



FORGED DOCUMENTS IN THE DIFC COURTS: LESSONS FOR LENDERS AND LAWYERS

Introduction

An allegation that a signature has been forged or a document has been fabricated is often central to a dispute. Typically, the outcome of such cases is a decisive victory for one side. The decision of *ICICI Bank Ltd v Shetty* [2025] DIFC CFI 034 is a rare instance where each side could point to a degree of success.

This article looks at the practice of the DIFC Courts when dealing with allegations of forgery and seeks to draw out lessons both for lenders and lawyers. It also looks at the different issues that arise when the disputed document is not central to the litigation (such as a personal guarantees) but is peripheral to the main issue.

ICICI v Shetty – Some you win, some you lose

Dr Shetty was the founder of NMC Healthcare LLC (“NMC”). In 2019 allegations emerged that there were discrepancies in the NMC group's financial statements. Further investigations revealed that the scale of NMC's debts had been concealed from investors and led to the NMC' group's collapse.

ICICI tried to enforce personal guarantees given by Dr Shetty. Dr Shetty disputed that his signature on the guarantees was genuine. ICICI was able to persuade the judge (Justice Lord Glennie) that Dr Shetty had guaranteed NMC's loans but was unable to persuade the court

that Dr Shetty had also given a personal guarantee for Modular Concepts LLC (“Modular”) debts. Why the different outcome?

How do the DIFC Courts resolves allegations of forgery?

Rules of Evidence

Article 50 (Application of Evidence) of the DIFC Court Law (DIFC Law No. 10 of 2004) provides that the rules of evidence the DIFC Courts apply are (a) those prescribed in DIFC Law (b) those applied in the courts of England and Wales or (c) those the DIFC Court considers appropriate to be applied in the circumstances. This approach means that there are certain differences of the approach between the DIFC Courts and the onshore Dubai courts regarding the involvement of the Dubai Police.

First, as a common law court it is not for the DIFC Courts to seek evidence from the Dubai Police as to whether a document has been fabricated (although there are instances of the DIFC Small Claims Tribunal referring fraud allegations to the Dubai Police for a report– see *Landry v Larg Beauty Centre LLC* [2020] DIFC SCT 164 and *Lutune v Lacti* [2021] DIFC SCT 358).

Second, the DIFC Courts are not bound to accept the conclusion of the Dubai Police recorded in a formal document as to whether a document has been forged (*IDBI Bank Limited (DIFC Branch) v Fast Telecom General Trading LLC* [2023] DIFC CFI 090).

Burden and Standard of Proof

The fact that one party is alleging that a document has been forged does not alter the normal rule that the legal burden of proof lies on the person needing to prove a particular thing to succeed on their claim or defence. In the *ICICI* case Dr Shetty did not need to prove that his signature had been forged; it was for ICICI to establish that the personal guarantees it relied on were genuine.

The DIFC Courts resolve factual issues on the balance of probabilities, i.e. is the thing asserted more likely to have occurred than not to have occurred. Where reprehensible conduct is asserted the court will have regard to the inherent unlikelihood of the conduct occurring when assessing where the balance of probabilities lies. The more serious allegation, the more cogent the evidence a judge will require for the matter to be proved.

In commercial cases the English courts take a pragmatic view of the inherent likelihood that reprehensible conduct has occurred. In *Bank St Petersburg v Arkhangelsky* [2020] EWCA Civ 408 the Court of Appeal held that there is a wide spectrum of probabilities as to the occurrence of such conduct. In that case the first instance judge had found that both parties had behaved dishonestly and lied to the court. The judge should therefore have put to one side the usual inherent improbability that one of the parties might have acted dishonestly when weighing up the evidence.

Expert Evidence

The strongest evidence of fabrication often comes from expert witnesses. The expert might be in the field of handwriting (e.g. to determine whether a wet signature was genuine), forensic document analysis (e.g. to determine the true age of a document) or forensic IT (e.g. to determine when an electronic document was sent, created or altered).

Expert evidence has its limitations. Experts often present their conclusions by reference to a degree of confidence. An expert's conclusion expressed with a relatively low degree of confidence is more susceptible to being outweighed by other evidence presented to a judge.

Sometimes expert evidence can only tell part of the story. In the *ICICI* case the parties' experts agreed that some of the disputed signatures had been added by copying a pre-existing signature and applying it to the documents with printer toner. The court was left to decide whether this had been done with or without Dr Shetty's approval. However, when doing so the court placed weight on the fact both experts agreed that there was a strong probability that Dr Shetty had signed other documents with a pen and ink signature which he denied signing.

Direct Evidence

The best evidence that a document is genuine can be from a witness who saw the document signed. In another case concerning Dr Shetty, *Punjab National Bank v NMC Healthcare LLC* [2024] DIFC CFI 079, the claimant bank's deputy CEO and a colleague had been present when Dr Shetty signed the disputed guarantee.

In the *ICICI* case the bank's practice was different; the bank would receive a scanned version of the executed documents, arrange for the collection of the executed version and then verify the signature from known version of the client's signature (such as on their passport). Without direct evidence that Dr Shetty had approved the application of an electronic signature to the documents the bank had to rely on other evidence to prove its case.

Indirect Evidence

There is a wide range of other material which the court may use to resolve an allegation that a document has been fabricated.

There is the physical condition of the document itself. Is the physical condition of the document consistent with it being produced and stored in the manner asserted by the party relying on the document? If the document is a printed version of an electronic document is the meta data of the electronic document still available and, if not, what explanation is offered for that?

A further factor is when and how the document first became known to the other side. A document produced late in the day without a proper explanation for the delay is more likely to be regarded with suspicion.

How the parties conduct themselves after the document was allegedly executed is often important. In the *ICICI* case the bank was able to rely on two important aspects of the parties' conduct after execution of the guarantees. First, each time the bank granted extensions of the facility agreements it had with NMC guarantee extension letters were obtained. Relying on the experts' conclusion that Dr Shetty had signed these extension letters the court was able to conclude that it was likely that he had authorised an original guarantee which bore only a copy signature. Second, although ICICI was not able to call a witness who had seen Dr Shetty sign the personal guarantees it did have a witness who had been present at a meeting at which Dr Shetty was said to have acknowledged the existence of personal guarantees.

The court will look at the circumstances surrounding the transaction. The main reasons that ICICI was unable to persuade the court that Dr Shetty had signed the Modular personal guarantee was that this company (unlike NMC) was not closely connected to Dr Shetty but was a construction company promoted by a relative of his and there were no related documents bearing Dr Shetty's wet ink signature. The judge could not be satisfied on the balance of probabilities that Dr Shetty had signed the Modular guarantee or authorised the application of his electronic signature.

Immediate Judgment

Although ICICI succeeded on most of its claim it took 3 years and a four day trial to get to judgment.

The DIFC Courts can grant immediate judgment at an early stage of proceedings under RDC 24 if a defendant has no real prospect of successfully defending the claim and there is no other compelling reason why the case or issue should be disposed of at a trial.

Allegations of fraud will generally require a full factual examination by the court and are not ordinarily suitable to resolution on an immediate judgment application (see *IGPL General Trading LLC v Hortin Holdings* [2021] CFI 016 & 023 at para 32).

Nevertheless, the immediate judgment procedure is sufficiently robust to dispose of forgery arguments which lack conviction.

In *Saif Saeed Sulaiman Mohammed Al Mazrouei v Bankmed (SAL)* [2019] DIFC CA 011 the DIFC Court of Appeal upheld the grant of immediate judgment against an appellant who argued that his signature on a guarantee had been forged. In that case the allegation of forgery was raised late, in an inconsistent and incoherent manner. There was no expert evidence supporting the forgery allegation. The Court said that it was for the appellant to adduce “some ground, basis or fact that can enable the Court to conclude that there is sufficient basis to the claim that forgery had taken place” but nothing had been offered even though “a strong statement to that effect with sufficient explanation” may have sufficed. The Court noted that there was not even evidence that the appellant had lodged a police report concerning the alleged forgery.

The *Punjab National Bank* case is another instance of a successful application for immediate judgment. The evidence of the bank official who had witnessed Dr Shetty sign the guarantee was cogent and there was no evidence of substance to support the defence that Dr Shetty had not signed it.

Peripheral documents

It is not only documents central to a dispute, such as a guarantee, that parties argue are forgeries. Peripheral documents such as minutes, emails and letters which are said to support one side’s version of events are often disputed. For example, in *Corinth Pipeworks SA v Barclays Bank Plc* [2015] DIFC CFI 024 it was alleged that written acknowledgements produced to support a claim that a commission was owing had been fabricated.

Where a party wishes to challenge a document disclosed by the other side under RDC Part 28 a notice to admit under RDC 29.115 must be served otherwise the party is deemed to admit that the document is authentic. Serving a notice to admit requires the other side to lead apparently credible evidence of sufficient weight that the document was what it purports to be (*Redstone Mortgages Ltd v B Legal Ltd* [2014] EWHC 3398 (Ch)).

If a party not only requires the other side to prove the authenticity of a document but wants to advance a positive case that the document has been fabricated it is not enough to only give a notice to admit. RDC 17.43(1) requires that full and specific details of any allegation of fraud, dishonesty, malice or illegality are set out in a statement of case. In *Corinth Pipeworks*

the allegations of fabrication were raised in a reply to a Request for Further Information under RDC 19. The English courts recognise that the function of a statements of case is to set out the factual allegations necessary to establish their case rather than to plead evidence and so it may not be appropriate to plead out every allegation that a document has been forged (*Lemos v Church Bay Trust Company Ltd* [2023] EWHC 2384 (Ch)). In such instances fairness still requires that the allegation that a document has been forged be set out in correspondence sufficiently far ahead of trial so that the challenged party has a fair opportunity to deal with it.

Lessons for Lenders and Lawyers

Lenders

There is little that can be done to prevent a party to a document later denying that they signed it. There are some things that can be done to ensure that such assertions lack conviction and can be disposed of swiftly by the courts.

- Avoid unverified electronic signatures. An electronic signature created through a product that verifies the signatory's identity or even a pen and ink signature, requiring a physical act of the signatory, are harder to repudiate than a signature which has just been affixed electronically.
- Have a witness. If there is a trustworthy witnesses to the signature the court is likely to accept their evidence.
- Avoid separate signature pages. If the signature is on a separate sheet to the other parts of the document it can be suggested that the other pages to the document, containing the terms, have been added later. It is partly for this reason that some documents are initialed by the parties on each page.
- Subsequent acknowledgments. Acknowledgements of the agreement or the obligation after the document has been executed make it harder to argue that the document was not properly executed.

Lawyers

The Mandatory Code of Conduct for Legal Practitioners in the DIFC Courts includes important requirements regarding allegations of fraud.

Under rule 22(N) an allegation of fraud or criminal behavior cannot be put forward in unless the lawyer has clear instructions to make such allegation and has before him reasonably

credible material which as it stands establishes a prima facie case of fraud or criminal behaviour.

In a similar vein rule 12(C) provides that, “In general, there is no duty upon a Practitioner to enquire in every case where he is instructed as to whether the client is telling the truth. However, where the client's instructions are such (whether because of their inherent implausibility or of other information coming to the Practitioner’s knowledge) as should put a Practitioner on enquiry, the Practitioner must, where practicable, check the truth of what the client tells him to the extent that such statements will be relied on before the Court or in pleadings or affidavits”.

Sometimes it will not be possible to advance an allegation of fraud as desired by a client. In such cases it is important remember that the claimant still has the burden of proof and, as *ICICI v Shetty* reminds us, sometimes that burden cannot be satisfied.

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