

JUDGMENT SUMMARY

Neutral Citation	[2020] ADGMCFI 0002
Case Number	ADGMCFI-2019-003
Name of Case	Rosewood Hotel Abu Dhabi LLC v Skelmore Hospitality Group Ltd.
Judge	Justice William Stone SBS QC
Date Issued	6 February 2020
Catchwords	Application seeking information from director of judgment debtor company. Jurisdiction. Extra-territorial power to grant order.
Cases Cited	Masri v Consolidated Contractors International Co SAL and others [2009] UKHL 43 CIMC Raffles Offshore (Singapore) PTS Ltd and anor v Schahin Holding SA and others [2014] EWHC 1742 (Comm)
Legislation and Authorities Cited	ADGM Application of English Law Regulations 2015 – Article 1 ADGM Court Procedure Rules 2016 – Rules 253 and 259(2) English Civil Procedure Rules 1998 – Rule 71
Executive Summary	This judgment concerns an application by the Claimant (and judgment creditor) to compel a director of the Defendant to provide information about the company's assets and means to enforce a judgment. The application was brought under Rule 253 of the ADGM Court Procedure Rules 2016 (the “ADGM CPR”). The Defendant objected, arguing that the Court lacked extra-territorial power to order the attendance of a director residing outside the ADGM jurisdiction. The Court granted the application, finding that the director had already submitted to the Court's jurisdiction through prior involvement in the case and that, based on the unique circumstances and legislative intent of Rule 253 of the ADGM CPR, the rule applies to directors within the UAE, regardless of their specific location outside of ADGM.
Overall Summary	Background

	<p>This Abu Dhabi Global Market (“ADGM”) Court of First Instance (Commercial & Civil Division) judgment considers an application made by the Rosewood Hotel Abu Dhabi LLC (the Claimant and judgment creditor) against Skelmore Hospitality Group Ltd (the Defendant and judgment debtor). The application was made pursuant to Rule 253(1) of the ADGM Court Procedure Rules 2016 (the “ADGM CPR”). This rule allows a judgment creditor to apply for an order requiring a judgment debtor, or an officer or director if the debtor is a company, to attend Court and provide information about their means or any other matter needed to enforce a judgment or order.</p> <p>The Claimant was seeking to obtain information from the Defendant regarding its means and other matters required to enforce a judgment debt of AED 6,278,514.61. The application sought an order specifically requiring Mr Emain Kadrie, in his capacity as a director and shareholder of the Defendant (and also shareholder and Chairman of a newly-created entity, Skelmore Holdings Ltd), to appear before the Court.</p> <p>The Claimant had concerns based on investigations into the Defendant's assets and alleged that the Defendant had created two new entities and transferred its most significant asset, a shareholding in Roberto's Restaurant & Club Ltd, to Skelmore Holdings Ltd, purportedly to avoid satisfying the judgment.</p> <p>The Defendant raised a discrete jurisdictional objection, arguing that the Court lacked extra-territorial power to grant the application because Rule 253 of the ADGM CPR did not permit ordering the attendance of a director who was outside the jurisdiction.</p> <p>They relied on the Rule 71 of the English Civil Procedure Rules 1998 (the “English CPR”) and the House of Lords decision in <i>Masri v Consolidated Contractors International Co SAL and others</i> UKHL 43 (the “Masri Case”), which held that Rule 71 of the English CPR did not contemplate an order against an officer outside the jurisdiction. The Defendant highlighted that the judgment debtor was registered in the Dubai International Financial Centre, Mr Kadrie resided in Dubai, and he was not present in the ADGM at the time of the application.</p> <p>Analysis</p> <p>The Court found that the Defendant's objection to be “<i>ambitious</i>”. The Court determined that Mr Kadrie was in a significantly different position from the director in the <i>Masri Case</i>, as he had been an active participant in the procedural life of this action, signing witness statements and application notices. By his actions and the Defendant's unconditional submission to the ADGM jurisdiction via contract, they had accepted the Court's jurisdiction. The Court also accepted the Claimant's submission that Mr Kadrie could be regarded as the Defendant's alter ego for the purposes of a Rule 253 order.</p> <p>Crucially, the Court reasoned that its task was to interpret Rule 253 of the ADGM CPR based on its own legislative intent, not just blindly follow interpretations of the historical Rule 71 of the English CPR as decided in the <i>Masri Case</i>. The language of Rule 253 of the ADGM CPR is broad and</p>
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	<p>unrestricted, applying to any officer or director. Given the limited geographical area of the ADGM and the ease of movement within the UAE, interpreting Rule 253 of the ADGM CPR according to the <i>Masri Case</i> principles would render it largely ineffective. Therefore, the Court held that Rule 253 of the ADGM CPR applies to all officers, directors, and partners within the UAE, and potentially beyond (the Court held that for present purposes the Court did not need to decide this latter point). Even if this primary conclusion was incorrect, the Court held that a purposive construction of Rule 253 of the ADGM CPR warranted departing from the common law approach in the <i>Masri Case</i> and giving the provision extraterritorial effect, at least within the UAE.</p> <p>Conclusion</p> <p>Accordingly, the Court found no valid basis for the Defendant's objection and granted the Claimant's application to conduct a Rule 253 examination of Mr Kadrie.</p> <p>The Court also accepted that this was an appropriate case for the hearing before a Judge and granted leave for the Claimant to attend and question Mr Kadrie. Costs of the application were awarded to the Claimant.</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.