

JUDGMENT SUMMARY

Neutral Citation	[2019] ADGMCFI 0008
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	4 November 2019
Catchwords	Strike out application. Witness statement.
Cases Cited	–
Legislation and Authorities Cited	ADGM Court Procedure Rules 2016 – Rules 92 and 100 English Civil Procedure Rules 1998 – Rule 32(1)
Executive Summary	This judgment concerns an application by the Claimant to strike out all or parts of a witness statement filed by the Defendant. The underlying dispute is a landlord and tenant action for breach of a lease, where the Claimant alleges that the Defendant failed to make payments and open a restaurant as agreed under the lease. The Defendant had attempted to join Mubadala Development Company (“MDC”) as a party to the action, but that joinder application was dismissed by the Court previously. The Claimant argued that the Defendant's Reply Witness Statement, containing references to discussions with MDC, was an attempt to introduce new issues and circumvent the Court's earlier decision on joinder. The Court granted the strike-out application in part, striking out a specific paragraph from the Defendant's Reply Witness statement that referred to assurances from MDC representatives influencing the signing of the lease, as it related to an unpleaded contention about MDC's impact on the contractual obligations.
Overall Summary	Background This Abu Dhabi Global Market (“ADGM”) Court of First Instance (Commercial & Civil Division) judgment concerns an application made by

	the Claimant (Rosewood Hotel Abu Dhabi LLC) to strike out all or parts of the Reply Witness Statement of Mr Emain Kadrie filed on behalf of the Defendant (Skelmore Hospitality Group Ltd.). The application was made pursuant to Rules 92 and 100 of the ADGM Court Procedure Rules 2016. The underlying action is a landlord and tenant dispute concerning a lease dated 29 June 2016 between the Claimant and the Defendant. The Claimant alleges that the Defendant breached the lease by failing: (i) to make payments due under the terms of that lease; and (ii) to open a restaurant in the leased space in the Rosewood Hotel in Abu Dhabi. The Claimant also sought various sums allegedly due under the lease, including liquidated damages for the failure to open the restaurant within the leased space. The Defendant's defence consisted of denials and allegations that the claimed monies were not due. Earlier in the proceedings, the Defendant sought to join Mubadala Development Company (“MDC”) as a Second Defendant, but this application was dismissed by the Court on 27 May 2019, and subsequent permissions to appeal were also dismissed. In relation to that joinder application, the Court noted that the Defendant could pursue a claim against MDC in a separate action. No such action has been brought. Directions were given for the filing of witness statements of fact. While the Claimant filed two witness statements, the Defendant initially stated it would not submit witness statements, viewing its defence as primarily of “<i>a legal nature</i>”. However, the Defendant subsequently filed the Reply Witness Statement of Mr Kadrie on 15 October 2019, which prompted the Claimant's strike-out application. The Claimant argued that: (i) the Reply Witness Statement was filed late and without explanation; (ii) contained mostly irrelevant statements bearing no relation to the pleaded cases or issues; and (iii) represented an attempt to introduce new issues, particularly arguments related to the conduct of MDC, which was not a party to the action, thus attempting to circumvent the Court's earlier decision on the joinder application. Analysis and Conclusion The Court accepted its power to control evidence under Rule 92 of the ADGM Court Procedure Rules 2016, which correlates with Rule 32(1) of the English Civil Procedure Rules 1998. The Court declined to base its decision solely on the late filing of the Reply Witness Statement. It noted that the Reply Witness Statement's focus on pre-lease negotiations with non-party MDC bore no relation to the Defendant's pleaded defence and only had resonance in the context of the rejected joinder application. The Court viewed the statement as an “<i>oddity</i>” given the circumstances. In reaching its decision, the Court stated that the relevant guiding principle was to make it clear that, on the current pleadings, the Defendant is not permitted to advance unpleaded contentions that negotiations or assurances from MDC resulted in significant modification or avoidance of the lease.
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	Accordingly, the Court exercised its discretion to allow the Claimant's strike-out application in part. The final sentence of paragraph 8 of the Reply Witness Statement was ordered to be struck out and excluded from evidence. This sentence reads: "<i>If the Defendant had not been assured by Mubadala's representatives of the support expected from Mubadala, as a result of their investments in ADGM, the Defendant would not even have signed the lease</i>".
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