JUDGMENT SUMMARY

Neutral Citation	[2020] ADGMCFI 0005
Case Number	ADGMCFI-2020–005
Name of Case	Erik Rubingh v Veloqx RSC Limited
Judge	Justice Sir Michael Burton GBE
Date Issued	13 July 2020
Catchwords	Application for summary judgment. Termination of employment. Pre-contractual negotiations. Entire agreement. Whether amendment required to claim before summary judgment can be given. No arguable defence. Compensation.
Cases Cited	–
Legislation and Authorities Cited	ADGM Employment Regulations 2019 (Compensation Awards and Limits) Rules 2019 – Section 3(2) ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 – Section 39 Practice Direction 4
Executive Summary	This judgment concerned an application for summary judgment by the Claimant for a US$1 million payment from the Defendant (his former employer). The Court granted judgment in favour of the Claimant, ruling that there was no arguable defence against the Claim which stemmed from an agreement independent of his employment contract with the Defendant, which was designed to compensate the Claimant for leaving his previous job.
Overall Summary	**Background** This Abu Dhabi Global Market ("**ADGM**") Court of First Instance (Employment Division) judgment concerned an application for summary judgment by the Claimant, Erik Rubingh, against the Defendant, Veloqx

	RSC Limited. The Claim was for a payment of US$1 million following the termination of Mr Rubingh's employment. Mr Rubingh was employed by another company, BMO Global Asset Management ("**BMO**"), and would have had to forfeit a right to US$1.5 million in unvested BMO shares if he left BMO to join the Defendant. To induce him to join the Defendant as Head of Factor Investments, the Defendant agreed to compensate him. Following email discussions, an agreement was reached for a payment of US$1 million over three years, in tranches of US$333,000 annually. Crucially, it was agreed that if the Defendant terminated his employment before the end of September 2022, then the whole US$1 million would become immediately due. This agreement was detailed in an offer letter dated 19 March 2019 and referred to in the employment contract of the same date (the "**March Employment Contract**"). Clause 4.2 of the March Employment Contract stated that the US$1 million agreement would operate independently of the probationary period. Clause 16.9 of the March Employment Contract also expressly stated that Clause 16.8 (concerning termination due to liquidation of the company etc.) would not affect the US$1 million agreement. Mr Rubingh commenced employment on 20 September 2019. In December 2019, the Defendant sent a letter explaining technical amendments to the March Employment Contract due to new ADGM Regulations, effective 1 January 2020. A new employment contract dated 9 December 2019 was enclosed (the "**December Employment Contract**"), which recorded a commencement date of 19 September 2019 and contained the technical amendments, but omitted Clause 16.9. The cover letter stated these amendments were by law and did not require the Claimant's agreement. Mr Rubingh's employment was terminated by the Defendant by a letter dated 21 April 2020, effective with 180 days' payment in lieu of notice. The letter stated termination was "*in accordance with clause 16 of your contract*" but gave no reason for the termination. The Defendant claimed they had ceased activity in the UAE and would commence liquidation, but confirmed this decision was not related to the Claimant's Claim. The Claimant's other employment entitlements were paid in full, but not the US$1 million. The Defendant raised several defences including arguments based on: pre-contractual negotiations, an entire agreement clause, a pleading technicality (the fact that the December Employment Contract is not referred to in the Particulars of Claim), that the payment was discretionary, and the construction of Clauses 4.2 and 16.8, particularly in light of the omission of Clause 16.9 in the December Employment Contract. **Analysis and Conclusion**

	The Court dismissed the Defendant defences. It found that the US$1 million agreement was in the offer letter and referred to in the Contracts such that the entire agreement clause was irrelevant. The offer letter clearly showed that the US$1 million was not discretionary. The Court found the Defendant's explanations for the inclusion of Clause 4.2 and the omission of Clause 16.9 were unpersuasive. The Court determined that Clause 16.8, even without Clause 16.9, could not affect the Claimant's independent entitlement to the US$1 million. Finding no arguable defence with any real prospect of success, the Court granted summary judgment for the Claimant in the sum of US$1 million.