant's evidence concerning Mr Alaa Abu Saoud was that the 'only conclusion' was that Sheikh Mohammed had 'used his influence to ensure that Mr Abu Saoud did not get justice'. The defendants produced the actual judgment of the court, which (in translation) ran to five pages of script. It is apparent that the court appointed an expert to report on the case and considered relevant documents. The expert concluded that Mr Saoud had not made out an entitlement to three months' notice and the court endorsed that conclusion. It appears that the legal and evidential burden of proof played a significant part in the judge's reasoning. Mr Saoud was, however, successful on two other heads of his claim and the court also awarded him his costs of the claim. The judgment is coherent and rational. There is no evidence at all, other than mere assertion, of interference by the defendants in the judicial process and the claimant's contention that this is the 'only conclusion' to be drawn is not sustainable.

vi) Mr Subhi Hussein made an allegation very similar to that made by the claimant, namely that he was told that unless he submitted his resignation, he would be accused of forging Sheikh Saif's signature. But when Mr Hussein's actual employment contract was examined, it was apparent that Sheikh Saif's signature nowhere appeared on it. Therefore, the allegation of the threat could not, on the face of it, be true. This prompted Mr Ayres to point to the exact wording of Mr Hussein's statement which referred to the Sheikh's signature on his 'employment documents' – a wider expression than 'employment contract'. But, once again, the finessing of the evidence was not convincing.

31. The second difficulty (which is allied to the first) is that when the records of the actual court proceedings are examined, they do not support the claimant's case in two respects. Firstly (and most obviously), court proceedings instigated by the defendants have not always gone their way. Mr Al Qubaisi was acquitted. The defamation claim brought by Sheikh Mohammed against Mr Shehadeh's lawyers (see paragraph 18 above) was dismissed. Mr Saoud was at least partially successful. The defendants' solicitor, Mr Mirchandani, gave the examples of four other cases against companies in the UAS Group, which had been resolved against them. Secondly, the records do not bear any 'tell-tale indicia of impropriety'; see *OJSC Oil Company Yugraneft v Abramovich &* Ors [2008] EWHC 2613 (Comm) at paragraph 496. The

decisions of the courts in the cases of Shehadeh, Al Qubaisi and Saoud reveal no departures from normal curial practice and no arbitrariness, irrationality, incoherence or bias.

32. The third difficulty is that the claimant has no expert evidence. Although not a requirement of the rules or of any formal guidance it is nevertheless commonplace in a case such as this to have expert evidence. By order dated 17 September 2020 (which the claimant neither supported nor opposed) Master Dagnall gave permission for expert evidence on the question of the independence of the Abu Dhabi judiciary and various subsidiary questions including those which arose in the specific cases that the claimant relied upon as evidencing improper influence or interference. The claimant filed no expert evidence. His explanation for that, which came from Mr Meewella of Bird & Bird, was that practising lawyers in the UAE were reluctant to say anything critical of the judiciary 'given the identity of the Sheikhs' as they might expect retaliation in the form of cancellation of their licences to practise. Mr Meewella's statement said that his colleagues in the UAE had 'tried unsuccessfully to identify appropriate candidates over several weeks'. This evidence was very general. There was no attempt to describe, even on an anonymised basis, the actual approaches and responses. There was no attempt to explain the apparent discrepancy between this evidence and the fact that the claimant had had lawyers, MAK & Partners, acting for him when he sought to enforce the terms of the settlement agreement. Mr Saoudi of Al Tamimi & Co (the defendants' Abu Dhabi lawyers) stated in his July 2020 witness statement that in all his years of handling the defendants' litigation he had never seen his opposing parties' lawyers 'showing hesitation or fear'. He had 'reached out' to two well-known law firms in the UAE, Abeer Aldhmany and Alketbi, who in letters dated 6 and 13 July 2020, stated that they would be prepared to provide an independent expert opinion or to act for the claimant. These letters were credible. It is not necessary or appropriate for me to make a specific finding as to why the claimant has no expert evidence on his side. But it has not been shown that the reason lies in the alleged susceptibility of the UAE's machinery of justice to interference by the wealthy and powerful.

33. The fourth difficulty, which follows on from the third, is that the claimant's submission that he would not get a fair trial in Abu Dhabi is based principally on his own evidence and the conclusions which he invites from examples for which he is the source. I have already noted that his evidence has not always proved reliable where it has been tested against the documents. But this is a facet or sign of a deeper problem, which is the lack of objectivity which is likely to result. In *Pacific International Sports Clubs v Soccer Marketing International Ltd* [2009] EWHC 1839 (Ch) Blackburne J said this in the context of allegations in relation to the Ukrainian justice system:

> '… allegations as to why the appropriate forum should be displaced must amount to an allegation that the forum is or will be unavailable for the trial of the claim. This must be clearly demonstrated *against an objective standard* and supported by positive and cogent evidence' [paragraph 33]
>
> 'The court should not therefore reject another forum as inappropriate on the basis of subjective and unsubstantiated assertions, *particularly assertions by the claimant himself*' [paragraph 38] (my emphasis)

34. The fifth and last difficulty is that the evidence presents a mass of factual disputes. That is at least partly why the principal skeleton arguments together ran to some 150 pages. It is trite law that an interlocutory application of this kind is not, and should not be allowed to become, a mini-trial. That is particularly so when many of the disputed issues are, as here, likely also to be issues in the trial itself. The factual disputes are so stark and so numerous that it would not be sensible or proportionate to address each one individually. A good example is the issue of the validity of the claimant's employment contract and the allegation that he obtained Sheikh Mohammed's signature upon it by deception. Some ten or eleven pages of Mr Ayres and Ms McNicholas's skeleton argument were devoted to this topic. I was invited by them to draw the conclusion that the defendants' case was contradicted by contemporaneous documents, at variance with statements that Mr Baker (UAS's CFO) had made and which had been covertly recorded by the claimant, and inherently implausible. Mr Taylor's oral submissions set out seven points in response, which included reference to various factual issues, to the inherent probabilities and, importantly, to issues of conduct and credibility upon

which there would inevitably have to be oral evidence at trial. The documentary evidence, which was incomplete, did not, in my view, deal a knockdown blow to either side's case.

35. There were other examples in abundance. The claimant alleged that in the proceedings brought against Mr Raslan, a servant of the Ministry of Justice, Mr Al Kindi was improperly involved on the side of the Sheikh and received corrupt payments in the form of a gift of a parcel of land and some shares in Awraq Islamic Shares and Bonds LCC. Mr Al Kindi's involvement in the Raslan case was explained by the defendants as attributable to the fact that Mr Raslan was the subject of a separate money-laundering complaint raised by the Abu Dhabi Municipality. Sheikh Mohammed and Sheikh Saif denied absolutely that they sought improper assistance from Mr Al Kindi and denied the gift of a parcel of land or remunerating him 'in any way'. They said that he held shares in Awraq because he bought them as part of a share issuance. There was no documentary evidence to shed light on these matters.

36. The evidence as to the defendants' alleged influence over deportations and visas was another example. This evidence proceeded by way (I might say merely by way) of allegation and denial, including a denial that discounts extended to Mr Al Shamsi for car purchases reflected anything other than the fact that he was an important and high-spending customer.

37. Plainly, I could only resolve matters such as these if the stance of one of the parties was obviously implausible or untenable. In almost all the instances of stark factual conflicts I cannot do that. The relevance of these matters is therefore very limited. They can really only go to the claimant's subjective state of mind. They cannot prove a real risk that he will not get a fair trial in Abu Dhabi.

38. I acknowledge that the claimant has heeded the warning set out in many of the authorities that generalised assertions against the impartiality and effectiveness of a foreign system of justice are not enough and that specific examples should be given. But the examples he has given do not, on close examination, come near to demonstrating 'real risk'. To put that another way, they do not rebut the conclusions to be drawn from the surveys by Transparency International and The World Justice Project or that recently arrived at by Saini J in the *Qatar Airways Group* case.

39. I have reached this conclusion without very much recourse to the expert reports of Dr Al Mulla. I have not found that necessary in order to come to a decision on this part of the case. The reason is that it was for the claimant to show a real risk that he would not get a fair trial in Abu Dhabi and his case on that matter did not require a detailed analysis of Abu Dhabi law and procedure. Dr Al Mulla was heavily criticised by the claimant including on grounds of partiality and a lack of transparency as to his own possible interest in the outcome. I read his reports carefully and I considered the criticisms, which I do not think were justified. But, in the event, the expert evidence has not played a significant part in my decision and so no more needs to be said on that aspect.

40. Given the foregoing conclusion, I will deal more shortly with that part of the claimant's case which addressed his fears for his personal safety were he to return to Abu Dhabi (which he would have to do were he to bring his claim there).

41. The high point of the claimant's case was his allegation that the defendants had conceived and made preparatory steps towards a plan to kidnap Mr Shehadeh in Canada, to remove him from there to the USA and thence to the UAE. The motive was to force Mr Shehadeh to pay over some AED 20 million which formed part of the settlement agreement between him and UAS but upon which Mr Shehadeh was said to have reneged. The claimant said that he had been approached by a Mr Wael Al Taweel, a friend of Sheikh Saif's, who asked him for copies of the court awards against Mr Shehadeh which he needed 'to arrange for someone to kidnap Mr Shehadeh'. The claimant refused. But Sheikh Saif then sent Mr Al Taweel to Mr Al Juneidi, the chief legal officer of UAS, whereupon Mr Al Juneidi sent an email dated 1 February 2015 to the claimant repeating the request for the awards which were needed to 'engage people in Canada who could help in moving Jamal from Canada to USA'. The email added that 'this needs to be checked with our lawyers in Canada as I do not believe in the legitimacy of such an action as Wael did not inform about the procedures to be taken'. The

claimant said he went to see Sheikh Saif and talked him out of the plan, which Sheikh Saif reluctantly agreed to stop.

42. The alleged plot was vehemently denied by Sheikh Saif and Mr Al Juneidi. Mr Al Juneidi described it as 'absurd'. His first statement explained that the documents that Mr Al Taweel was seeking were the international arrest warrants which had been issued against Mr Shehadeh and that these were needed in order to take legal advice in the USA as to whether Mr Shehadeh could be extradited. He drew attention to the concluding words of his email which referred to checking with Canadian lawyers.

43. The claimant then, in answer to Mr Al Juneidi's statement, exhibited the transcript of a recording of a conversation with him which he had covertly recorded. Various passages of this conversation were relied upon to demonstrate that it was indeed a plan to kidnap Mr Shehadeh which was contemplated. Mr Al Juneidi was recorded using the word 'kidnap'.

44. This drew a further statement from Mr Al Juneidi in which he sought to place the recording in its context, which was, he said, an informal light-hearted conversation with someone he then regarded as a friend but who was, in fact, trying to get him to say things that could later be used against him. He did not deny that the word 'kidnap' had been used. But this was in a tone and context that made it clear that it was in fact a jocular reference to extraditing Mr Shehadeh. The statement raised a number of issues about the translation of the conversation, which was held in Arabic, and about the nuances of what had been said. Mr Al Juneidi emphatically denied that he had ever discussed or contemplated an actual kidnap.

45. The alleged plot to kidnap Mr Shehadeh is another example of an allegation which it is impossible to resolve on paper. It raises at least the following difficulties:

    i) It is, on the face of it, implausible. A kidnap and rendition from Canada and the USA would be liable to raise a major international incident with extremely serious consequences for the participants. It is intrinsically unlikely that these defendants truly contemplated it or that they could have thought that officers and agents of UAS, whose knowledge and cooperation would be necessary, would go along with it.

    ii) Seeking copies of court awards and consulting foreign lawyers are not obvious preliminaries to a proposed kidnap.

    iii) The alleged plot is flatly denied by Sheikh Saif and Mr Al Juneidi.

    iv) To the extent that the email of 1 February 2015 and the covertly recorded conversation support such a plot, the exact context and language (including its tone and nuances) would require very careful examination at a trial before drawing that conclusion. (And that examination would be better carried out by a judge whose first language was Arabic.) I note, in passing, that the same observations could be made about the covert recordings of conversations between the claimant and Mr Baker referred to in paragraph 34 above.

46. In the light of the above I find that the claimant has not demonstrated an objectively well-founded fear of returning to the UAE based upon an alleged plot to kidnap Mr Shehadeh.

47. Such fear was also not demonstrated by the alleged threats to instigate a criminal prosecution against him for forgery and have him detained in prison. Quite apart from the disputed factual issues that this presented, the uncontested expert evidence of Dr Al Mulla was that any criminal complaint was now time-barred under Article 20 of the UAE Penal Procedures Law and that the limited extension available under the UAE's 'date of knowledge' exception had similarly expired. Further, arrest and detention in the UAE are highly regulated and it is far-fetched to suggest that Sheikh Mohammed could suborn the police, the prosecuting authorities and the judiciary to disregard those provisions. That is particularly so in a case such as this, which would be subject to intense public and media scrutiny; see the remarks of Flaux J in *Standard Chartered Bank (Hong Kong) Ltd v Independent Power Tanzania Ltd* [2015] EWHC 1640 (Comm) at paragraph 181.

48. That left what I might characterise as a more general fear of the defendants based upon their position and status and the various more generalised threats that they or their agents were said to have uttered towards the claimant and persons connected to him or towards other adversaries.

49. I acknowledge that the outcome of the criminal prosecution against Sheikh Issa (the half-brother of the Ruler of Abu Dhabi) and the judgment of Sir Andrew McFarlane in the case brought by Princess Haya against the Ruler of Dubai raise troubling issues as to the extent to which the Ruling Families of the UAE are able to step outside the boundaries of the law. But these defendants had nothing to do with the facts of either case and they (the personal defendants) are not part of either Ruling Family. These cases, of which I have only scanty details and only one of which actually came before a court in the UAE, do not seem to me an adequate basis upon which to make a general finding that the elite classes of the UAE, which would include these defendants, are above the law or able to manipulate the organs of the state against persons of lesser socio-economic status and importance.

50. The particular threats alleged by the claimant in this case presented the familiar problem that they were all denied and unsupported by independent evidence. Despite the claimant having embarked on a practice of making covert recordings of the protagonists in his dispute, no threats were captured on such a recording. The claimant was also somewhat reticent in volunteering a fact that was obviously relevant to his alleged fear of the defendants and of returning to the UAE. He said in his first witness statement: 'I left the UAE soon after I had signed the Termination Agreement at the insistence of my family, who did not feel safe remaining there'. Mr Taylor observed, and I agree, that the sense of this sentence was that he had left the UAE within a few weeks or months at the most. But this was not the case. He stayed on in the UAE for three years, for most of which he continued to reside at a property leased from UAS at a discounted rate. This does not sit easily with his alleged fears.

51. So far as the claimant's case rested on the examples of the five specific cases referred to in the first part of this judgment, for the reasons already given these do not satisfy either the 'real risk' or the slightly looser 'well-founded reasons' test.

Conclusions

52. The defendants (and particularly the second defendant) do indeed enjoy a position of status and power. I can easily credit that the claimant would regard them as formidable opponents whom he would much prefer to sue in England than in the UAE. He would understandably regard the UAE as the defendants' 'home turf' and he may genuinely believe that their status would confer on them some advantage in litigation there. But the evidence does not persuade me that there is in fact a real risk that the claimant would not receive a fair trial in the UAE. Similarly, whilst I think it is entirely possible that the claimant will not bring his claim in the UAE, that is not because he has well-founded reasons why he will not go there based upon fears for his safety or upon the risk that the criminal justice system would be manipulated against him. On the evidence before me, whatever the claimant's perception may be, I do not accept that such fears are objectively justified or that the system of criminal justice in the UAE is in fact susceptible to manipulation by these defendants or that there is a real risk of that.

53. I can summarise as follows:

    i) The claimant has not demonstrated either 'well-founded reasons' or 'real risk'.

    ii) The evidence shows that Abu Dhabi and the UAE have a well-functioning, robust and independent system of justice, which enjoys a significant degree of international respect.

    iii) That system of justice has found against UAS or Sheikh Mohammed on numerous occasions.

iv) To the extent that the claimant has sought to demonstrate a real risk that these defendants would be able improperly to influence Abu Dhabi's system of justice and/or a well-founded fear that they would subject him to threats to his personal safety, he has not discharged the burden of doing so. That is principally for the reasons set out in the following sub-paragraphs.

v) Close examination of the cases upon which the claimant relied as showing improper influence by the defendants has revealed no real evidence of that and no 'tell-tale indicia of impropriety'.

vi) The claimant's evidence has in certain important respects been shown to be either unreliable or implausible. That factor has been influential because the evidence in opposition to the applications comes principally from him and is not supported by independent expert evidence.

vii) Many of the matters upon which the claimant relied were strongly disputed and the disputes were not capable of resolution at an interlocutory hearing. They were therefore not apt to contribute to the discharge of the burden that lay upon the claimant.

54. For these reasons, I will stay the claim against the fifth defendant and I will set aside the order giving permission to serve out of the jurisdiction and declare that the court should not exercise any jurisdiction which it may have over the remaining defendants.

Post-script – the claimant's application to cross-examine

55. I refused the claimant's application to cross-examine for the following reasons.

56. The application was, and was acknowledged to be, unusual. The question of forum is almost always decided on written evidence alone. The mere fact that that written evidence discloses conflicts is not a reason to allow cross-examination, which would all too easily render the application contesting jurisdiction a species of trial – something which the authorities strongly discourage. It is significant that there is no decided case where cross-examination of factual witnesses has been permitted and only one case where there has been cross-examination of an expert. (And in that case there were special facts and the cross-examination was agreed between the parties.)

57. The application was not made timeously. The issues upon which cross-examination was sought, particularly those concerning Dr Al Mulla, were apparent months ago. Paragraph 2.7 of PD23A had not been complied with. The application was made scarcely two weeks before the hearing (which was fixed in July) and was actually argued at the commencement of the hearing.

58. If I had allowed the application, it would have meant vacating the hearing and re-listing it for a later date. That would have resulted in a large amount of wasted costs and great inconvenience to the defendants. It would have delayed the resolution of the dispute for a significant period. The court's time would also have been wasted, with all that that implies for other court users. The application would have had to have been re-listed with a much longer time estimate. The claimant's estimate of a further day – to cross-examine 4 witnesses – was wholly unrealistic. But even then, it is doubtful whether cross-examination would have advanced / much advanced my understanding and resolution of the issues. A particular vice of allowing cross-examination in this case would have been that some of the issues upon which cross-examination was sought were more general issues in the litigation. To have allowed cross-examination would therefore have been to trespass on matters that were the province of the trial judge, whoever and wherever that might be. That would have been undesirable.