

JUDGMENT SUMMARY

Neutral Citation	[2019] ADGMCFI 0005
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	14 July 2019
Catchwords	Application for permission to appeal judgment dismissing to join new party. Failure to demonstrate the appeal before the Court of Appeal would have a real prospect of success.
Cases Cited	–
Legislation and Authorities Cited	ADGM Court Procedure Rules 2016 – Rule 208
Executive Summary	This judgment considered an application for permission to appeal made by the Defendant. The Court ultimately dismissed the application for permission to appeal, concluding that an appeal would not have a real prospect of success as required by the ADGM Court Procedure Rules 2016. The judgment noted that the original decision was based on the evidence presented and involved an exercise of the Court's discretion.
Overall Summary	<p>Background</p> <p>This Abu Dhabi Global Market (“ADGM”) Court of First Instance (“CFI”) (Commercial & Civil Division) judgment considered an application for permission to appeal made by the Defendant, Skelmore Hospitality Group Ltd. (“Skelmore”), seeking permission to appeal to the ADGM Court of Appeal an Order and judgment of the CFI dated 27 May 2019. The prior Order and judgment had dismissed the Defendant's application to join Mubadala Development Corporation (“MDC”) as the Second Defendant in the proceedings.</p> <p>Skelmore filed their application for permission to appeal on 10 June 2019, and the Claimant, Rosewood Hotel Abu Dhabi LLC (“Rosewood”), filed an objection on 25 June 2019. Skelmore was given time to respond to</p>

	<p>Rosewood's objection but did not file any further submissions. The CFI therefore decided the contested issue based on the single submission from each party.</p> <p>Skelmore asserted that the original judgment dismissing the joinder application was flawed. They argued it failed to apply the law correctly, misstated the pleadings, sought to place an unreasonable burden on Skelmore, mischaracterised Skelmore's evidence, and proposed an inappropriate alternative course of action (namely the potential institution of a separate action by Skelmore against MDC). The Defendant concluded that the CFI failed to discharge its duty of fairness and efficiency, and therefore permission should be granted to appeal the judgment "<i>in all respects</i>" except for the amendment to join MDC instead of Mubadala Investment Company, which the Court had allowed.</p> <p>Rosewood opposed the application, arguing that permission should be denied. They submitted that the CFI had considered the evidence, and the dismissal resulted from a proper exercise of discretion based on the material before it.</p> <p>Analysis</p> <p>The Court accepted the Rosewood's submission regarding the benchmark for granting permission to appeal, which is found in Rule 208 of the ADGM Court Procedure Rules 2016. This rule states that permission is given only where the appeal would have a real prospect of success or where there is some other compelling reason for the appeal to be heard.</p> <p>The Court found no "<i>other compelling reason</i>" on the facts of this case. Therefore, the sole question was whether an appeal would have a "<i>real prospect of success</i>". The Court found it difficult to see how this benchmark could be satisfied.</p> <p>The dismissal of the joinder application was a procedural decision made by CFI based on the exercise of an unfettered discretion. The CFI reached its decision based on the evidence presented. It was noted that Skelmore provided little, if any, material information that would have enabled the CFI to properly exercise discretion to allow joinder of the Rosewood's parent company.</p> <p>The CFI explained that Skelmore is not prevented from pursuing MDC and would not suffer prejudice from the dismissal, as it is open to Skelmore to bring separate proceedings against MDC. The CFI was unable to discern how or why the exercise of its discretion could be vitiated on appeal.</p> <p>The decision was one that was open to the CFI based on the evidence, and the CFI could not identify any serious procedural irregularity or characterise the decision as plainly wrong or manifestly unjust.</p> <p>Ultimately, the CFI concluded that Skelmore had failed to discharge the burden of demonstrating why the joinder sought should be permitted. Consequently, in the CFI view, any appeal to the Court of Appeal would not have a "<i>real prospect of success</i>".</p>
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	<p>Conclusion</p> <p>Therefore, the application for permission to appeal was dismissed. The CFI ordered that costs must follow the event and to be assessed if not agreed.</p>
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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.