

JUDGMENT SUMMARY

Neutral Citation	[2020] ADGMCFI 0001
Case Number	ADGMCFI-2018-013
Name of Case	Laktineh & Co. Ltd. v Ahmed Al Hatta & Anor
Judge	Lord McGhie
Date Issued	30 January 2020
Catchwords	Default judgment. Application to set aside. Knowledge of proceedings and judgment. <i>Res judicata</i> . Promptness of application to set aside.
Cases Cited	Redburn Group Ltd v Fairgate Development Ltd [2017] EWHC 1223 Regency Rolls Ltd v Murat Carnall [2000] EWCA (Civ) 379
Legislation and Authorities Cited	ADGM Court Procedure Rules 2016 – Rules 41 and 200(1) Abu Dhabi Law No.4 of 2013 (the “ADGM Founding Law”) – Article 13(6) English Civil Procedure Rules 1998 – Rule 3.9
Executive Summary	This judgment considered an application to set aside a default judgment made by the First Defendant. The Court refused the application. The refusal was based primarily on the Court finding that the application was not made promptly, despite acknowledging that the First Defendant may have had a real prospect of successfully defending the original claim if it had gone to trial. The judgment details the reasons for the Court's decision, focusing on the evidence presented regarding the First Defendant's knowledge of the default judgment prior to making the set-aside application.
Overall Summary	<p>Background</p> <p>This Abu Dhabi Global Market (“ADGM”) Court of First Instance (Small Claims Division) judgment considered an application by the First Defendant, Mr Ahmed Al Hatti, as the director of the Second Defendant to set aside a default judgment.</p> <p>The default judgment had been granted on 28 February 2019 against Mr Al Hatti and the Second Defendant, Cayan Real Estate and Development LLC, in a claim brought by Laktineh & Co. Ltd (the Claimant) for legal</p>

	<p>services said to have been provided by the Claimant. The application was made under Rule 41 of the ADGM Court Procedure Rules 2016 (the “ADGM CPR”).</p> <p>Rule 41(2) sets out the conditions for setting aside a default judgment: the applicant must show that there is a real prospect of successfully defending the claim, or it appears to the Court that there is some other good reason why the judgment should be set aside or varied, and the application to set aside must have been made promptly.</p> <p>Analysis</p> <p>The Court was satisfied that the First Defendant had a real prospect of successfully defending the claim regarding his personal liability for the legal services. The concept of incorporation generally limits personal liability, and the First Defendant contended his dealings were on behalf of the Second Defendant company. The Claimant argued that the circumstances justified inferring personal liability. The claim itself was based on instructions from both the First Defendant and the Second Defendant and did not solely rely on an unsigned engagement letter. The Court also confirmed it had jurisdiction to hear the claim.</p> <p>However, the Court found that the application to set aside the judgment was not made promptly. Promptness is considered an essential requirement reflecting the importance of finality in litigation. The set-aside application was filed on 10 December 2019. The First Defendant asserted that he did not become aware of the default judgment until 31 October 2019. The Court acknowledged that if this were true, the set-aside application could have been considered prompt.</p> <p>Despite this assertion, the Court found sufficient evidence to conclude that the First Defendant had knowledge much earlier. An execution judge had certified that service of the default judgment had been effected on 22 April 2019. Crucially, Mr Tariq Siyam, the general counsel for the Second Defendant's applied to the ADGM Courts on 27 May 2019 for access to court records in the name of both the First Defendant and Second Defendant. Mr Siyam's email on 1 May 2019 also indicated awareness of the judgment following service by a Court representative. Given Mr Al Hatti's position and Mr Siyam's actions seeking information for both Defendants, the Court drew the inference that the First Defendant must have been aware of the judgment by the end of May 2019 at the latest. The First Defendant's explanations for lack of knowledge were not found to be cogent. Evidence also suggested the First Defendant received emails about the claim itself earlier, despite his assertion he did not use that email address.</p> <p>Conclusion</p> <p>As the set-aside application was not made promptly, the Court's discretion under Rule 41(2) of the ADGM CPR did not arise. Consequently, the application to set aside the default judgment was refused.</p>
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