

JUDGMENT SUMMARY

Neutral Citation	[2020] ADGMCFI 0004
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	4 June 2020
Catchwords	Final third party debt order. Procedures for making an interim third party debt order final. Objections by third party to the making of a final order. Whether there is a debt due or accruing due from the third party to the judgment debtor. Insolvency of judgment debtor and third party. Judgment creditor not to be placed in a better position than other creditors of the judgment debtor.
Cases Cited	<p>Taurus Petroleum Ltd v State Oil Marketing Co [2018] ACC 690</p> <p>Merchant International Company Limited v Natsionalna Aktsionerna Kompaniia Naftogaz Ukrainy v The Bank of New York Mellon [2014] EWCA Civ 1603</p> <p>Hardy Exploration & Production (India) Inc v Government of India [2019] QB 544</p> <p>Ayerst v C & K (Construction) Ltd [1976] AC 167</p> <p>Roberts Petroleum Ltd v Bernard Kenny Ltd [1982] 1 WLR 307; [1983] 2 AC 192</p>
Legislation and Authorities Cited	<p>ADGM Court Civil Procedure Rules 2016 – Rules 253, 260, 261(1), 262, 263, 264(3), 265(1), 266(1)(a), 266(2)(c) and 267</p> <p>DIFC Law No 1 of 2019 – Section 82(1)(a)</p>
Executive Summary	<p>This judgment considers the Claimant’s request for a final Third Party Debt Order (“TPDO”) against Roberto's Restaurant & Club Ltd, the Third Party. The Claimant had previously secured judgment debt against Skelmore Hospitality Group Ltd, the Defendant. The Claimant sought an TPDO to obtain funds allegedly owed by the Third Party to the Defendant to partially</p>

	<p>satisfy the judgment debt. The Court dismissed the Claimant's application due to an insufficient demonstration of a clear debt owed by the Third Party to the Defendant. While the Court considered the Defendant's argument regarding potential insolvency, it ultimately did not deem this point applicable as no formal liquidation proceedings had been initiated at the time of this judgment.</p>
Overall Summary	<p>Background</p> <p>This Abu Dhabi Global Market (“ADGM”) Court of First Instance (Commercial & Civil Division) judgment concerns an application by the Rosewood Hotel Abu Dhabi LLC (the Claimant) for a final Third Party Debt Order (“TPDO”) against Roberto's Restaurant & Club Ltd (“Roberto's”), the Third Party.</p> <p>The Claimant is the judgment creditor, having previously obtained judgment against Skelmore Hospitality Group Ltd. (“Skelmore”), the Defendant, for a sum exceeding AED 6.5 million plus interest. Roberto's and Skelmore are sister companies within the Skelmore Group.</p> <p>The Claimant had obtained an <i>ex parte</i> interim TPDO against Roberto's on 16 March 2020. The basis for this application was a belief that Roberto's owed Skelmore AED 3,219,763, as reflected in Skelmore's 2019 draft accounts. The Claimant sought to rely on Rules 260 – 267 of the ADGM Court Procedure Rules 2016 to obtain this sum to offset the unpaid judgment debt.</p> <p>In response, Skelmore and Roberto's (represented jointly) objected to the final order. They argued that the AED 3,219,763 was incorrectly characterised as a debt. Mr. Justin Mostert, Chief Finance and Investment Officer of the Skelmore Group, asserted that the figure was merely an accounting entry related to historic capitalisation and subject to inter-company cross-funding and set-off within the Group. He contended that, when all liabilities and receivables were netted off, Skelmore was actually a net debtor to Roberto's. A second objection raised was the impending insolvency of both Skelmore and Roberto's, arguing a TPDO should not be granted as it would give the Claimant preference over other creditors.</p> <p>Analysis</p> <p>The Court noted that the application was to be decided based on written evidence and submissions, as the parties agreed that no oral hearing or cross-examination was necessary.</p> <p>The Court found that the Claimant's evidence of a debt consisted solely of a single line item in draft unaudited accounts. The Court emphasised that the ultimate legal burden remained on the Claimant to prove the existence of a debt due or accruing due from Roberto's to Skelmore.</p> <p>Addressing the debt issue, the Court was not satisfied that a debt sufficient to found a final TPDO had been demonstrated. It was unwilling to disregard Mr. Mostert's evidence regarding set-off and inter-company balances without further inquiry, which had not been requested. The</p>

	<p>Court felt the Claimant was attempting to "cherry pick" accounting entries.</p> <p>On the insolvency argument, the Court found that this issue did not "bite" because no winding up petition had yet been lodged against either Skelmore or Roberto's, nor had they entered into voluntary liquidation.</p> <p>Conclusion</p> <p>Ultimately, the Court, exercising its discretion and guided by the principle of doing equity to all parties, dismissed the application. The primary reason was the Claimant's failure to prove, on the evidence provided, that a debt was actually due or accruing due from Roberto's to Skelmore. The <i>ex parte</i> interim TPDO dated 16 March 2020 was discharged forthwith.</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.