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Enforcement of foreign judgments v. enforcement of foreign awards: The limits of the DIFC Courts' role as a host jurisdiction revisited

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In a recent ruling of the DIFC Court of Appeal (CA 007/2015 - *DNB Bank ASA v. (1) Gulf Eyadah Corporation (2) Gulf Navigation Holdings PJSC*, ruling of the DIFC Court of Appeal of 25 February 2016), Chief Justice Michael Hwang, Justice Sir David Steel and H.E. Justice Omar Al Muhairi took the opportunity to revisit and reverse the findings of H.E. Justice Ali Al Madhani in the same matter before the DIFC Court of First Instance (see CFI 043/2014 - *DNB Bank ASA v. (1) Gulf Eyadah Corporation (2) Gulf Navigation Holding PJSC*, ruling of the DIFC Court of First Instance of 2nd July 2015, on which I reported in a [previous blog](#)). By way of reminder, in the earlier ruling of the DIFC Court of First Instance, H.E. Justice Ali Al Madhani drew a distinction between the role of the DIFC Courts as a “conduit” or “host” jurisdiction in the enforcement of foreign judgments and foreign arbitral awards on the basis of the confined scope of application of DIFC Law No. 12 of 2004 as amended by DIFC Law No. 16 of 2011, also known as the Judicial Authority Law, according to which - in the Justice's view - the DIFC Courts could only serve as a conduit jurisdiction in the enforcement of foreign *arbitral awards*, not however in the enforcement of foreign *judgments*. In essence, Justice Al Madhani found that:

“50. One might argue that Foreign Judgments or Orders recognised by the DIFC Courts come under the meaning of *‘the judgments, decisions and orders rendered by the Courts’* in Article 7(2) and therefore can be referred to the Dubai Courts for execution. In my view it does not, and if that were the correct approach there would be no need to particularly mention or add *‘Arbitral Awards ratified by the Courts’* in separate words to that provision. The acknowledgment of the *‘Arbitral Awards ratified by the Courts’* means that a distinction must be drawn to what this Court issues or renders (judgments, decisions and orders) by itself and between what is rendered or issued by another court or institution and then brought for recognition or ratification.

51. My interpretation of Article 7 is that a Recognised Foreign Court Judgment or Ratified Arbitral Award cannot be said to be within the

meaning of *'the judgments, decisions and orders rendered by the Courts'*.

52. In conclusion, although this Court has jurisdiction to recognise and enforce Foreign Judgments and that power shall be within the DIFC and cannot extend beyond the DIFC, this Court has no power to refer Recognised Foreign Judgments to Dubai Courts for execution. [...]"

Seized on appeal, Chief Justice Hwang found differently in the DIFC Court of Appeal, Justices Steel and Al Madhani concurring. In the Chief Justice's self-explanatory words:

" 116. [...] In the present matter, it is clear that the judgment sought to be enforced is a foreign money judgment, which is enforceable by this Court. Once it is enforced, it becomes an independent local judgment of this Court.

117. Accordingly, I respectfully disagree with the Judge's analysis of Article 7(2) of the JAL [i.e. the Judicial Authority Law]. A foreign judgment which is enforced by this Court would become a local judgment and therefore falls within the scope of *'judgments, decisions and orders rendered by the Courts'* under Article 7(2) of the JAL.

[...]

120. In my view, the Respondents are incorrect in drawing [...] a distinction between a recognised arbitral award and a foreign judgment simply based on the wording of both provisions in the JAL. The distinction, however, is that the recognition of a foreign award does not of itself give rise to a judgment in terms of the award. In this regard, a recognised award may not be enforced because enforcement has not been asked for or the Court has, in its discretion, refused enforcement.

121. There is a clear distinction between the enforcement of a recognised arbitral award and the enforcement of a judgment confirming a recognised arbitral award. Rule 43.75 (2) of the RDC clearly illustrates this distinction. It provides that once the Court has made an Order enforcing an arbitral award, the Court may enter judgment in the terms of the award.

[...]

123. There are also situations where enforcement of a recognised arbitral award is not sought by the parties. Instead, parties only seek to recognise an arbitral award. The provisions in the DIFC Arbitration Law parallel that of the New York Convention. [...]

124. Accordingly, recognition of foreign awards need to be mentioned in Articles 7(2) and 7(6) of the JAL, otherwise they would not be enforceable.

Enforced foreign awards where the Court has entered judgment in the terms of the award become judgments of the DIFC Courts and as such are already enforceable under Article 7(2) of JAL.” (italics in the original)

In support of these findings, the Chief Justice also placed reliance on Justice Sir John Chadwick’s obiter in *Bocimar International N.V. v. Emirates Trading Agency LLC* (see CFI 008/2015, ruling of the DIFC Court of First Instance), quoting in relevant part as follows:

“114. [...]

‘21. It follows that recognised foreign awards are referred to in Article 7(2) because they would otherwise not be enforceable; and enforced foreign awards (that is awards in respect of which a DIFC Courts judgment has been entered) are not so referred to, for once foreign awards have been enforced by entry of a judgment in their terms, they become judgments of the DIFC Courts and so are already enforceable under Article 7(2). Similarly, there is no reference in Article 7(2) to foreign judgments because once they are recognised and enforced by action on the judgment, the Court issues a DIFC Courts judgment, which is itself enforceable under Article 7(2).’

[...]”

Chief Justice Hwang insisted that in reliance on relevant arbitration precedent (see CA005/2014 – *Meydan Group LLC v. Banyan Tree Corporate Pte Ltd*, on which see my [previous blog](#)) enforcement actions in relation to foreign judgments in the DIFC do not require the presence of assets of the judgments debtor’s in the DIFC or indeed any other geographic nexus with the DIFC (see paras 125 *et seq.*). In the Chief Justice’s conclusion:

“129. From the perspective of the DIFC Courts, it is not wrong to use the DIFC Courts as a conduit jurisdiction to enforce a foreign judgment and then use reciprocal mechanisms to execute against assets in another jurisdiction. The DIFC Courts are not concerned with what happens in the Dubai Courts in which the Claimant seeks to enforce its judgment as it does not have the jurisdiction to dictate what they should do. However, the holder of a DIFC Courts judgment recognising a foreign judgment will seek enforcement of the DIFC Courts judgment at its own risk. Furthermore, the Respondents did not argue that the Dubai Courts would not enforce the judgment.”

The Chief Justice’s findings on appeal in *DNB Bank* support the DIFC Courts’ role as a universal conduit or host jurisdiction for the enforcement of both foreign judgments and arbitration awards for onward execution in mainland Dubai, even absent any geographic nexus with the DIFC other than the application for enforcement itself. Irrespective of the original choice of forum for the resolution of disputes – whether

litigation or arbitration, the judgment or award creditor, regardless of the location of the judgment or award debtor's assets in mainland Dubai, will be able to apply to the DIFC Courts for the enforcement of that judgment or award with the objective of onward execution before the Dubai Courts in reliance on the regime of mutual recognition between the Dubai and DIFC Courts under Article 7 of the Judicial Authority Law. As a consequence of the Chief Justice's findings, any limitations that may have been believed to fetter the DIFC Courts' role as a conduit or host jurisdiction following the ruling of Justice Madhani at first instance have become jurisprudential history.


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