

JUDGMENT SUMMARY

Neutral Citation	[2019] ADGMCFI 0003
Case Number	ADGMCFI-2019-003
Name of Case	Rosewood Hotel Abu Dhabi LLC v Skelmore Hospitality Group Ltd.
Judge	Justice Stone SBS QC
Date Issued	27 May 2019
Catchwords	Application to join new party. Lease. Justification of joinder. Burden of joinder. Failure to identify bases of claim and remedy sought against proposed new party in the event of joinder.
Cases Cited	–
Legislation and Authorities Cited	ADGM Court Procedure Rules 2016 – Rule 56(1)
Executive Summary	This judgment addressed the Defendant's application to join Mubadala Development Company ("MDC") as a Second Defendant. The Court dismissed the application, finding that the Defendant failed to adequately demonstrate the basis of a claim or the remedy sought against MDC.
Overall Summary	<p>Background</p> <p>This Abu Dhabi Global Market ("ADGM") Court of First Instance (Commercial & Civil Division) judgment considers to an application made by the Defendant, Skelmore Hospitality Group Ltd. ("Skelmore"), to join a new party to the existing proceedings.</p> <p>The primary action was brought by the Claimant, Rosewood Hotel Abu Dhabi LLC ("Rosewood"), for unpaid sums allegedly due under a five-year lease agreement for commercial premises at the Rosewood Hotel, Al Maryah Island (the "Lease"). Rosewood's claimed approximately US\$1.362 million plus interest and costs. Skelmore disputed liability in its Defence. Skelmore sought permission to join a Mubadala entity as the Second Defendant, initially identifying it as Mubadala Investment Company ("MIC") but later amended to Mubadala Development Company ("MDC").</p>

	<p>Skelmore's application was supported by witness statements asserting that lease negotiations were conducted solely by representatives of Mubadala, without Rosewood's presence. Skelmore's Chief Financial Officer stated that "<i>Mubadala acted throughout as the Defendant's principal interlocutor in respect of the Lease</i>" and that joining Mubadala was of "<i>paramount importance</i>" to their Defence, which would rely on correspondence and discussions with Mubadala. Skelmore argued that as the Rosewood's ultimate parent, it was reasonable to assume Mubadala was making decisions on behalf of the Rosewood.</p> <p>Rosewood opposed the application, arguing that it was not justified. Rosewood's evidence clarified the corporate structure and the timeline of MIC's creation (post-dating the Lease), leading to Skelmore amending the party sought to be joined to MDC. Rosewood also provided evidence that individuals involved in the Lease transaction acted in their capacity as Rosewood officers or representatives.</p> <p>Analysis</p> <p>The Court confirmed it had an unfettered discretion to grant permission for joinder under Rule 56(1) of the ADGM Court Procedure Rules 2016. The burden of demonstrating why joinder was necessary/desirable lied upon Skelmore, as the applicant seeking the relief. Despite amending the application to name MDC, the Court found insufficient material before it to justify joinder. Skelmore's filed Defence was general, and no draft amended Defence or specific details of the allegations or remedies sought against MDC were provided with the application or supporting witness statements. The Court noted that mere factual involvement of MDC personnel did not, in itself, justify joinder.</p> <p>Details of Skelmore's proposed case against MDC only emerged late in a reply submission. Skelmore stated that they sought joinder to ensure that the Court considered all aspects of the dispute and proposed to bring evidence of assurances and undertakings provided by Mubadala that Skelmore relied on when entering the Lease, and evidence of their breach. In its reply submission, Skelmore noted that if the joinder application is granted, then Skelmore proposed to amend its Defence to "<i>assert its rights ..., including ... rescission of the Lease, damages for breach of collateral contract, claim by way of indemnity or any other remedy to which it may consider itself entitled</i>".</p> <p>The Court found these allegations to be wholly unparticularised. Given the lack of initial justification and the unparticularised nature of the claims against MDC, the Court concluded that Skelmore had failed to discharge the burden to demonstrate why an Order for joinder should be made. The Court decided against allowing the joinder, stating it would sidetrack a straightforward claim between the existing parties with unparticularised collateral allegations against MDC.</p> <p>Conclusion</p>
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	The application to join MDC as the Second Defendant was dismissed. The Court noted that Skelmore could pursue these allegations against MDC in a separate action. Costs were ordered to follow the event.
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This statement is not intended to be a substitute for the reasons of the Court or to be used in any later consideration of the Court's reasons.