CA-003-2024 Carmon Reestrutura-Engenharia E Serviços Técnios Especiais, (SU) LDA v Antonio Joao Catete Lopes Cuenda.

The case concerns an appeal regarding whether the DIFC Courts can issue a worldwide freezing order (WFO) in anticipation of a foreign judgment that could be enforceable in DIFC. The central issue is about the jurisdiction and power of the DIFC Courts to grant such an order.

Initially, Justice Martin (prior to his appointment as Chief Justice of the DIFC Courts, sitting in the Court of First Instance) issued a WFO against a respondent based on claims of misappropriation of funds, with underlying proceedings in Hong Kong. The case drew attention to a prior decision of the Court Appeal [2023] DIFC CA 003 Sandra Holding Ltd & Ors v Al Saleh & Ors (Sandra Holding) questioning the DIFC Courts' authority in similar contexts.

Justice Martin initially issued and then continued a WFO, but it was set aside on jurisdictional grounds following Sandra Holding's precedent. The CFI's jurisdiction was contested, and the decision to set aside the WFO was appealed, questioning the correctness of applying Sandra Holding. The appeal raised broader questions about the DIFC Courts' ability to act preemptively to preserve assets that might be subject to enforcement of a foreign court judgment.

The legal framework analysed includes various DIFC Court laws and regulations. Article 5(A)(1)(e) of the Judicial Authority Law was significant since it addresses the jurisdiction of the DIFC Courts for actions as conferred by DIFC Laws and Regulations. The Court Law and RDC (Rules of DIFC Courts) were explored regarding their provisions for issuing interim remedies.

The appeal's outcomes reflect a broader understanding of the DIFC Courts' power, suggesting the necessity of having jurisdiction to issue a WFO in support of prospective enforcement of foreign judgments, aligning more closely with international legal perspectives to address changes in international trade and finance dynamics.

Ultimately, the Court in this appeal decided to overrule Sandra Holding in part, highlighting the necessity to adapt the DIFC Courts' jurisdictional reach to better accommodate contemporary commercial needs, thereby reversing the earlier jurisdictional limitations set by Sandra Holding.