



ORDR-8741140723-0924

Claim No: CFI-077-2021

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

ESHRAQ INVESTMENTS PJSC

Claimant

and

SHEHAB M. GARGASH & OTHERS

Defendants

JUDGMENT OF JUSTICE MICHAEL BLACK

Hearing: **16 to 19 May 2023**

Counsel: **Mr. William Frain-Bell, assisted by Mr. Scott Hutton and Mr. Arthur Dedels instructed by Khalid Abdalla Altamimi Advocates & Legal Consultants for the Claimant**

Ms. Maria Mulla instructed by Mohammed Allinjawi Advocates and Legal Consultants for the Defendant

Judgment: **6 July 2023**

UPON the Claimant's Part 7 Claim dated 23 September 2021 (the "Claimant's Claims")

AND UPON the Defendant's defence with counterclaim dated 28 February 2022 and amended on 3 March 2023 (the "Counterclaims")

AND UPON the consent order dated 24 March 2022 consolidating cases CFI-077-2021, CFI-078-2021 and CFI-081-2021, under CFI-077-2021

AND UPON hearing Counsel for the Claimant and Counsel for the Defendant at the Trial held before me on 16, 17, 18 and 19 May 2023

AND UPON reviewing the case file

IT IS HEREBY ORDERED THAT:

1. The Claimant's Claims shall be dismissed.
2. There shall be judgment in favour of Daman Real Estate Partners Limited against the Claimant in the sum of AED 3,575,148.06.
3. The parties are to file written submissions on interest and costs within 14 days of this Judgment.



Issued by:
Delvin Sumo
Assistant Registrar
Date of issue: 6 July 2023
At: 12pm

SCHEDULE OF REASONS

The Parties

1. The Claimant (“Eshraq”) has brought 3 claims (Case Numbers CFI-077-2021, CFI-078-2021 and CFI-081-2021) in broadly identical terms against each of Mr Shahab M. Gargash (“Mr Gargash”), Daman Investments PSC (“Investments”) and Daman Real Estate Capital Partners Limited (“RECAP”) in respect of the purchase of residential units in the Burj Daman, DIFC (the “Units”). The claims were consolidated by Consent Orders made 24 March 2022 under CFI-077-2021.
2. Eshraq is and was at all material times a public shareholding company duly formed and validly existing under the laws of the UAE, having its registered office in Abu Dhabi. Eshraq is a real estate development company specializing in both residential and commercial investments. Its previous name is Eshraq Properties PJSC, and it was renamed as Eshraq Investments PJSC in 2019.
3. Mr Gargash is an Emirati businessman who runs a group of companies with a diverse business portfolio including real estate development, asset management, stock brokerage, banking and finance, automobiles, and food and beverages. He is a minority shareholder in RECAP and one of its Managing Directors. He is also a shareholder in Investments and acts as its Managing Director. He is resident in the UAE outside the DIFC.
4. Investments is a limited liability company duly incorporated and registered in Dubai outside the DIFC and a member of the Daman Group of Companies.
5. RECAP is a limited liability company duly incorporated and registered in the DIFC.

The Claims and Counterclaims

6. On 15 April 2015 Eshraq entered into 58 separate Sale and Purchase Agreements (“SPAs”) each in respect of an individual Unit with each of the Defendants as follows:
 - (1) Mr Gargash – 8 Units in the sum of AED 25,647,600;
 - (2) Investments – 9 Units in the sum of AED 28,338,200; and
 - (3) RECAP – 41 Units in the sum of AED 172,691,200.
7. In summary Eshraq claims that the Defendants failed to:

- (1) provide the documentation and assistance required to transfer title to the Units "without undue delay", in breach of Clause 6.4 of the SPAs and Articles 57 and 58 of the DIFC Contract Law;
- (2) handover possession of the Units upon Eshraq satisfying its obligations under Clause 4.1 (i) to (iv), in breach of Clause 4.1 of the SPAs;
- (3) transfer title to the Units to Eshraq upon Eshraq satisfying its obligations under Clause 4.1, in breach of Clause 6.1 of the SPAs;
- (4) return to Eshraq sums paid by Eshraq in excess of price agreed for each Unit (the "Overpaid Amounts") in breach of the good faith obligation implied by Articles 57 and 58 of the DIFC Contract Law;
- (5) (against Mr Gargash and RECAP) reimburse Eshraq for outstanding amounts which had to be paid for utility charges in respect of the Units (the "Utility Charges") in breach of Clause 7.3(iii) of the SPAs;
- (6) disclose ongoing disputes concerning the Units in breach of representations and warranties detailed in Clause 7.3(ii) of the SPAs;
- (7) (against RECAP only) sell the Units free from "all Encumbrances and any easements, covenants, occupational interests and other similar rights", in breach of Clause 2 of the SPAs; and
- (8) (against RECAP only) breach of the representation and warranty in Clause 7.3(iii) of the SPAs with respect to other interests in the Units and liabilities with respect to the Units.

8. Eshraq's pleaded claims are as follows:

- (1) Against Mr Gargash:
 - (a) AED 10,053 (originally pleaded at AED 58,912.31) in respect of the penalties paid to the DIFC Authority by Eshraq for the delay in registering the transfer of the Units;
 - (b) AED 105,263 in respect of the Overpaid Amounts – no longer pursued;
 - (c) AED 7,063 for the Utility Charges paid by Eshraq in respect of the period prior to the date of the RECAP SPAs– no longer pursued;

- (d) AED 174,150 (originally pleaded at AED 324,230) for loss of rental income; and
 - (e) Interest;
 - (2) Against Investments:
 - (a) AED 11,107 (originally pleaded at AED 65,683.34) in respect of the penalties paid to the DIFC Authority by Eshraq for the delay in registering the transfer of the Units;
 - (b) AED 116,306 in respect of the Overpaid Amounts – no longer pursued;
 - (c) AED 255,935 (originally pleaded at AED 492,893) for loss of rental income; and
 - (d) Interest;
 - (3) Against RECAP:
 - (a) AED 547,088 (originally pleaded at AED 821,156.98) in respect of the penalties paid to the DIFC Authority by Eshraq for the delay in registering the transfer of the Units;
 - (b) AED 708,759 in respect of the Overpaid Amounts – no longer pursued;
 - (c) AED 9,196.79 for the Utility Charges paid by Eshraq in respect of the period prior to the date of the RECAP SPAs;
 - (d) AED 3,514,534 (originally pleaded at AED 8,153,508) for loss of rental income; and
 - (e) Interest.
9. The Defendants raise as a preliminary issue that Eshraq's claims are statute barred and should be dismissed. Without prejudice to their limitation defence, they deny Eshraq's claims.
 10. Mr Gargash, Investments and RECAP each raise a counterclaim against Eshraq for general damages (and interest) for damage to their commercial and professional reputation in reliance on Article 11 of the DIFC Damages Law, DIFC Law of Damages

and Remedies No.7 of 2005, and Article 10 of the DIFC Law of Obligations No.5 of 2005 on the basis of:

- (1) False Announcements in Local Newspapers;
 - (2) Criminal Complaint Based on False Allegations and Continuous Defamatory and Libellous Campaign; and
 - (3) False Claim in Dubai Courts.
11. RECAP also counterclaims AED 3,575,148.06 paid on behalf of Eshraq and on its account in respect of service charges on the Units under the SPAs.
 12. In response to the submission that the claims are statute barred, Eshraq pleads that it relies on a cause of action which arose on or around 22 October 2015, being the date when the Defendants breached their obligation to take the necessary steps to assist the Claimant to register the transfer of title and to handover the Units. Proceedings were issued in September 2021.
 13. Eshraq denies that Defendants have discharged their burden of proof in their defamation claim.
 14. As to RECAP's counterclaim for service charges, Eshraq states that it withheld performance in accordance with article 79 of the DIFC Contract Law No. 6 of 2004 on the basis that the Defendants failed to take the steps that would enable the transfer of title and completion of the handover of the Units. The Defendants agreed with this position and agreed to pay the service charges until the registration process has been completed, as confirmed by an email from Place Community Manager of 20 March 2017.
 15. RECAP say that being the developer of the Burj Daman project, it had a responsibility to step in and mitigate the damage occurring due to Eshraq's refusal to make payment which could and had started to affect and jeopardize the services provided to other residents in the tower.

The SPAs & Registration

16. The SPAs were in common form and the material terms for present purposes were as follows:

(1) "Clause 2 - Purchase & Sale

Subject to the terms and conditions contained in this Agreement, Seller hereby sells the Property to Purchaser, and Purchaser hereby purchases the freehold Property from Seller free from all Encumbrances and any easements, covenants, occupational interests and other similar rights and any additional easements reasonably included in the Strata Plan or subsequently registered by the Master Developer.

(2) Clause 4 – Possession

4.1 Purchaser and Seller hereby acknowledge that Seller shall handover possession and Purchaser shall take possession of the Residential Unit once all obligations of Purchaser have been completed which are:

- (i) payment to the Developer, of the Initial Service Charge as set out in Schedule D;
- (ii) payment to the DIFC of any DIFC fees due in connection with the transfer of the title of the Residential Unit from Seller to Purchaser;
- (iii) payment of the Purchase Price to the extent not already paid pursuant to Clause 3.2 of this Agreement; and
- (iv) payment of such other fees which are customarily required by the DIFC to be paid by a purchaser.

4.2 The obligations of Purchaser in Clause 4.1 above shall be completed within sixty (60) days of the date of this Agreement
....

(3) Clause 6 – Transfer of Title

6.1 Provided that Purchaser has fulfilled all obligations set forth in this Agreement, including those set forth in Clause 4.1, Clause 4.2, Clause 8.3 and Clause 8.6, and subject to any requirements of Master Developer related to the registration of title to the Residential Unit, the Building or the Plot in the land registry established for the DIFC (the "Land Registry") (including the payment by Purchaser of any transfer fee or other fees associated with the transfer of title or registration of the Residential Unit in the Land Registry in the name of the Purchaser which may be required by Master Developer), Seller shall, without undue delay, after the payment of the Purchase Price and the Purchaser's adherence to the requirements of Clause 4.1 of the Agreement, transfer title to the Residential Unit to Purchaser and procure registration of such transfer in favor of Purchaser with the Land Registry, subject to Clause 6.2 and subject to the applicable provisions of the Property Law.

6.2 Purchaser shall accept transfer of title to the Residential Unit subject to such easements and restrictions benefiting or burdening the Residential Unit in terms of this Agreement, the Association, or by any federal, local or other governmental authority, including the DIFC or Master Developer or otherwise registered against the title.

(4) Clause 7 - Warranty, Undertakings and Obligations of Seller

7.3 The Seller represents and warrants that:

- (i) the Seller has Good Title to the freehold ownership interest in the Property;

- (ii) there are no disputes or claims which directly involve the Residential Units;
- (iii) there are no liabilities with respect to the Residential Unit as at the date of this Agreement other than as expressly provided in this Agreement;

(5) Clause 8 - Additional Undertakings of Purchaser

- 8.1 Purchaser shall from the date of this Agreement, pay for water, chilled water, electricity, gas, sewage removal and other utility connection and consumption charges which the Dubai Municipality or any other governmental entity levies with respect to the Residential Unit or which are provided and charged by the Association, as well as any charges or property or local authority taxes, general or special assessments or other charges of any nature which may be levied or assessed against the Property. In this regard, Purchaser shall be required to accept an assignment or transfer of contractual obligations entered into by Seller which relate to the supply of any such utilities for the benefit of the Residential Unit, including, without limitation, those contractual obligations entered into by Seller and Emirates Central Cooling System Corporation ("Empower"), among others, or to enter into direct contractual relations with such utility providers.
- 8.2 Purchaser acknowledges that, beginning on the date of this Agreement it shall have an obligation to contribute towards the expenses incurred by the Association for the maintenance, management, administration and control of the Building and the Common Property through payment to the Association of the Service Charge corresponding to the Residential Unit. The amount of the Service Charge payable by Purchaser for any calendar year shall be calculated on the basis of the Participation Quota corresponding to the Residential Unit, and shall be assessed and payable in accordance with the provisions of the Constitution, it being understood that the amount of the Service Charge may be increased from time to time. Seller shall procure that the Developer shall notify Purchaser of the Participation Quota for the Residential Unit no later than five (5) business days following the date of this Agreement. Without prejudice to the foregoing, Purchaser shall be required to pay the Service Charge corresponding to the Residential Unit for the period running from the date of this Agreement until the end of the calendar year in which this Agreement was signed in accordance with the Constitution, and more particularly, as set out in Schedule D (the "Initial Service Charge") no later than the date set forth in Clause 4. For the avoidance of doubt the Initial Service Charge includes the Purchaser's proportional share of the Community Fees up to the end of the calendar year in which this Agreement is signed.
- 8.3 In order to ensure payment of the Service Charge corresponding to the Residential Unit by Purchaser which becomes due and payable from time to time (including the Initial Service Charge), Purchaser shall be required to pay, no later than the date set forth in Clause 4, a deposit equivalent to the amount of the Service Charge payable in relation to the Residential Unit for a period of six (6) Months as set out in Schedule D (the "Service Charge Deposit"). The conditions related to the use and disposition of the Service Charge

Deposit, as well as other measures available to the Association in the event of the non-payment by Purchaser of the Service Charge corresponding to the Residential Unit at any time shall be set forth in the Constitution.

- 8.6 To secure Purchaser's continuing obligation to pay the Community Fees in accordance with Clause 8.4, Purchaser shall be required to pay a deposit to the Master Developer in an amount equivalent to the Community Fees payable in relation to the Residential Unit for a period of six (6) Months. The amount of the deposit, which shall be calculated in accordance with the Master Community Declaration, and the conditions related to its payment, use and disposition shall be notified to Purchaser. For the avoidance of doubt, such deposit is included in the Service Charge Deposits [sic].

(6) Clause 11 – Force Majeure

Both the Seller and the Purchaser shall not be considered to be in default or in breach of their respective obligations under this Agreement to the extent that performance of their respective obligations is prevented or delayed by an event of Force Majeure. If one or the parties considers that an event of Force Majeure has occurred, they shall notify the other party in writing, indicating the nature and expected duration or effect on the other party's performance of the Force Majeure event in question. It being understood that the Seller and the Purchaser shall take reasonable measures which are available to them to minimize the effect of such event on the performance of their respective obligations hereunder.

(7) Clause 12 – General

- 12.1 No amendment or modification of this Agreement shall be valid unless it is expressly agreed in a written instrument duly signed by both parties.
- 12.5 No concession or other indulgence granted by Seller to Purchaser, whether in respect of time for payment or otherwise with regard to the terms and conditions of this Agreement, shall be deemed to be a waiver of its rights under this Agreement. Further, no concession or other indulgence granted by Purchaser to Seller, with regard to the terms and conditions of this Agreement, shall be deemed to be a waiver of its rights under this Agreement.
- 12.7 This Agreement constitutes the entire agreement between the parties relating to the subject matter of this Agreement and supersedes all previous verbal or written agreements, discussions and negotiations between the parties.

(8) Clause 14 – Governing Law & Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws and regulations of the DIFC. The parties agree to submit to the exclusive jurisdiction of the courts of the DIFC for the purpose of resolving any disputes.

(9) Schedule B – Defined Terms

For the purposes of this Agreement, the following words, when capitalized, shall have the following meanings:

Association means	the association, or body corporate, of all Owners to be formed by Developer pursuant to Clause 9 of this Agreement which shall be the legal owner of the Common Property (or
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	<p>hold such property in trust for the benefit of such Owners) and in which Purchaser shall hold a percentage ownership interest pursuant to the terms and conditions set forth in this Agreement and the Constitution. and which shall adopt by-laws governing the management, administration and control of the Building and the Common Property. and the use and enjoyment of the Unit among other functions; it being understood and agreed that in accordance with the Property Law, multiple associations within the Building may be formed pursuant to the Constitution. in which case Purchaser shall be advised as to which association he or she shall be a member of and all references in this Agreement to the "Association" shall refer to that association.</p>
Encumbrance means	<p>any mortgage, charge, pledge, lien, option, right to acquire, right of pre-emption, assignment by way of security or trust arrangement for the purpose of providing security or other security interest of any kind or any agreement to create any of the foregoing.</p>
Force Majeure means	<p>any event or circumstance which is beyond the reasonable control of a party, which is not the result of the fault or negligence of that party and could not be overcome through the exercise of due diligence, and which prevents that party's performance of its obligations in accordance with this Agreement. Subject</p> <p>to the satisfaction of the foregoing conditions, Force Majeure shall include, but not be limited to, any act of</p> <p>God including but not limited to fire, flood, earthquake, wind storm or other natural disaster; terrorist attacks; acts of any sovereign including but not limited to war,</p> <p>invasion, act of foreign enemies or other hostilities; labor disputes including but not limited to strikes, lockouts or boycotts; the act of any government or governmental authority (including, but not limited to, the enactment or failure to enact laws, regulations or decisions of any sort, the refusal or revocation of any license, consent or otherwise, or any other act, order, instruction, decision or requirement of any nature), which, for purposes of this Agreement, shall include, but not be limited to, any governmental authority acting within the U.A.E. or Dubai, including the DIFC; construction or other accidents, including accidents occurring at the Building or the site on which the Building is being</p>

	constructed; interruption or failure of utility service including but not limited to electric power, gas, water or telephone services: breach of contract by any contractor or subcontractor of Developer, or any failure or inability of any such contractor or subcontractor to perform for any reason an obligation pursuant to its agreements with Developer, whether such failure or inability is due to the fault of the contractor or subcontractor or is otherwise excused due to force majeure or for any other reason; or any act, instruction, order or requirement of the DIFC or Master Developer, as well as any construction, engineering or other works being carried out by the DIFC or Master Developer which affects the construction or completion of the building or the Residential Unit.
Master Developer means	the Dubai International Financial Centre Authority ¹ , a body corporate duly established and existing within the DIFC.

(10) Schedule D

Initial Service Charge and Service Charge Deposit will be provided upon signing off the Sale and Purchase Agreement.”

17. It appears that Place Strata Management LLC trading as “Place Community Managers” acted for the Association, at least in 2016, and that they were succeeded in 2019 by an entity called “Three60”.
18. It is also pertinent to note the requirements of the DIFC Registrar of Real Property (“RORP”). I was referred to the “Property Registration and Related Services Client Handbook 2020”. No party suggested that its provisions were not the same as those that applied since 2015. The salient features of the scheme are as follows:

“6. SALE AND PURCHASE OF DIFC PROPERTY

Application for Registration of a Transfer of DIFC Property

This section sets out the main requirements for the Registration of a Transfer of DIFC Property. A Transfer of a Freehold Interest in Property must be registered with the RoRP within **30 days** of entering into the Sale and Purchase Agreement for the transaction where there is no mortgage registered against the Property and within **50 days** for transfers where there is a mortgage registered. Failure to register within the time frame will result in the fines prescribed in the DIFC Laws. Furthermore a buyer must provide Registry Services with the evidence of payments made to the seller in relation to the purchase of DIFC Property. *[original emphasis]*

¹ “DIFCA”

Lodging a request to Register a Transfer of a Freehold Interest in Property can only be submitted through the DIFC Client Portal...

- The service request submitted on the DIFC Client Portal is for the initial review and booking the appointment to finalize the Registration. The Freehold Transfer Registration will be completed upon submission of the Freehold Transfer Fee, and all the remaining fees and original documents.
- All original forms and documents should be provided at the appointment date and time.
- Transfer of a Freehold Interest must be registered along with the payment of the Freehold Transfer Fee within 30 or 50 days (see above) from the date of entering into the Sales and Purchase Agreement.
- If the transfer involves a unit which is mortgaged, the discharge of mortgage can be done before or along with the submission of the service request to register the Freehold Transfer.

...

Documents to be uploaded	
Documents Required From the Seller	
Off Plan Property	Completed Property
<ul style="list-style-type: none"> • Copy of No Objection Certificate issued by the developer. • Identification Documents referred to above. 	<ul style="list-style-type: none"> • Copy of the Title Deed. • Levy Clearance Certificate from the Body corporate • Identification Documents referred to above."

19. The agreed procedure for the sale and purchase of the units was therefore:

- (1) By Clauses 4, 8.2 and 8.3 of the SPAs no later than 13 June 2015 (i.e. 59 days after the date of the SPA, the obligation being stated to be "within 60 days") Eshraq was to pay:
 - (a) the Developer (RECAP), the Initial Service Charge as set out in Schedule D;
 - (b) the DIFC fees due in connection with the transfer of the title of the Unit;
 - (c) the Purchase Price to the extent not already paid;
 - (d) other fees which are customarily required by the DIFC to be paid by a purchaser;

- (e) a deposit equivalent to the amount of the Service Charge payable in relation to the Residential Unit for a period of six (6) Months as set out in Schedule D (the 'Service Charge Deposit'); and
 - (f) a deposit to DIFCA in an amount equivalent to the Community Fees payable in relation to the Unit for a period of six (6) Months calculated in accordance with the Master Community Declaration to be included in the Service Charge Deposit.
- (2) By Clause 6.1 once Eshraq has fulfilled all the above and subject to any requirements of DIFCA related to the registration of title to the Unit, the Building or the Plot in the Land Registry including the payment of any transfer fee the Seller shall, without undue delay, transfer title to the Unit to Eshraq and procure registration the transfer in favour of Eshraq with the Land Registry, subject to Clause 6.2;
 - (3) By Clause 6.2 Eshraq agreed to accept transfer of title to the Unit subject to any restrictions burdening the Unit registered against the title.
20. The contractual scheme appears to be inconsistent with the requirements of RORP. RORP appears to have treated the SPAs as “Off Plan” purchases even though the Units had already been constructed. The transfer of the freehold interest in the Units had to be registered with the RORP within 30 days of the SPAs, i.e. by 14 May 2015. A service request to register had to be submitted through the DIFC Client Portal and in order to do that, certain documents had to be uploaded including a copy of No Objection Certificate (“NOC”) issued by the developer. Once the service request had been submitted an appointment would be made to finalize the Registration. The registration would be completed upon submission of the Freehold Transfer Fee, and all the remaining fees and original documents. By Clause 6.1 the Seller was to procure registration of the transfer in favour of Eshraq with the Land Registry but not until Eshraq had paid the DIFC fees due in connection with the transfer of the title of the Unit which by the SPAs could occur after 60 days from the date of the SPAs.

The Evidence

21. Eshraq adopted the unusual approach of calling no factual evidence. It stated that it would rely on (i) the common ground between the parties, as set out in the agreed Case Memorandum dated 22 September 2022; (ii) the contents of the documents in the Trial Bundle which are not in dispute and those that will be spoken to by the

Defendants' witnesses during the trial; (iii) relevant admissions by the Defendants to the contents of the Claimant's various statements of claim; and (iv) the oral evidence of the witnesses of fact for the Defendants giving evidence during the trial.

22. Eshraq sought to justify its approach by asserting in submission that it had been unable to make contact with any former employees who were involved in the purchase of the 58 units from the Defendants in 2015. No evidence was adduced to justify the assertion. None of these former employees was identified. No evidence as to the efforts to contact them was provided. Further it is not said that there were no current employees who were involved in the purchase of the 58 units from the Defendants in 2015.
23. The Defendants took issue with the assertion on a number of grounds:
 - (1) Eshraq refers to a number of emails not exhibited to any witness statement nor is it entirely clear who the respective individuals on the emails are and their role, and in many instances the full email chain has not been included;
 - (2) Eshraq refers to a number of invoices, again these have not been exhibited to any witness statement from the Claimant explaining what the items are. Further the Schedules and Annexes to the Claimant's statements of case have been prepared by its legal representative with no explanation as to where the information within the Schedules and Annexes has been obtained from and how the tables have been formulated;
 - (3) Eshraq's legal representatives have been able to obtain detailed instructions to prepare extensive statements of case which make very specific factual allegations.
24. In addition, it was the unchallenged evidence of Mr Gargash that a Mr Jassim Siddiqi was present at an important meeting in February 2017 and that Mr Siddiqi remains the chairman of Eshraq. I can only infer that Mr Siddiqi is unwilling to appear as a witness.
25. In the result, the Claimant's factual case was piecemeal and episodic with gaps unexplained by any coherent continuous factual narrative.
26. The only witnesses called by the Claimant were expert witnesses Mr Hisham Farouk and Mr Ehsen Khokher both of Grant Thornton. Grant Thornton were instructed to review the Claimant's claim for loss of rental income, Investments' and RECAP's claims for "commercial reputational damages".

27. The Defendants called the following witnesses:

- (1) Mr Parvesh Khatri - acting Head of Finance at Investments. He gave evidence of the alleged impact on Investments' business of Eshraq's "defamation campaign";
- (2) Mr Ahmed Khizer Khan – from August 2016 the CEO of Investments and responsible for Al Daman Securities LLC, a subsidiary of Investments and the Acting General Manager for RECAP. He gave evidence under the following headings:
 - (a) The sale and purchase of the Units,
 - (b) The Claimant's failure to pay for the Initial Service Charge to RECAP,
 - (c) The Claimant's late payment of the registration fees,
 - (d) The Defendants' cooperation in issuing the NOCs for the registration of the sold units,
 - (e) The sold units were never mortgaged to Emirates NBD,
 - (f) The Counterclaim,
 - (g) The Claimant's false press release,
 - (h) Impacts of the Claimant's false criminal charges, false markets disclosure, and abuse of the legal process,
 - (i) Counterclaim for actual service charges paid by RECAP;
- (3) Mr Shehab M. Gargash – the First Defendant, general director and shareholder of Investments and RECAP and the general director of the Daman and Gargash groups of companies. He gave evidence under to following headings:
 - (a) The sale and purchase agreements,
 - (b) Effective date of the SPAs,
 - (c) The agreed conditions under the SPAs for the transfer of the 58 units titles to the Claimant,

- (d) Payment of the Initial Service Charge by the Claimant,
 - (e) Payment of the registration fees,
 - (f) The Defendants issuance of the NOCs for the registration of the transfer of the titles of the sold units,
 - (g) The purchased units were not under mortgage,
 - (h) The Counterclaim,
 - (i) The Claimant's press conference,
 - (j) The Claimant's criminal complaint,
 - (k) The Claimant's leaking information about the Criminal Complaint and circulation of a defamatory WhatsApp message in the market,
 - (l) The Claimant's disclosure to ADX,
 - (m) The Claimant's legal notices and claim for loss of income,
 - (n) The Growing impact of the defamation campaign,
 - (o) Civil proceedings in Dubai Courts,
 - (p) Present proceedings in DIFC Courts,
 - (q) Financial Impact of the defamation campaign on Daman RECAP and Daman Investments,
 - (r) RECAP's payment of the actual service charges for the RECAP 41 units on the Claimant's account,
 - (s) Personal injury;
- (4) Mr Ali El Adou - the former Head of Asset Management of Investments who gave evidence of the effects in the market of the Claimant's allegations that Mr Gargash and RECAP had committed fraud and deceit;
 - (5) Mr Noor Karim Afridi who gave expert accountancy evidence of the losses claimed by the Defendants;

- (6) Mr Mayank Sawhney who gave real estate expert evidence in reply to the Grant Thornton report and in support of the counterclaim for loss in property valuation suffered by the Defendants due to the defamation of actions of the Claimant.

The Facts

28. The principal evidence in relation to liability in respect of both the claim and counterclaim came from Mr Khan and Mr Gargash. I found both of them to be straightforward witnesses who gave their evidence in a professional manner without appearing to be evasive or economical with the facts. Of course, the Claimant's absence of factual evidence meant that their testimony was uncontradicted but I also gained the impression from cross-examination that very little (if any) was challenged. Cross-examination was more in the form of oral discovery in the hope of turning up something that might support the Claimant's case.
29. On 5 April 2015 Eshraq issued 2 cheques to Al Daman Securities LLC, a subsidiary of Investments, in the sum of AED 295 million. The combined price of Gargash Units was AED 25,647,600, the Investments Units AED 28,338,200 and the RECAP Units AED 172,681,200 making a grand total of AED 226,667,000 - the difference between that figure and the cheques is accounted for by the consideration for the purchase of 50,000 shares in a company called Ward Holding Limited by Eshraq from Investments under an agreement dated 12 April 2015. Ward Holdings Limited is a company that holds or held an interest in a hotel in the Burj Daman.
30. It is common ground that the SPAs were entered into on 15 April 2015. Mr Gargash was the only witness able to speak to the period prior to August 2016 when Mr Khan took over executive responsibility for running Investments.
31. No documentary evidence was produced showing when the Initial Service Charge was notified to Eshraq but on cross-examination Mr Gargash confirmed that the Initial Service Charge was an estimate prepared by the developer as "the baseline at which all buyers start". He said that even before the SPAs were signed there were oral discussions with Eshraq about the Initial Service Charge and demands for payment after the SPAs were signed. He accepted that he was not sure whether the demands were in writing. He was also unable to say whether Eshraq did or did not pay the Initial Service Charge when requested to do so.
32. On 15 July 2015 an award was issued by an arbitral tribunal sitting in Dubai outside the DIFC against RECAP in favour of the builders of the Burj Daman, Oger Dubai LLC

("Oger"). On 9 September 2015 this Court made a Freezing Order against RECAP on the application of Oger.

33. Mr Gargash was shown a Banker's Cheque dated 22 October 2015 drawn by Eshraq in the sum of AED 11,355,165 and it was suggested that the cheque was intended to discharge the Eshraq's liability to RORP. However, since the cheque was never cashed it is hard to see its relevance.
34. It was pleaded that the cheque was payable to the DIFC Authority and delivered to Investments and RECAP to finalise the transfer of all 58 Residential Units under the SPAs but the cheque was subsequently cancelled because the Claimant was requested to transfer title in the Units in phases. The DIFC Transfer Fees were therefore paid by multiple cheques and bank deposits. None of this is accepted by the Defendants and the Claimant has no evidence to establish its case.
35. It appears the transfer fees in respect of the Gargash and 8 of the Investments Units were paid on 29 November 2015. On 6 December 2015 the balance of the fees in respect of the remaining Investment Unit seems to have been paid but the receipt was not issued by RORP until 24 September 2017.
36. On 27 December 2015 the NOC notices in respect of the Gargash Units were issued.
37. On 30 December 2015 this Court made a further Freezing Order against RECAP and permitted Oger to seek enforcement of the arbitral award.
38. Mr Gargash accepted that it then became necessary to have the Court's and Oger's lawyers' approval before any units were handed over.
39. On 9 February 2016 Eshraq paid the Initial Service Charges and Deposits in respect of the Gargash Units. The handover of the Gargash Units was completed on 15 February 2016.
40. On 8 March 2016 the NOC notices in respect of the Investment Units were issued.
41. On 23 March 2016 Eshraq paid the Initial Service Charges in respect of the Investment Units and the handover was completed on that day.
42. On 30 May 2016 Eshraq paid the Initial Deposit in respect of 7 RECAP units.
43. On 16 June 2016 this Court made a Winding Up Order against RECAP described by Mr Gargash as "the ultimate end game".

44. On 28 July 2016 this Court ordered RECAP to cease trading.
45. Decree No. 19 of 2016 had been issued on 9 June 2016 creating the Joint Judicial Committee (the “JJC”) to resolve conflicts of jurisdiction between the DIFC and Dubai Courts. It is not clear when RECAP issued its application to the JJC but by Article 5(1) of the Decree the reference of any dispute to the JJC had the consequential effect that the claims or applications in respect of which there is a dispute as to jurisdiction were to be stayed pending a decision of the JJC in determining the competent Court.
46. In evidence Mr Gargash accepted that the first Freezing Order had prevented RECAP from performing handover, but the second Freezing Order clarified matters and thereafter there was only an extra step to overcome.
47. I have found it helpful to tabulate the dates the registration fees were paid to the RORP, the dates Eshraq made the other payments required by clauses 4 and 8 of the SPAs and NOCs issued by RECAP in respect of the RECAP Units. The table appears as the Annex of this judgment (“ANNEX”). The table shows that the first payment of registration fees in respect of 6 Units was made on 6 October 2016 and notwithstanding that contributions to service charges were still outstanding, Eshraq was given possession of the 6 Units on 16 October 2016.
48. On 8 November 2016 Eshraq held a press conference and issued the following press release on 14 November 2016:
- the Company indicated that it is currently developing a plan to take the legal actions against Daman Investment Company and its legal personnel in order to expedite the delivery of apartments purchased in 2015 in Burj Daman.
49. Mr Khan says that it had an immediate adverse effect in the market and was untrue.
50. On 19 December 2016 the JJC directed (by a majority) that RECAP’s challenge to arbitral award be remitted to the Dubai Courts and that the DIFC Courts should cease from entertaining the case.
51. In January 2017 Mr Khan and Mr Gargash were travelling on business to Kuwait when Mr Gargash was arrested at the airport on a criminal complaint filed by Eshraq alleging that he and RECAP were guilty of fraud and deceit. The complaint alleged that 30 of the Units were mortgaged to Emirates NBD Bank and it was not possible to register them in Eshraq’s name. I have seen no evidence to substantiate such an allegation.

The Certificates of Official Search do show in relation to some of the Units that an interest of Emirates NBD Bank is noted but it is not registered.

52. Mr Khan explained that RECAP financed the Burj Daman project through a bank facility from Emirates NBD. Only the plot on which the tower was built had been mortgaged to the bank. The Units were never mortgaged at any point to any bank. The agreement with the bank provided that the bank would recover its funds out of the sale or lease proceeds of the Units which would be deposited in RECAP's designated account with Emirates NBD. The complaint to the police was therefore untrue.
53. Mr Gargash was detained for several hours. Mr Gargash describes this as "a humiliating experience where I was subjected to public embarrassment and pressure to defend myself and my group against frivolous and false allegations".
54. On 2 February 2017 Eshraq paid the registration fees in respect of 2 Units and possession of those Units was given on 7 and 8 February 2017.
55. A meeting took place on 13 February 2017 between Mr Gargash and Mr Siddiqi. He said in evidence he sat down with him out of politeness and had a coffee.
56. On 23 February 2017 Mr Gargash wrote to Mr Siddiqi of Eshraq (in translation from Arabic):

"... we would like to express our thorough understanding regarding your demands, and our mutual agreement on the necessity to complete hand over of remainder sold flats. We confirm that the former confusion accompanied completion of handing over of remainder flats was due to exceptional procedures —out of our control— subsequent to contracting, this is confirmed by your receiving (26) flat in the past, however, the said procedures resulted in harmful outcomes for both of us, however in views of judgment ruled by the competent judicial panel which provided: "to roll up influence of courts of Dubai International Financial Centre from the issue", We anticipate that handing over of remainder flats will be effectuated via reasonable settlement and mutual understanding observing rights of both parties and achieving their joint interests through implementing provisions of the contract and complying to its contents on basis of compliance and simultaneously with principle regarding implementation of contract in good faith by the parties .

Pursuant to our commitment to concept of good faith and building truth to head for fruitful amicable settlement for both contract parties, we and by virtue of this letter confirm our personal commitment to strive implementing the contract and proceed delivery of remainder flats within four weeks from the date —and we further undertake to follow up taking all actions required for implementation of decision issued by the Judicial

Committee, to put an end to consequences of previous procedures taken by the courts of Dubai International Financial Centre, which prevented us from performing this in the past.”

57. Mr Gargash described Eshraq as “a company in a shambles” who did not complete their obligations under the SPA even though the purchase price has been paid and that is why they did not get the asset.
58. On 9 April 2017, RECAP issued the NOCs in respect the remaining Units and handed them over notwithstanding that Eshraq had failed to pay the registration fees, Initial Service Charges or deposits. Mr Gargash and Mr Khan say that RECAP did so because they were coerced by the attacks mounted by Eshraq on Mr Gargash and the company and it seemed the only way to put a stop to them.
59. The criminal file was passed to the Public Prosecutor's Office and was eventually dropped on 2 May 2017. Eshraq challenged this decision – which I find extraordinary given the false basis of the allegations. Unsurprisingly the challenge was rejected.
60. Mr Gargash and RECAP tried to keep the matter private but in the meantime WhatsApp messages were being passed in the market saying that Mr Gargash had been arrested and was being investigated for fraud against Eshraq. The source of the messages is not clear to me on the evidence but the Defendants claim it was Eshraq. Mr Khan says that it had a deleterious effect on the Group's business.
61. The hope that Eshraq would cease its campaign was misplaced:
- (1) On 6 August 2017 Eshraq wrote to the Head of Companies Listing Department of the Abu Dhabi Securities Exchange:

“I would like to inform you that the Company has finally succeeded after 2 years and 2 months of legal actions and follow up to register the remaining batch of apartments out of the total (58) apartments in Daman Tower DIFC it has purchased in April 2015 from Mr Shahab M Gargash, Daman Investments PSC, Daman Real Estate Capital Ltd. The Property Information Registration Certificate were issued by DIFC and permitted to the Company. The Company has started renting the newly registered apartments.

The Company shall take necessary legal actions to recover any loss sustained as a result of the delay in the registration and handover of the (58) apartments.”

The contents of the letter were materially false – there were no legal actions and handovers occurred timeously once Eshraq had satisfied its own obligations;

- (2) On 9 August 2017 Mr Gargash wrote to the Abu Dhabi Securities Exchange stating particular:

“There are 3 points in the statement that require correction as follows:

- o The allegation that the company did not register real estate purchased from 15 April, 2015 until after two years and two months. This is untrue, as all apartments were delivered in accordance with the contracts concluded starting from December 2015.
- o The allegation that the company succeeded in registering the apartments after the "legal pursuit", despite that the company did not recourse to any courts or judicial authorities at all.
- o The threat of the company that it will take the "necessary legal measures to claim all the losses it has incurred." This is a misrepresentation that does not contain facts and does not correspond to the statement of a public company; the purpose of which is to deceive the reader that there are compensation and returns that are entitled to the company which may affect the share price without any grounds or causes.”

- (3) On 19 October 2017 the Defendants each received a legal notice from the Claimant's former solicitors alleging that Eshraq complied with their obligations clause 4.1 of the SPA without delay and claiming loss of rental from the date of the SPAs. Clearly the instructions given to the former solicitors were misleading;
- (4) There is an undated Statement of Claim before the Dubai Courts by Eshraq against Al Daman Securities LLC seeking return of the AED 295 million on the basis that the sum had been paid into a trading account to deal on local financial markets but the funds disappeared. This was a demonstrable falsehood;
- (5) On 13 November 2017 Al Daman Securities LLC submitted a counterclaim stating that the true nature of the transaction was the purchase of the Units;
- (6) On 11 December 2017 Mr Gargash, Investments and RECAP intervened in the proceedings. Mr Gargash claimed that Eshraq had made a malicious criminal complaint against him. The intervenors referred to the legal notices served on behalf of Eshraq as “groundless lies” and accused Eshraq of launching a defamatory campaign including the WhatsApp messages and letter to the Head of Companies List Department of the Abu Dhabi Securities Exchange. The intervenors claimed damages for damage to their business reputation;

- (7) On 5 February 2018 Eshraq served a Memorandum of Reply. It adhered to its original pleading and made procedural arguments in relation to the interventions;
 - (8) The Defendant and intervenors replied on 11 February 2018;
 - (9) The Dubai Court appointed an expert on 27 February 2018 who reported on 9 April 2018. The expert concluded that the true nature of the transaction was the sale and purchase of the Units and RECAP had fulfilled its bargain with Eshraq. The expert left the issue of reputational damage to the Court;
 - (10) Meanwhile on 17 October 2018 this Court discharged the orders referred to at paragraphs 32, 37, 43 and 44 above;
 - (11) On 5 November 2018 the Dubai Court held that it did not have jurisdiction over the claim as it concerned real estate located in the DIFC. At a hearing on 14 January 2019 Mr Gargash, Investments and RECAP appealed on the basis that the wrongful acts of which they complained were subject to the jurisdiction of the Dubai Courts. Eshraq also lodged an appeal.
 - (12) On 13 March 2019 the Dubai Court of Appeal dismissed both appeals. Both sides appealed to the Court of Cassation. Following a hearing on 15 December 2019 the Court of Cassation dismissed the appeals.
62. Mr Gargash describes the stress that all of the above has caused against the background of poor health that it is unnecessary for me describe in detail in a public judgment.
63. I am satisfied on the evidence that Eshraq embarked on a series of false allegations against the Defendants to pressurise them into handing over the Units before Eshraq had themselves satisfied their own obligations which were precedents to handover. Even after handover they persisted in making false allegations in an attempt to obtain reimbursement of the whole of the consideration paid for the Units and the Ward shares and to pursue damages on the false basis that they had satisfied all of their obligations as early as the date of the SPAs themselves.

Analysis

The Claims

64. The Claims against each of the Defendants for loss of rental income and late registration penalties are based on the pleaded allegation that the Defendants refused to supply the NOCs which were required to transfer the Units.
65. Once the facts are properly analysed the allegation does not withstand scrutiny. Any delays in handover were solely due to Eshraq's own failure to discharge its own obligations. Once it had fulfilled its obligations handover followed "without undue delay":
- (1) On 9 February 2016 Eshraq paid the Initial Service Charges and Deposits in respect of the Gargash Units and handover occurred 6 days later on 15 February 2016 – the NOCs having been given in December 2015;
 - (2) On 23 March 2016 Eshraq paid the Initial Service Charges in respect of the Investment Units and the handover was completed the same day – the NOCs having been given earlier in March 2016;
 - (3) On 6 October 2016 the registration fees were paid in respect of the first batch of RECAP Units and handover occurred on the same day – the NOCs having been given on 18 May 2016;
 - (4) On 2 February 2017 the registration fees were paid in respect of the second batch of RECAP Units and handover occurred on the same day – the NOCs having been given on 24 October 2016;
 - (5) On 9 April 2017 RECAP gave the required NOCs and handed over the remainder of the RECAP Units notwithstanding that Eshraq had failed to fulfil any of the obligations set out in clauses 4 and 8 of the SPAs.
66. In all cases the NOCs were given before Eshraq fulfilled its obligations under the SPAs. Only on fulfilment of those obligations was Eshraq entitled to handover under clause 6.1 of the SPAs. As Mr Gargash said in evidence the Oger proceedings did not cause the Defendants to act in breach of their obligations and this appears to be correct. I accept Mr Gargash met with Mr Siddiqui and wrote his letter of 23 April 2017 in an attempt to defuse the situation. It was not the Defendants who prevented handover but Eshraq. Eshraq's claims thus have no basis in fact and must be dismissed.
67. I should add by way of completeness that Eshraq's pleadings contain various other allegations such as breaches of representations and warranties in the SPAs but since no relief is claimed in respect of them it has been unnecessary to address them. It has

also been unnecessary to address the defence that the claim is statute barred as the claim is without foundation.

The Counterclaims

68. There are two counterclaims:

(1) All three Defendants counterclaim general damages for damage to their commercial and professional reputation. The Defendants rely on Article 11 of the DIFC Damages Law, DIFC Law of Damages and Remedies No.7 of 2005, and Article 10 of the DIFC Law of Obligation No.5 of 2005 based on –

(a) The false announcements in newspapers;

(b) (Mr Gargash) The false criminal complaint and (all three) the continuous defamatory and libelous campaign; and

(c) False claims in the Dubai Courts;

(2) RECAP counterclaims service charges for the purchased units paid on behalf of Eshraq.

69. I will address the second counterclaim first. RECAP pleads that clause 4.1 of the SPAs meant that Eshraq was responsible for the Service Charge from the “Effective Date” and should have been paid within 60 days, i.e. by 13 June 2015 but Eshraq has claimed that it should only pay the Service Charges from the dates of the NOCs. The property manager, Three60 claimed the Service Charge from both Eshraq and RECAP as developer. RECAP considered it was liable to pay the Service Charge to mitigate the damage being caused by Eshraq’s failure to pay.

70. On 29 January 2020 RECAP paid AED 3,622,760.77 to Three60. Of that sum AED 3,575,148.06 related to the Service Charge from 15 April 2015 for the RECAP Units and RECAP counterclaims that sum as having been paid on Eshraq’s behalf plus interest “at the judicial rate”.

71. In reply Eshraq pleads that it withheld performance in accordance with article 79 of the DIFC Contact Law No. 6 of 2004 on the basis that the Defendants failed to take the steps that would enable the transfer of title and completion of the handover of the Units under the Daman RECAP SPAs. The Defendants agreed with this position and agreed

to pay the service charges until the registration process has been completed, as confirmed by an email from Place Community Manager of 20 March 2017.

72. Article 79 of the DIFC Contact Law No. 6 of 2004 provides that where the parties are to perform simultaneously, either party may withhold performance until the other party tenders performance. On the facts as I have found them the Defendants did not fail to take the steps that would enable the transfer of title and completion of the handover of the RECAP Units. On the contrary, RECAP transferred Units before Eshraq had complied with its obligations under the SPAs. Eshraq has led no evidence to support the allegation that the Defendants agreed with this position and agreed to pay the service charges until the registration process has been completed. The email from Place of 20 March 2017 does state that "Daman has agreed to settle charges till the DIFC registration date" but that does not indicate that RECAP would not seek reimbursement from Eshraq.
73. The uncontradicted evidence of Mr Khan was that he witnessed the impact the Claimant's continuous breach of contract i.e., its failure to pay for the service charges, on the quality and continuity of the Burj Daman's services. RECAP chose to step in to save the project and its reputation. On 26 January 2020, RECAP paid AED 3,575,148.06 as the actual service charges for the 41 Daman RECAP Units to the property managers which Eshraq had originally failed to pay from 15 April 2015 until handover. The payment was made on the account of Eshraq and RECAP never waived its right to be reimbursed for the paid amount.
74. Mr Gargash said much the same, namely that as the manager of RECAP, master developer of Burj Daman, he saw the impact of the Claimant's refusal to pay for the service charges on the integrity of the tower's services. Therefore, they had no choice but to take positive action by interfering to save the project and reputation which had already been suffering from the Claimant's ongoing defamation campaign. This was by paying the actual service charges which Eshraq failed to pay for the RECAP 41 units to the property managers on the account of Eshraq.
75. Clause 8.2 of each of the SPAs expressly provided that beginning on the date of the SPA Eshraq shall have an obligation to contribute towards the expenses incurred by the Association for the maintenance, management, administration and control of the Building and the Common Property through payment to the Association of the Service Charge corresponding to the Residential Unit. There is no evidence that this obligation

was waived. The liability settled by RECAP was Eshraq's. RECAP is entitled to be reimbursed.

76. Turning to the counterclaim for general damages for damage to the Defendant's commercial and professional reputation, the leading DIFC authority on the point is the judgment of the Court of Appeal in *IDBI Bank Limited v (1) Amira C Foods International DMCC (2) A K Glogal Business FZE and Mr Karan A Chanana* [2019] DIFC CA 014 (6 July 2020). In that case the Court of Appeal upheld (albeit reducing) an award of compensation against a bank for failing to honour an irrevocable undertaking on behalf of its client. As a result of the dishonour of the payment the client's customer refused to do any further business with the client. An element of the compensation was general damages for loss of business reputation.

77. Justice Wayne Martin in giving the judgment of the Court, having reviewed a number of English decisions, held at [117]:

"This brief review of the authorities is sufficient to establish that the legal principle governing the award of general damages for damage to reputation following wrongful dishonour of a customer's credit by a bank is not in doubt. In the language of the cases in this area, the damages ought to be "not nominal, nor excessive, but reasonable and temperate". If an analogy is drawn to the area of defamation, the damages awarded "should be kept strictly within modest bounds", at least in the absence of evidence that the damage to reputation has caused significant financial detriment."

78. The DIFC Courts may award general damages for damage to reputation, but the question arises whether there is a free-standing right to make such a claim or whether it is a head of damage arising from a cause of action. In *IDBI Bank* the cause of action was the breach by the bank of its mandate. In the authorities reviewed by Justice Martin were variously banks dishonouring bills and cheques, failure by a bank properly to manage a client's business and defamation by a newspaper. In each there was a cause of action that caused the reputational damage. In my judgment it is clear that damage to reputation is a head of damage not a freestanding cause of action in itself. The damage to reputation must be consequent on a wrong. If that were not the case a non-defamatory news report that nonetheless caused damage to a commercial reputation would be actionable. That of course makes no sense and would place an unacceptable fetter on press freedom.

79. In the present case, what then are the causes of action pleaded by the Defendants? It seems that Mr Gargash's personal counterclaim is a claim for malicious prosecution ("To achieve its illegal goals, the Claimant filed a false criminal complaint for fraud and

deceit”) and that the counterclaim of Mr Gargash and the corporate Defendants is a claim in defamation and for abuse of process (when addressing the civil claim) – the Defendants refer to a “Continuous Defamatory and Libelous Campaign” and describe Eshraq’s civil claim as “litigation abuse and abuse of the legal process in bad faith.”

80. In *The Industrial Group Limited v Abdelazim EL Shikh EL Fadil Hamid* [2022] DIFC CA 005 and CA 006 (20 September 2022) the Court of Appeal had to consider, amongst other issues, “III. Whether the Judge erred in holding that Mr Hamid did not have a cause of action under DIFC law for the torts of (i) malicious prosecution and (ii) abuse of process, collectively, ‘the torts’”. The facts of the case are not relevant to the present, but on Issue III, the Court of Appeal held at [109]:

“Thirdly, we were told by Mr Montagu-Smith in oral argument and accept, that the Law of Obligations deals, inter alia, with negligence, occupiers’ liability, deceit, economic torts, nuisance, insurance, and bailment. Other statutes deal with the law of contract and employment law (as seen above). The Law of Obligations does not, however, contain any provisions dealing with defamation. Nor does it deal with malicious prosecution. In our judgment, it follows that the torts do not form part of DIFC law, so that Mr Hamid’s appeal must fail unless he can make good an alternative route by which they are incorporated into DIFC law (see further below). Though our decision does not rest on an explanation for the absence of any provisions dealing with malicious prosecution and abuse of process, it may be that, as with defamation, it was at the time thought that these were matters for the criminal courts. In that regard, it is to be recollected that the application of these torts to civil proceedings was only relatively recently established in English law itself.”

81. It is a matter of some regret that based on the decision in *Industrial Group* I must find that the Defendants have no cause of action for the conduct of Eshraq that I described during the course of the evidence (and from which description I do not resile) as “deplorable”. Had I been able I should have awarded Mr Gargash substantial damages for malicious prosecution. Eshraq’s quantum expert, Mr Farouk, trespassing well outside the boundaries of his expertise, expressed the view in his report:

“I consider that it would be difficult to tarnish and defame the Gargash family name and the Daman Investments commercial reputation so as to impact the financial performance of the business, within the short period of time as is claimed by the Defendant.”

82. He was cross-examined on that view:

“MS. MULLA: But on what basis? Are you able to say? I consider that it would be difficult to tarnish and defame the Gargash family name within a short period of time, where did you get that opinion from?

MR. FAROUK: Well, it’s my personal professional judgment.

MS. MULLA: Okay

MR. FAROUK: And that was effectively being built on myself being born in this country and knowing the stature and name of the Gargash family and the investments that they have and the strength that they have in this local economy. And that the idea that, you know, if one or two examples of impacting in our response

...

MR. FAROUK: So in my opinion, given the history and stature and the brand name that the family has developed over decades of years? Yes, in my opinion, I do not believe that this, one or two or three examples that you have identified now would have tarnished the brand name of the group or the family.

...

MR. FAROUK: Exactly. So let me put it in a different way. If you have a family or a group that has, in my opinion, diamond and pedigree brand in the country, and actually one of the founding eight families of this of the device, city of Dubai and one moment in time, there has been an accusation. I find it very difficult to that the investors that since it's a small market would come to this group because of the brand would then be deterred away because of one accusation.

MS. MULLA: If someone was accused of fraud and a criminal prosecution was launched. Do you stand by that statement?

MR. FAROUK: Yes, I do. Because ultimately, that is an accusation. And ultimately, you have decades of years, opposing that one accusation."

83. Had I been able to award damages for malicious prosecution I would have accepted Mr Farouk's evidence in aggravation rather than in mitigation as he apparently intended. It was the public profile and stature in Dubai of Mr Gargash that made his public arrest at the airport all the more pernicious.
84. In contrast, I found the corporate Defendants' evidence as to the claimed effects on their business of Eshraq's actions to be unpersuasive. Nevertheless, I would have accepted the uncontradicted evidence of Mr Khan that some clients were lost and would have awarded modest damages to mark the Court's disapproval of Eshraq's conduct.
85. It is unfortunate that the Dubai Courts declined jurisdiction over the counterclaims although I can entirely understand their reasoning that the counterclaims were linked to real estate transactions over which the DIFC Courts unarguably had exclusive jurisdiction. I can only speculate that the Dubai Courts may have come to a different conclusion had they known that the DIFC Courts did not have jurisdiction over the counterclaims.
86. As it stands the Defendants find themselves in the invidious position that both these Courts and the DIFC Courts have declined jurisdiction. I do not know whether the DIFC Courts can be asked to review their decisions, but it may be that the Defendants will

have to take solace from my view that I would have found in their favour if the DIFC Courts would have had jurisdiction.

Conclusions

87. The Claimant's Claims are dismissed.
88. There shall be judgment in favour of Daman Real Estate Partners Limited against the Claimant in the sum of AED 3,575,148.06.
89. The parties are to file written submissions on interest and costs within 14 days of having been notified of this judgment.

ANNEX

Unit	SPA	Reg/fee	Security deposit	Contribution	NOC to RORP	NOC to PLACE	Handover
401	15/04/15	27/4/17	11/06/17	11/06/17	9/4/17	28/5/17	09/04/17
404	15/04/15	27/4/17	11/06/17	11/06/17	9/4/17	28/5/17	09/04/17
501	15/04/15	27/4/17	12/06/17	12/06/17	9/4/17	28/5/17	09/04/17
603	15/04/15	27/4/17	12/06/17	12/06/17	9/4/17	28/5/17	09/04/17
604	15/04/15	27/4/17	12/06/17	12/06/17	9/4/17	28/5/17	09/04/17
701	15/04/15	27/4/17	12/06/17	12/06/17	9/4/17	28/5/17	09/04/17
703	15/04/15	27/4/17	12/06/17	12/06/17	9/4/17	28/5/17	09/04/17
704	15/04/15	27/4/17	12/06/17	12/06/17	9/4/17	28/5/17	09/04/17
801	15/04/15	27/4/17	12/06/17	12/06/17	9/4/17	28/5/17	09/04/17
802	15/04/15	27/4/17	12/06/17	12/06/17	9/4/17	28/5/17	09/04/17
804	15/04/15	27/4/17	12/06/17	12/06/17	9/4/17	28/5/17	09/04/17
1003	15/04/15	6/10/16	30/5/16	19/10/16	18/05/16	19/10/16	16/10/16
1005	15/04/15	27/4/17	12/06/17	12/06/17	9/4/17	28/5/17	09/04/17
1101	15/04/15	27/4/17	12/06/17	12/06/17	9/4/17	28/5/17	09/04/17
1102	15/04/15	27/4/17	12/06/17	12/06/17	9/4/17	28/5/17	09/04/17
1103	15/04/15	27/4/17	12/06/17	12/06/17	9/4/17	28/5/17	09/04/17
1104	15/04/15	27/4/17	12/06/17	12/06/17	9/4/17	28/5/17	09/04/17
1201	15/04/15	27/4/17	12/06/17	12/06/17	9/4/17	28/5/17	09/04/17
1202	15/04/15	27/4/17	12/06/17	12/06/17	9/4/17	28/5/17	09/04/17

Unit	SPA	Reg/fee	Security deposit	Contribution	NOC to RORP	NOC to PLACE	Handover
1205	15/04/15	27/4/17	12/06/17	12/06/17	9/4/17	28/5/17	09/04/17
1206	15/04/15	27/4/17	12/06/17	12/06/17	9/4/17	28/5/17	09/04/17
1401	15/04/15	27/4/17	12/06/17	12/06/17	9/4/17	28/5/17	09/04/17
1402	15/04/15	27/4/17	12/06/17	12/06/17	9/4/17	28/5/17	09/04/17
1406	15/04/15	27/4/17	12/06/17	12/06/17	9/4/17	28/5/17	09/04/17
1502	15/04/15	27/4/17	12/06/17	12/06/17	9/4/17	28/5/17	09/04/17
1504	15/04/15	27/4/17	12/06/17	12/06/17	9/4/17	28/5/17	09/04/17
1606	15/04/15	27/4/17	12/06/17	12/06/17	9/4/17	28/5/17	09/04/17
1703	15/04/15	27/4/17	12/06/17	12/06/17	9/4/17	28/5/17	09/04/17
1803	15/04/15	6/10/16	30/5/16	19/10/16	18/05/16	19/10/16	16/10/16
2004	15/04/15	6/10/16	30/5/16	19/10/16	18/05/16	19/10/16	16/10/16
2202	15/04/15	2/2/17			24/10/16	28/5/17	7/2/17
2203	15/04/15	2/2/17			24/10/16	28/5/17	8/2/17
2204	15/04/15	6/10/16	30/5/16	19/10/16	18/5/16	19/10/16	6/8/16
2302	15/04/15	27/4/17	12/06/17	12/06/17	9/4/17	28/5/17	09/04/17
2303	15/04/15	27/4/17	12/06/17	12/06/17	9/4/17	28/5/17	09/04/17
2902	15/04/15	6/10/16	30/5/16	19/10/16	18/5/16	19/10/16	16/10/16
3301	15/04/15	27/4/17	12/06/17	12/06/17	9/4/17	28/5/17	09/04/17
3605	15/04/15	27/4/17	12/06/17	12/06/17	9/4/17	28/5/17	09/04/17
4202	15/04/15	6/10/16	30/5/16	19/10/16	18/5/16	19/10/16	16/10/16

Unit	SPA	Reg/fee	Security deposit	Contribution	NOC to RORP	NOC to PLACE	Handover
4405	15/04/15	6/10/16	30/5/16	19/10/16	18/5/16	19/10/16	16/10/16
4802	15/04/15	27/4/17	12/06/17		9/4/17	28/5/17	09/04/17