محاكم DIFC COURTS

Claim No: CA 009/2026

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

In the name of His Highness Sheikh Mohammad Bin Rashid Al Maktoum, Ruler of Dubai

IN THE COURT OF APPEAL

BEFORE H.E. DEPUTY CHIEF JUSTICE ALI AL MADHANI, H.E. JUSTICE ROBERT FRENCH AND H.E. JUSTICE RENE LE MIERE

BETWEEN

(1) ROMAN ABRAMENKO

(2) VADIM MISEVICH

Claimants/Appellants

and

IGOR CHUPRIN

Defendant/Respondent

Hearing:	**21 May 2026**
Counsel:	Mr Michael Walsh KC, instructed by Trowers and Hamlins LLP for the Appellants
	Mr Alexander Cook KC, instructed by Bracewell LLP for the Respondent
Judgment:	**8 June 2026**

JUDGMENT OF THE COURT OF APPEAL

UPON the Order of H.E. Justice Andrew Moran dated 10 April 2026 (the "10 April Order")

AND UPON the Claimants' Appeal Notice dated 22 April 2026 seeking permission to appeal the 10 April Order (the "PTA Application")

AND UPON the Order of H.E. Justice Andrew Moran granting the Claimants' PTA Application (the "15 April Order")

AND UPON reading the submissions and evidence filed and recorded on the Court file

AND UPON hearing Counsel for the Appellants and Counsel for the Respondent on 21 May 2026

IT IS HEREBY ORDERED THAT:

1. The Appeal is dismissed.

2. The Appellants shall pay the Respondent's costs of the appeal, summarily assessed at USD 160,000.

Issued by:
Delvin Sumo
Assistant Registrar
Date of issue: 8 June 2026
At: 1pm

SCHEDULE OF REASONS

Introduction

1. This is an appeal from the Order of H.E. Justice Moran dated 10 April 2026, which granted the Defendant relief from sanctions to rely on the witness statement of Ms Alena Kurulenko served out of time.

2. At the conclusion of the hearing of the appeal, the Court dismissed the appeal, ordered the Appellants to pay the Respondent's costs of the appeal, and indicated that written reasons would be delivered. These are those reasons.

3. The appeal concerns the proper application of the principles governing relief from sanctions, particularly the approach to:

   (a) whether there was a good explanation for the failure to comply with a court order; and

   (b) whether, in all the circumstances, relief should be granted.

4. The Appellants contend that the Judge erred in principle and that his decision falls outside the range of decisions open to him.

5. The central question on this appeal is not whether this Court would have reached the same conclusion, but whether the Judge misdirected himself in applying the applicable legal framework or reached a conclusion that was not reasonably open to him in the exercise of his case-management discretion.

Procedural Background

6. The underlying proceedings concern a substantial commercial dispute and are proceeding on an expedited timetable.

7. By order dated 5 December 2025, witness statements were to be served by 19 December 2025, and supplementary statements by 19 January 2026.

8. The Respondent did not serve a witness statement from Ms Kurulenko within those deadlines.

9. On 17 March 2026, during the trial, the Respondent sought relief from sanctions, the admission of Ms Kurulenko's witness statement as evidence, and the giving of Ms Kurulenko's oral evidence remotely.

10. By his Order of 10 April 2026, the Judge granted the application and made consequential procedural directions.

The Applicable Principles

Relief from sanctions

11. Rule 4.49 of the Rules of the Dubai International Financial Centre Courts ("RDC") provides that, on an application for relief from any sanction imposed for a failure to comply with, amongst others, a Court order, the Court will consider all the circumstances of the case, including: the interests of the administration of justice; whether the application was made promptly; whether the failure was intentional; whether there is a good explanation for it; the extent of the party's compliance with other applicable requirements; whether the failure was caused by the party or its legal representatives; whether the trial date can still be met; and the respective effects of the failure and of granting relief on each party.

12. RDC 4.50 requires that an application for relief be supported by evidence. However, it does not require the applicant to establish, on a final basis and on the balance of probabilities, the facts relied on to explain the failure to comply, or any of the other considerations under RDC 4.49.

13. The task under RDC 4.49 is evaluative. The Court must consider all the circumstances of the case and, in the exercise of its discretion, determine whether granting relief would achieve a just outcome. No single factor is decisive; the weight of each consideration will vary with the particular circumstances.

14. The approach under RDC 4.49 is materially the same as that adopted by the English courts under CPR r 3.9. The Court may therefore look to the guidance given by the Court of Appeal of England and Wales in *Denton v TH White Ltd* [2014] EWCA Civ 906, as set out in *Mad Atelier International BV v Axel Manes* [2022] DIFC CFI 030 (7 September 2022).

15. That guidance sets out a structured approach—considering the seriousness of the breach, the reasons for it, and all the circumstances—but those stages are not to be applied mechanically. They form part of a single, overall evaluative exercise.

16. The existence of a good explanation for the failure to comply is an important consideration, but it is not a condition precedent to the grant of relief. A failure to establish a good explanation may weigh heavily against relief. However, the Court must nevertheless undertake an overall assessment of all the circumstances identified in RDC 4.49 before determining whether relief should be granted.

17. The courts of England and Wales adopt a structured approach under *Denton* which, although differently expressed, similarly requires an evaluative assessment of all the circumstances of the case. That approach recognises that the absence of a good reason for the default is not determinative: relief may nevertheless be granted where the overall circumstances so justify. Recent applications of that approach can be seen in T*iernan-Spratt v City of Wolverhampton Council* [2023] EWHC 811 (KB) and *Baroness Lawrence v Associated Newspapers Ltd* [2026] EWHC 556 (KB), in which relief was granted notwithstanding that no good reason for the default was established.

18. Where an interlocutory application is met with conflicting evidence—particularly where the matters in dispute overlap with issues to be determined at trial—the Court does not ordinarily seek to resolve those conflicts by making final findings of fact. The established approach is to avoid converting such applications into mini-trials, especially where the evidential record is incomplete or the issues are not apt for definitive determination at that stage. In such circumstances, the Court will proceed based on an assessment appropriate to the interlocutory context, bearing in mind the provisional and evaluative nature of the task.

19. Consistently with that approach, and in circumstances where the evidence is contested, it is open to the Court to consider whether the explanation for failure to comply advanced is supported by material going beyond mere assertion. A conclusion that there is prima facie evidential support—by which is meant that the explanation is supported on the face of the available material, without any final determination of disputed facts—serves a limited and provisional function. It indicates that the explanation is supported by evidence which, if accepted, could constitute a good explanation for the failure to comply, whilst recognising that the underlying facts remain disputed and unproven. It does not involve

treating those facts as established, nor does it equate an arguable explanation with one that has been proved.

20. The presence or absence of such evidential support is a factor to which the Court may attach such weight as is appropriate in the circumstances. The task remains an overall evaluative assessment under RDC 4.49, in which no single consideration is determinative, and the Court must determine whether it is just to grant relief, having regard to all the circumstances.

21. That evaluation requires regard to be had not only to the importance of procedural compliance and the prejudice to the opposing party, but also to the interests of the administration of justice. This includes the Court's ability to determine the issues fairly on the available material. Where refusal of relief would exclude relevant and potentially important evidence bearing on central issues at trial, that may weigh in favour of relief, although it is not decisive and must be balanced against all other relevant considerations.

22. The English authorities applying Denton illustrate the same approach in practice: see, for example, *Tiernan-Spratt v City of Wolverhampton Council* at [50]– [51] and *Baroness Lawrence v Associated Newspapers Ltd* at [39].

Appellate restraint

23. This appeal concerns a discretionary, evaluative case management decision.

24. Appellate courts exercise significant restraint when reviewing trial judges' discretionary decisions. It is not enough that the appellate court would have decided differently; there must be an error in the exercise of discretion. Such an error may include acting on a wrong principle, allowing extraneous or irrelevant matters to guide the decision, mistaking the facts, failing to take into account a material consideration, or reaching a result that is so unreasonable or plainly unjust that a failure to properly exercise discretion can be inferred. If such an error is found, the appellate court may exercise its own discretion in place of the primary judge's, provided it has sufficient materials to do so: see *House v The King* (1936) 55 CLR 499.

25. Appellate courts exercise particular caution when reviewing discretionary decisions on case management and matters of practice and procedure. Such decisions involve an evaluative exercise entrusted to the trial judge, who is best placed to assess the circumstances of the case and the conduct of the proceedings. An appellate court will

not interfere merely because it would have reached a different conclusion. Intervention is warranted only where the judge has erred in principle, taken into account irrelevant matters, failed to take into account relevant matters, made a material error of fact, or reached a conclusion that is plainly wrong and falls outside the generous ambit within which reasonable disagreement is possible.

26. That approach is important in the context of relief from sanctions, where the trial judge is required to undertake a fact-sensitive, evaluative assessment to which appellate restraint ordinarily applies.

The Judge's Decision

27. The Judge expressly recognised that the failure to comply with the Court order was serious and significant, that the application was made very late, and that granting relief would cause delay, additional costs and a procedural disadvantage to the Appellants.

28. He nevertheless concluded that Ms Kurulenko's evidence was central to the issues in the case and that refusing relief would risk determining the proceedings without hearing potentially critical evidence.

29. Regarding the explanation for the failure to comply, the Respondent's case was that Ms Kurulenko had been deterred from giving evidence by threats, intimidation and alleged assaults directed at her and her family, and that this deterrence had prevented the Respondent from serving her witness statement earlier.

30. The Judge did not make any final findings on those allegations. Rather, he considered that there was prima facie evidential support for the account advanced, in the sense that it was supported by material going beyond mere assertion and, if established, would constitute a good explanation for the failure to comply.

31. After weighing all the circumstances, including the competing prejudice to the Appellants and the interests of justice, the Judge concluded that, despite the significant procedural consequences, the balance favoured admitting the evidence and granting relief.

Permission to appeal

32. The Judge granted permission to appeal.

33. He did not consider there was a realistic prospect of persuading an appellate court that he had erred in conducting the required balancing exercise, or that his decision was clearly unreasonable or unjust. However, he concluded that, in the exceptional circumstances of the permission to appeal application, there was a realistic prospect that an appellate court might find that his approach to determining whether there was a good reason for the failure to comply was mistaken in fact or in law.

34. He also considered that there was another compelling reason for the appeal to be heard: to provide guidance on the proper approach where the explanation for failure to comply relied upon is contested, overlaps with issues for trial, and cannot be finally determined on an interlocutory application.

Grounds of Appeal

35. The appeal is advanced on two grounds. First, the Appellants submit that the Judge erred in his approach to the second stage of the *Denton* analysis by treating "prima facie" material as sufficient to constitute a good reason for the failure, despite declining to make findings of fact on the alleged intimidation. Secondly, the Appellants submit that, in any event, the Judge's overall balancing exercise was plainly wrong.

Ground 1: Alleged error in the approach to "good reason"

36. Ground 1 is that the Judge erred in law and/or in fact and/or in principle in his approach to the second stage of the *Denton* analysis, and in particular in concluding, for the purposes of RDC 4.49, that there was a good explanation for the Defendant's failure to adduce the witness statement of Ms Kurulenko in accordance with the procedural timetable set by the Order of 5 December 2025.

37. The Appellants' senior counsel submitted that, having expressly declined to determine whether the alleged intimidation occurred or who was responsible, the Judge could not properly treat the material before him as sufficient to constitute a good explanation for the failure.

38. On the Appellants' case, the question is whether the evidence establishes the asserted explanation, not whether there is an arguable or provisional basis for it. Senior counsel submitted that the Judge adopted a logically inconsistent position: he declined to find that the alleged explanation existed, yet treated it as sufficient to support relief.

39. That submission raises a point requiring careful analysis, but it does not establish an error in principle.

40. The Judge did not purport to make any conclusive finding that the alleged intimidation had occurred, that the Appellants were responsible for it, that the threats were the reason for Ms Kurulenko's failure to give evidence earlier, or that any of those matters had been proved on the balance of probabilities.

41. Nor did the Judge treat the explanation as determinative of the application. Properly understood, his reference to "prima facie" evidence of a good reason was directed to the existence of an evidential foundation going beyond bare assertion, while recognising that the explanation remained disputed and unsuitable for final determination on an interlocutory application.

42. In such circumstances, the absence of a concluded finding as to whether the asserted explanation is established does not preclude the Court from proceeding to the overall evaluation; rather, it limits the weight that can be placed upon the asserted explanation at that stage of the analysis.

43. That was not, in the circumstances of this case, a misdirection. The Judge's approach did not collapse the second *Denton* stage into the third; rather, it recognised that where the factual foundation of the explanation cannot be finally determined, the explanation's significance lies in the weight it bears within the overall evaluative exercise.

44. The structure of Denton does not require a judge in every case to make definitive findings on disputed facts at the second stage, particularly where the issue overlaps with matters that may be explored at trial and where it would be impossible, inappropriate or unfair to resolve it finally on the material available.

45. In such a case, the Court may take the quality and cogency of the explanation into account as part of the overall assessment, without converting an unresolved issue into a final finding of fact.

46. When read fairly and as a whole, the Judge's reasoning does not show that he lowered the legal standard or treated a merely arguable explanation as equivalent to a proved good reason. It shows that he regarded the explanation as having some evidential support but remaining contested, and that he took that into account, together with the other relevant circumstances, when deciding whether relief should be granted.

47. The Appellants further submitted that it was not open to the Judge to find that the material before him provided an evidential basis for the asserted explanation. They contended that the evidence relied upon was “no more than assertion”, lacking any probative foundation capable of establishing, even provisionally, that Ms Kurulenko’s failure to give evidence earlier was caused by intimidation.

48. In particular, they emphasised that the Judge had expressly declined to make findings on whether the alleged incidents had occurred or on who was responsible, and that there was no direct evidence linking any such conduct to the Appellants.

49. On that basis, the Appellants submitted that there was no foundation for the conclusion that there was evidence of a good reason, and that the Judge erred in law and in fact by treating the material as amounting to prima facie evidential support for the explanation advanced.

50. That submission requires consideration of the material that was before the Judge.

51. The evidence comprised, first, the direct account of Ms Kurulenko, who described threats, harassment, and physical attacks directed at her and her family, and stated that she was too afraid to give evidence; secondly, contemporaneous documentation, including police reports recording complaints of threats and incidents, statements from her legal representatives, and video footage of an alleged attack on her property, all of which the Judge reviewed; and thirdly, supporting evidence from Mr Chuprin and Mr Gilbert regarding her persistent unwillingness to give evidence, said to be connected with concerns for personal safety.

52. Whilst that material was contested, incomplete, and did not establish that the alleged acts were carried out by or on behalf of the Appellants—so that any attribution of responsibility rested largely on inference—it was not devoid of evidential content. It included direct testimony, contemporaneous records, and supporting material, which, taken together, provided a factual foothold for the explanation advanced, even though it fell short of establishing it on a final basis.

53. In those circumstances, it was open to the Judge to conclude that the material went beyond bare assertion and constituted an evidential foundation for the explanation relied upon, while at the same time declining to make any findings of fact as to whether the events had occurred or who was responsible for them.

54. Accordingly, the Judge's conclusion that there was prima facie evidential support for the asserted explanation did not involve a finding unsupported by evidence. Rather, it reflected an intermediate evaluative judgment regarding the existence of an evidential basis for the explanation, properly distinguished from any conclusive determination of the underlying allegations.

55. The Appellants' characterisation of the material as amounting to no more than an assertion does not displace that assessment, nor does it demonstrate that the Judge made an error of fact in reaching the conclusion he did.

56. Accordingly, Ground 1 is not made out.

Ground 2: Alleged error in the overall balancing exercise

57. The Appellants submit that, even if the Judge did not err in principle at the second stage, the Judge's conclusion at the third stage of the *Denton* analysis was plainly wrong. The Appellants emphasise the seriousness of the breach, the lateness of the application, the disruption to the expedited trial, and the prejudice to the Appellants.

58. Those were matters of real significance. The Judge recognised each of them. He accepted that the breach was serious and significant, that the application was made at a very late stage, and that granting relief would cause delay, additional costs and a procedural disadvantage to the Appellants.

59. He nevertheless concluded that greater weight should be given to the importance of Ms Kurulenko's evidence and to the risk of deciding the case without hearing evidence that might be significant to the issues the Court had to determine.

60. While the importance of the evidence cannot, of itself, justify relief from a serious and late breach, it is a factor to which the Court is entitled to have regard, particularly where refusing relief would risk determining central issues on an incomplete evidential basis.

61. That was an evaluative judgment in case management. The Judge identified the relevant considerations, assigned them appropriate weight, and reached a conclusion about where the balance lay.

62. The question for this Court is not whether another judge might have struck the balance differently, but whether the conclusion reached was outside the range of reasonable decisions open to the Judge. In this Court's judgment, it was not.

63. The case was not one in which the Judge overlooked the seriousness of the failure to comply or failed to appreciate the prejudice and disruption caused. On the contrary, he squarely addressed those matters. His conclusion was that, notwithstanding those matters, the interests of justice favoured admitting evidence he regarded as potentially important, subject to directions intended to mitigate prejudice. That conclusion was open to him.

64. Ground 2 is therefore also not made out.

Guidance

65. It is neither necessary nor appropriate to prescribe rigid rules for explaining defaults that depend on disputed facts. The application of the *Denton* framework to an application for relief under RDC 4.49 remains an evaluative exercise in which the Court must consider all the circumstances.

66. Where the explanation advanced for the failure to comply is disputed, overlaps with issues that may be determined at trial, and cannot fairly or properly be resolved on the material available at the interlocutory stage, the Court is not required to make final findings of fact before determining the application.

67. In such a case, it is open to the Court to consider whether the explanation is supported by evidence beyond mere assertion, and to recognise where there is an evidential basis that, if established, would constitute a good explanation for the failure. That assessment is provisional. It does not involve treating disputed matters as established facts, but permits the Court to give the explanation such weight as is appropriate in the overall evaluation.

68. The question remains whether, having regard to all the circumstances and undertaking the evaluative assessment required at the third stage of *Denton*, relief should be granted under RDC 4.49.

69. The weight to be given to a disputed explanation for the failure to comply, and to any evidential support for it, will depend on the facts of the case, including the nature of the issues, the extent to which they can fairly be resolved on the application, and the impact of granting or refusing relief on the just determination of the proceedings.

Costs

70. The Respondent seeks an order that the Appellants pay the Respondent's costs of the appeal, relying on the general rule that costs follow the event, and submits that there is no sufficient reason to depart from that rule.

71. The Appellants submitted that costs should be reserved or made costs in the case. They submitted that the appeal arose in unusual circumstances, that permission to appeal had been granted because the case raised an arguable point of principle, and that it would therefore be inappropriate to make an immediate costs order against the unsuccessful Appellants.

72. The Court does not accept that submission.

73. This was a discrete and unsuccessful appeal from an interlocutory case management decision. The fact that permission to appeal was granted does not alter the ordinary position. Permission indicates that the appeal was arguable or raised a point warranting appellate consideration. It does not mean that an unsuccessful appellant should be protected from the usual costs consequences.

74. Nor is there any sufficient reason to reserve costs or make them costs in the case. The appeal required separate preparation and hearing and caused the Respondent to incur distinct and identifiable costs. In those circumstances, the ordinary rule should apply.

75. The appropriate order is therefore that the Appellants pay the Respondent's costs of the appeal.

Summary Assessment of Costs

76. The Court considers it is appropriate to assess those costs now.

77. The appeal has been fully argued before this Court. The Court has had the benefit of detailed statements of costs from both parties and is best placed to summarise the reasonable and proportionate costs of the appeal. There is no sufficient reason to defer assessment to a later stage.

78. The Respondent's statement of costs claims a total of USD 162,059.96, including counsel's fees and other disbursements. The Appellants' own statement of costs claims a materially higher amount.

79. In light of the nature of the appeal, the urgency with which it was prepared and heard, the volume of material deployed, the level of representation on both sides, and the need to arrive at a proportionate figure on a summary basis, the Court is satisfied that the Respondent's recoverable costs should be assessed at a figure slightly below the amount claimed.

80. Having regard to the available material and the parties' respective submissions on proportionality, staffing and the conduct of the appeal, the Court assesses the Respondent's recoverable costs at USD 160,000.

81. Accordingly, there will be an order that the Appellants pay the Respondent's costs of the appeal, summarily assessed at USD 160,000.