

JUDGMENT SUMMARY

Neutral Citation	[2021] ADGMCFI 0003
Case Number	ADGMCFI-2020-026
Name of Case	AEFO Technical Services LLC v Aquarius Global Limited
Judge	Justice Stone SBS QC
Date Issued	7 April 2021
Catchwords	Application for Penalty Order; contempt of court; whether breach of an order for the payment of money into court capable of attracting a contempt order; burden of establishing contempt; criminal standard; whether Defendant, in the exercise of judicial discretion, “otherwise in contempt of court”
Cases Cited	<p>Prosser v Prosser [2011] EWHC 2172 (Ch)</p> <p>Bates v Bates [1888] 14 PD 17 (CA)</p> <p>Graham v Graham [1992] 2 FLR 406</p> <p>Discovery Land Company and ors v Jirehouse (a body corporate) and ors [2019] EWHC 2249 (Ch)</p>
Legislation and Authorities Cited	<p>Application of English Law Regulations 2015</p> <p>ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 - Section 96</p> <p>Commercial Licensing Regulations 2015 (Fines) Rules 2020</p> <p>ADGM Court Procedure Rules 2016 - Rules 287 and 288</p> <p>UK Civil Procedure Rules – Rule 81.4</p>
Executive Summary	<p>This judgment concerned AEFO Technical Services LLC's application for a penalty order against Aquarius Global Limited's director for alleged contempt of court. The Court dismissed the application. This arose from the Defendant's failure to fully pay AED 21 million into court as ordered. The Court found the application unjustified in principle and noted that the</p>

	<p>Defendant's defence had already been struck out, the criminal standard of proof for contempt was not met, and no penal notice was issued.</p>
	<p>Background</p> <p>This Abu Dhabi Global Market ("ADGM") Court of First Instance (Commercial & Civil Division) judgment concerned an application made by AEFO Technical Services LLC (the Claimant) for a Penalty Order against Mr. Parish, the sole director of Aquarius Global Limited (the Defendant), alleging contempt of court. The origin of this application lies in an Interim Payment Order issued on February 14, 2021, which required the Defendant to pay AED 21,004,750 into the court. This sum represented the purchase monies for the supply of 1 million N95 3M 1860 protective masks intended for the NHS in Britain.</p> <p>The Defendant subsequently paid AED 10 million into court, resulting in a shortfall of AED 11,004,750. This prompted the Claimant to take further action, issuing an '<i>unless</i>' order application on March 4, 2021, which sought to strike out the Defendant's Defence and enter judgment if the shortfall was not paid by March 11, 2021. On the same day, the Claimant filed the application for a Penalty Order, suggesting to the Court that both applications be decided together. The Court, however, declined to consider the applications simultaneously.</p> <p>Despite extensions granted by the Court for compliance with the payment order, first to March 31, 2021, and then to April 6, 2021, the Defendant failed to make any further payment. Consequently, the '<i>unless</i>' Order was formally entered on April 6, 2021, leading to the striking out of the Defendant's Defence. It was only at this stage that the Court deemed it appropriate to consider the contempt application.</p> <p>The Claimant sought specific relief in this Application: either a referral of Mr. Parish's contempt to the Attorney General of Abu Dhabi, or alternatively, a fine of USD 10,000 payable into the Court, along with the Claimant's costs for the application. The application was mounted under rules 287 and 288 of the ADGM Court Procedure Rules 2016 ("ADGM CPR") and Regulation 96 of the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 (the "Regulations"). Rule 287 allows for a penalty order if a person or an officer of a company fails to comply with a court order. Regulation 96 grants the Courts jurisdiction over contempt matters, including misbehaviour or being "<i>otherwise in contempt of court</i>," and allows for penalties such as a fine not exceeding Level 4 (USD 10,000) or referral to the Attorney General of Dubai.</p> <p>Analysis</p> <p>The Court noted that the law regarding liability for contempt is complex and often unclear, having developed under common law and statutory provisions that have not always been consistent. While the Claimant's application essentially argued that non-compliance with a Court Order</p>
Overall Summary	

	<p>necessarily leads to a contempt sanction, the Court found this "<i>broad-brush approach</i>" unhelpful given the difficulties in the application.</p> <p>Comparing with English law, the Court highlighted that the former English Rule 81.4 (equivalent to ADGM CPR r 287) allowed for committal for non-compliance, with well-known examples including breaches of freezing orders or non-compliance with disclosure orders. However, the English authorities are not unified on contempt for non-payment of money. This is largely due to the English Rule 81.4 being subject to the Debtors Acts 1869 and 1878, which restrict the court's power to imprison for non-payment of most debts, typically limiting remedies to enforcement against the debtor's property. While <i>Prosser v Prosser</i> suggested that the Debtors Act might not apply to orders requiring money to be deposited in court (as opposed to paying an ordinary debt directly to a claimant), the Court noted that these English Debtors Acts have not been incorporated into ADGM law through the Application of English Law Regulations 2015. Consequently, there is no equivalent statutory prohibition in ADGM concerning contempt orders for the payment of a sum of money, making the law in ADGM on contempt for breach of an order for non-payment "<i>at the least, equivocal</i>".</p> <p>The Court expressed difficulty in accepting the dichotomy suggested by English authority, where breaching an order to pay money <i>into court</i> might attract contempt, but breaching an order to pay money <i>directly to a claimant</i> would not. On this basis alone, the Court was "<i>minded to reject the present Application as being unjustified as a matter of principle</i>".</p> <p>Nevertheless, assuming that a contempt application <i>could</i> be mounted for breach of a procedural order requiring payment into court, the Court proceeded to exercise its judicial discretion under Regulation 96(2)(c) to determine if the factual circumstances merited a contempt order. The Court identified three significant mitigating factors against making such an order:</p> <ol style="list-style-type: none"> Prior Procedural Sanction: Non-compliance with the payment order had already resulted in the striking out of the Defendant's Defence, which the Court considered a "<i>condign sanction</i>" for non-compliance. The Court did not view the Defendant's conduct as "<i>contumelious conduct</i>" typically associated with contempt that warrants public opprobrium or referral to the Attorney General. Burden of Proof and Ambiguity of Conduct: The failure to pay could stem from an inability to pay rather than a deliberate defiance. The Defendant's director, Mr. Parish, had indicated an inability to pay the full amount, although he assured the Court of the Defendant's intention to make full payment. Crucially, the burden of establishing contempt rests on the Claimant and must be proven to the criminal standard of "<i>beyond reasonable doubt</i>". The Court found that this standard had not been met on the evidence presented. The Court also dismissed the Claimant's argument to consider the Defendant's "<i>ongoing and repeated</i>
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	<p><i>conduct,"</i> stating that only the specific alleged contemptuous conduct should be scrutinized.</p> <p>3. Lack of Penal Notice: As a matter of standard practice, an order whose breach could lead to a contempt order should typically include a penal notice. The original Order of February 14, 2021, and subsequent orders, did not contain such a notice. The contempt application itself appeared to be a "<i>procedural afterthought</i>" by the Claimant, filed to exert additional pressure for payment.</p> <p>Conclusion</p> <p>For the reasons outlined, particularly the Court's principled difficulty with the nature of the alleged contempt, the existence of an already imposed procedural sanction (striking out of Defence), the Claimant's failure to meet the criminal standard of proof, and the absence of a penal notice in the original order, the Court ultimately declined to grant the Penalty Order sought by the Claimant. Accordingly, the Application was dismissed, with an order <i> nisi</i> that there be no order as to costs, which would become absolute unless an application to vary was made within seven days.</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.