

**Anti-suit injunction
granted in favor of a party
seeking to avoid onshore
Dubai Court proceedings
and pursue arbitration
instead: Multiplex
Constructions LLC v.
Elemec
Electromechanical
Contracting LLC (2020)
Case Analysis**



The DIFC Court has recently passed a judgment in Multiplex Constructions LLC (Claimant) v Elemec Electromechanical Contracting LLC (Defendant). It is a landmark judgement passed by the DIFC Court in the context of the Arbitration Agreement. Justice Al Sawalehi decided the case. The Judgement prohibited Defendant from pursuing further proceedings that had begun in non-DIFC Courts (Court of First Instance, Dubai). This decision guides parties that choose Arbitration as a method of resolving disputes. Once the parties have agreed on an arbitral seat mentioned in an arbitration agreement, they must abide by it.

Anti-suit Injunction: Meaning

The term “anti-suit injunction” refers to an injunction that prohibits a party from commencing or proceeding further in a case before another jurisdiction. A preliminary injunction prohibits parties from bringing lawsuits in places other than the one mentioned in the contract. An Anti-suit injunction comes with the binding effect. It requires the respondent to take no further action in (or not to initiate or terminate) any such proceedings.

Facts of Case

1. In this case, Multiplex Constructions LLC (“Claimant”), an Australian firm that has worked on several projects in the Middle East, including the Emirates Towers in Dubai and the W Hotel in Doha, signed a construction subcontract with Elemec Electromechanical Contracting LLC (Defendant). This Dubai-based firm provides electromechanical installations for a variety of projects in the Middle East in 2015.

The contract consisted of an arbitration provision that provided for a DIFC-seated arbitration under DIFC-LCIA rules. The United Arab Emirates selected as the governing law of contract.

1. Later on, the parties were involved in a conflict (the reason for the dispute have not been disclosed). Defendant brought the matter to the onshore Dubai Courts in violation of the arbitration agreement.

2. Multiplex objected to the claim because it violated the arbitration agreement, which required a DIFC-LCIA arbitration. The court reserved its Judgement on its jurisdiction to hear the case.
3. Plaintiff has started the DIFC-LCIA arbitration in the meanwhile.

Relief Sought by Plaintiff before DIFC Court

Plaintiff filed the case with DIFC Court seeking the following remedies:

A declaration that the Arbitration Agreement is binding on the parties.

An order that the DIFC Courts have exclusive jurisdiction over the arbitral proceedings

To pass an anti-suit injunction directing Defendant to discontinue filing lawsuits in Dubai's onshore courts.

Findings of DIFC Court

Plaintiff's application went before the DIFC Courts three times. Justice Al Swalehi looked at three significant points:

1. The arbitration agreement's wordings;
2. The signatories' capability; and
3. Whether Plaintiff had forfeited its rights to oppose the onshore court proceedings by participating in such proceedings, notwithstanding its express reservation of rights.

After considering all the points mentioned above, the court barred Defendant from taking the matter to the Dubai courts. Justice Al Swalehi passed such Judgement.

The decision based on the DIFC Court's reasoning in Brookfield Multiplex Construction LLC v DIFC Investments (CFI 020/2016). Justice Sir Jeremy Cooke expressed his view and stated that the primary responsibility for enforcing the arbitration agreement would lay with the courts of the seat. If the seat of Arbitration is in the DIFC, the DIFC court's first concern would be to protect its exclusive jurisdiction under the law. Secondly, it safeguards the

arbitration agreement as being the court of the seat, which allows for the filing of disputes to the arbitrator in the event of a violation of the party's rights.

Based on the view expressed by Justice Sir Jeremy Cooke, Justice Al Sawalehi affirmed the legality of the arbitration agreement and issued an anti-suit injunction, which compels Defendant to stop the onshore proceedings and prohibits him from pursuing further actions in Dubai courts. Such injunction passed with penal sanction. If Defendant failed to comply with the decision, he might face criminal liability, including imposing a fine or imprisonment.

Concluding remark

The DIFC Court's Order represents a turning point in both DIFC and international arbitration law. Onshore procedures are a frequent tactical technique used by parties to disrupt arbitral processes or DIFC litigation. This decision reaffirms the DIFC Court's commitment to upholding contract integrity. This favorable outcome should add to the DIFC-significant LCIA's growth in caseload.

The purpose of this article is to provide a general overview of the case. Regarding your situation, you can seek expert guidance. HHS lawyers and legal consultants are specialized in dealing with issues relating to Arbitration. Should you want to know more about the case or face any problem regarding the procedure for filing an arbitration request before DIFC-LCIA, don't hesitate to contact us.

Reference:

INTERNATIONAL ARBITRATION NEWSLETTER available at <https://www.addleshawgoddard.com/globalassets/insights/litigation/ag-international-arbitration-newsletter-january-2021.pdf>

Brookfield Multiplex Constructions LLC v (1) DIFC Investments LLC (2) Dubai International Financial Centre Authority [2016] DIFC CFI 020 available at <https://www.difccourts.ae/rules-decisions/judgments-orders/court-first-instance/brookfield-multiplex-constructions-llc-v-1-difc-investments-llc-2-dubai-international-financial-centre-authority-2016-difc-cfi-0>