

JUDGMENT SUMMARY

Neutral Citation	[2019] ADGMCFI 0007
Case Number	ADGMCFI-2019-008
Name of Case	A4 v B4
Judge	Justice Sir Andrew Smith
Date Issued	8 October 2019
Catchwords	Recognition and enforcement of New York Convention arbitration award. Refusal on grounds that arbitration agreement not valid. Refusal on grounds of public policy of United Arab Emirates.
Cases Cited	Tekdata Interconnections Ltd v Amphenol Ltd [2009] EWCA Civ 1209 Minmetals Germany GmbH v Ferco Steel Ltd. [1999] 1 All E R 315 Joint Judicial Committee of Dubai: Assas Investments Ltd. v Fius Capital Ltd., Cassation No 6 of 2017
Legislation and Authorities Cited	ADGM Arbitration Regulations 2015 – Sections 56 and 57 and Part 4 ADGM Procedure Rules 2016 – Rules 37 and 198 ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 – Sections 16 and 227 Abu Dhabi Law No (4) of 2013 (the “ADGM Founding Law”) – Article 6(1) Constitution of the United Arab Emirates – Article 121 Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted by the United Nations Conference on International Commercial Arbitration on 10 June 1958 (the “New York Convention”) – Article V Merkel, Arbitration Law – Paragraph 19.72 Chitty on Contracts (33rd Ed.) – Paragraphs 2-036 and 2-037
Executive Summary	This judgment considered the recognition and enforcement of a London Court of International Arbitration (LCIA) award (the “Award”). The Court

	<p>granted the application for recognition and enforcement of the Award, finding that the Defendant failed to provide proof for refusing recognition based on the invalidity of the arbitration agreement or any public policy concerns in accordance with Section 57 of the Arbitration Regulations 2015.</p>
<p>Overall Summary</p>	<p>Background</p> <p>This Abu Dhabi Global Market (“ADGM”) Court of First Instance (Commercial & Civil Division) judgment considered an application by the Claimant, a company registered in Abu Dhabi, for the recognition and enforcement of an arbitration award made against the Defendant, also an Abu Dhabi registered company.</p> <p>The Claimant initiated arbitration proceedings under the rules of the London Court of International Arbitration (the “LCIA”) on 8 March 2018. Lord Thomas of Cwmgiedd was appointed as the sole arbitrator. In the award made on 14 November 2018 (the “Award”), he ordered the Defendant to pay the Claimant: (i) US\$522,782.48 plus interest for services rendered, (ii) £11,500 plus interest for legal costs, and (iii) £10,588.17 plus interest for arbitration costs.</p> <p>The Claimant applied to the Court on 25 June 2019 under Section 56 of the ADGM Arbitration Regulations 2015 for the Award to be recognised as binding and enforced as a judgment of the Court.</p> <p>Although the Claimant initially sought a without-notice order, the Court directed that the Defendant be served in order to give the Defendant the opportunity to make representations on the Claimant’s Claim. Despite repeated efforts and Court Orders to ensure that the Defendant had the opportunity to respond, the Defendant failed to do so and did not attend the hearing.</p> <p>Analysis</p> <p>The Court confirmed its jurisdiction to recognise and enforce the Award under the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 and the Arbitration Regulations 2015.</p> <p>The Award is a “New York Convention Award” as it was made in the UK, a signatory state. Section 56 of the ADGM Arbitration Regulations 2015 mandates recognition and enforcement of such awards unless a ground for refusal under Section 57 is proven.</p> <p>The Defendant challenged the jurisdiction of the LCIA arguing that there was no privity of agreement between the parties such that the arbitral tribunal lacked jurisdiction to hear any disputes between the parties.</p> <p>The Court noted that under Section 57(1)(a)(ii) of the ADGM Arbitration Regulations 2015 and mirroring Article V(1) of the New York Convention, the burden of proving the invalidity of an arbitration agreement lies upon the party resisting recognition or enforcement. As the Defendant did not pursue this contention or furnish proof of invalidity of the arbitration</p>

	<p>agreement in the court proceedings, the Court was not entitled to consider this issue.</p> <p>The Court also considered whether public policy of the UAE, particularly concerns about the application being a device to enforce against assets outside the ADGM, provided a ground for refusal under Section 57(1)(b)(ii) of the ADGM Arbitration Regulations 2015 and Article V(2) of the New York Convention. The Court acknowledged international debate on the scope of the public policy exception. However, it found no sound factual basis to raise the point itself. The Court noted that the burden of proof for public policy objections lies on the party relying on it. There was no evidence that the Defendant lacked assets in the ADGM or that the Claimant's application was solely a device to execute against assets elsewhere in the UAE. Furthermore, the possibility of parallel enforcement proceedings elsewhere in the UAE is not inherently contrary to public policy. The Defendant had every opportunity to raise public policy arguments but did not.</p> <p>Conclusion</p> <p>In conclusion, the Court found that none of the grounds for refusing recognition and enforcement under Section 57 of the ADGM Arbitration Regulations 2015 were satisfied. Therefore, the Claimant was entitled to recognition of the Award and an Order for its enforcement. The Order included the right for the Defendant to apply to set it aside within 14 days of service.</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.