

JUDGMENT SUMMARY

Neutral Citation	[2019] ADGMCFI 0009
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	16 December 2019
Catchwords	Lease. Tenant's breach of obligations under Lease. Lessor's recovery of various components of loss under Lease. Bases of calculation of loss.
Cases Cited	Cavendish Square Holding BV v Makdessi and Parking Eye Limited v Beavis [2015] UKSC 67 Reichman v Beveridge [2006] EWCA Civ 1659
Legislation and Authorities Cited	ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 – Section 39 ADGM Court Procedure Rules 2016 – Rule 174(1)(a) ADGM Application of English Law Regulations 2015 Practice Direction 2 UAE Federal Decree Law No. (8) of 2017 Chitty, 33rd Ed. – Paragraphs 26-192 and 26-198 McGregor, 20th Ed. – Paragraph 16-122
Executive Summary	The judgment details the Claimant's claims for outstanding tenant payments, late fees, utility costs, and liquidated damages due to the Defendant's failure to open the restaurant and make timely payments in accordance with the lease. The Court found in favour of the Claimant on all claims and ordered the Defendant to pay the specified sums.
Overall Summary	Background

	This Abu Dhabi Global Market Court of First Instance (Commercial & Civil Division) judgment was given after trial in the case between the Claimant, Rosewood Hotel Abu Dhabi LLC ("Rosewood"), and the Defendant, Skelmore Hospitality Group Ltd. ("Skelmore"). The case centred on Skelmore's breaches of a lease agreement dated 29 June 2016, whereby the Rosewood leased commercial premises in the Rosewood Hotel, Al Maryah Island, Abu Dhabi, for five years for the purpose of Skelmore operating a fine dining restaurant in the Rosewood Hotel (the "Lease"). The Rosewood, along with its parent company Mubadala Development Corporation, sought to enhance the hotel's reputation and generate revenue through this venture. However, the project was beset with problems and delays from the outset, including issues with contractors. Despite repeated assurances from Skelmore that the restaurant would open, this did not occur. Delays also arose in payments due under the Lease. Rosewood issued multiple notices of breach and demands for payment. By mid-2018, termination of the Lease was being considered, and Skelmore proposed a settlement which was not accepted. Proceedings were initiated by Rosewood, asserting breach of contract. Analysis The Court considered six heads of claim. Regarding the Tenant Payments (Base Rent, Service Charges and Marketing Charges), the Court accepted the amounts calculated by Rosewood's Director of Finance, Mr. Rama Chandran, noting that Skelmore had not presented a substantive defence, including arguments regarding lack of consideration which the Court found unconvincing. The Late Payment Fee, calculated based on the agreed rate (the three-month Emirates Interbank Offered Rate plus 8%), was also accepted as due and owing, with the Court rejecting Skelmore's defence of waiver or acquiescence. The claim for reimbursement of Direct Utilities, which Rosewood had paid on Skelmore's behalf, was also accepted. The most significant claim was for breach of Trading Obligations, based on Skelmore's failure to open the restaurant. Clause 7.16.2.1 of the Lease required Skelmore to pay liquidated damages equal to twice the Base Rent for each day the premises were not open for trade. Skelmore disputed this, citing a contradiction with the fit-out period and arguing the amount was a penalty. The Court acknowledged the merit in not applying the obligation during the six-month fit-out period (until 1 January 2017). However, the Court accepted Rosewood's argument that the liquidated damages clause was enforceable, was not a penalty (as Skelmore failed to prove it was extravagant or unconscionable), and did not require Rosewood to prove actual damages. The Rosewood had a legitimate interest in the restaurant opening, and the vacant space had negative implications for the hotel. Finally, the Court rejected Skelmore's defence that the Rosewood failed to mitigate its losses by not terminating the Lease earlier. The Court held that Rosewood had the right, but not the obligation, to terminate the Lease and
--	--

	that the rules on mitigation do not apply to claims for debt or liquidated damages. Conclusion Therefore, the Court found in favour of the Rosewood. Skelmore was ordered to pay the Rosewood several sums accrued as at the date of judgment. These amounts included outstanding Tenant Payments (Base Rent, Service Charges and Marketing Charges) totalling AED 1,142,152.41. Skelmore was also ordered to pay a late payment fee on these amounts totalling AED 172,031.28. Outstanding Direct Utilities payments amounted to AED 34,469.04. The largest sum awarded was for liquidated damages for breach of Trading Obligations, totalling AED 4,729,861.24 as at the judgment date, continuing to accrue daily at AED 4,383.56 until 31 December 2020 or valid termination or payment, whichever was earlier. Simple interest at 9% per annum was also applied to these sums until payment.
--	--