

JUDGMENT SUMMARY

Neutral Citation	[2023] ADGMCFI 0003
Case Number	ADGMCFI-2020-020
Name of Case	NMC Healthcare LTD and associated companies
Judge	Justice Kenneth Hayne
Date Issued	23 February 2023
Catchwords	Contempt by breach of court order. Principles of contempt. Admission of contempt. Role and authority of chairman of a company under UAE Law. Whether directors instructed and approved acts and omissions constituting the contempts.
Cases Cited	<p>A-G for Tuvalu v Philatelic Distribution Corporation [1990] 1 WLR 926</p> <p>Integral Petroleum SA v Petrogat FZE [2020] EWHC 558 (Comm)</p> <p>Marengo v Daily Sketch and Sunday Graphic Ltd 1948 1 All ER 406</p> <p>Dar Al Arkan Real Estate Development Co v Refai [2015] 1 WLR 135</p> <p>Kwan Ping Bong v R [1979] AC 609</p> <p>Masri v Consolidated Contractors International Co SAL [2011] EWHC 1024 (Comm)</p> <p>Petrogat [2020] EWHC 558 (Comm)</p> <p>Solicitor General v Jones [2013] EWHC 2579 (Fam)</p> <p>Jones [2013] EWHC 2579 (Fam)</p>
Legislation and Authorities Cited	<p>UAE Federal Decree Law No. 32 of 2021 Concerning Commercial Companies (the “Commercial Companies Law”) – Articles 143, 154, 155, 156 and 267</p> <p>ADGM Insolvency Regulations 2015 – Section 45</p> <p>ADGM Court Procedure Rules 2016 – Rule 287</p>

<p>Executive Summary</p>	<p>This judgment considers a case that was brought by NMC Healthcare Limited (in administration) (subject to a deed of company arrangement) (“NMCH”) against Noor Capital PSC (“Noor”) and several individuals associated with Noor, including directors and officers. NMCH’s application alleged that Noor and several individuals associated with Noor were in contempt of Court for breaching a prior Court Order, which prohibited Noor from pursuing certain enforcement actions in the Dubai Courts.</p> <p>The Court held Noor Capital and its Chairman in contempt for seven alleged breaches of the prior Court Order. However, the contempt allegations against the other named Respondents, including other directors and officers, were not proven, largely based on the evidence given by Noor’s Chairman and the significant authority granted to the Chairman under UAE Federal Decree Law No. 32 of 2021 Concerning Commercial Companies.</p>
<p>Overall Summary</p>	<p>Background</p> <p>This Abu Dhabi Global Market (“ADGM”) Court of First Instance (Commercial & Civil Division) judgment concerns applications by NMC Healthcare Limited (in administration) (subject to a deed of company arrangement) (“NMCH”) to hold Noor Capital PSC (“Noor”) and several individuals associated with Noor in contempt of Court. Noor had obtained a payment order against NMCH in the Dubai Courts, which was upheld on appeal to the Court of Cassation in Dubai.</p> <p>Under the ADGM Insolvency Regulations 2015 and the terms of the deed of company arrangement (which is governed by ADGM law), enforcing judgments against NMCH is prohibited without administrator consent or Court permission. Further, the terms of NMCH’s Deed of Company Arrangement are binding upon Noor.</p> <p>On 5 October 2022, the ADGM Court issued an Order directing Noor not to commence or continue proceedings in the Dubai Courts to enforce its debt against NMCH and to stay or withdraw specific applications in the Dubai Courts by 5:00 pm GST on 10 October 2022 (the “5 October Order”).</p> <p>NMCH alleged that Noor committed eight acts or omissions that constituted disobedience of the 5 October Order, including applying to enforce the payment order and failing to withdraw applications by the deadline. These allegations were treated as “<i>counts</i>” 1 to 8. NMCH also alleged that the individuals associated with Noor were in contempt because: they had a positive duty to ensure that Noor complied with the 5 October Order; or they caused Noor to violate the 5 October Order; or they aided or abetted Noor or wilfully failed to take reasonable steps to ensure compliance the 5 October Order.</p> <p>Analysis</p>

	<p>The Court noted that the allegations of contempt must be proved to the criminal standard.</p> <p>Under Rule 287(3) of the ADGM Court Procedure Rules 2016, a penalty Order against a company for contempt may also be made against any director or other officer. The 5 October Order included a penal notice warning that any person who knows of the Order and helps or permits Noor to breach it could also be held in contempt. "<i>Helping</i>" means active conduct like aiding and abetting, while "<i>permitting</i>" includes wilful failure to take reasonable steps to ensure the Order is obeyed.</p> <p>Noor and its Chairman, Mr. Abdul Jabbar Al-Sayegh (the Third Respondent), admitted that Noor's actions after 5 October 2022 amounted to a breach of the 5 October Order and that they (Noor through its Chairman) had the required mental element for contempt. Mr. Al-Sayegh also stated in an affidavit that he alone was solely responsible for the decisions and actions taken by Noor to continue enforcement proceedings in Dubai after the 5 October Order. He said that he did not consult other directors regarding these actions and was entitled to make these decisions as Chairman.</p> <p>The Court considered the role of the Chairman under Article 155(1) of UAE Federal Decree Law No. 32 of 2021 Concerning Commercial Companies, noting that Article 155(1) makes the Chairman the legal representative of the company before courts and with third parties, subject to the company's statute. This provision, alongside the rules for convening board meetings, lends weight to Mr. Al-Sayegh's evidence that he was entitled to make such decisions without referring to the board.</p> <p>NMCH argued that the other directors should be found liable because they knew of the 5 October Order (or should have known through good corporate governance) and failed to ensure compliance.</p> <p>However, the Court found no evidence that the other directors expressly instructed or approved of the acts or omissions constituting the contempt. The Court was also not persuaded to reject Mr. Al-Sayegh's evidence that he acted alone. Those directors who received notice of the 5 October Order and spoke to Mr. Al-Sayegh were told he had the matter was in hand and that Noor would seek to resolve the jurisdictional conflict, which the Court found sufficient to relieve them of the need for further inquiry.</p> <p>Regarding the failure to withdraw applications by the deadline (count 7), the Court clarified that failure to comply with a mandatory order by a specific time is a single breach, not a "<i>continuing</i>" obligation justifying a finding of further contempt.</p> <p>The Court was not persuaded that Noor's Legal Manager (the Second Respondent) or Noor's CEO (the Twelfth Respondent) helped or permitted Noor's breaches. Both were subject to the authority of the board and potentially the Chairman, and Mr. Al-Sayegh claimed sole responsibility.</p> <p>Conclusion</p>
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	<p>In conclusion, the Court found that the contempt alleged in counts 1 to 7 against Noor Capital PSC and Mr. Al-Sayegh were proved. The contempt alleged against the other Respondents were not proved. Issues about purging the proved contempt and the further orders in consequence of the findings of contempt were adjourned to a date to be fixed.</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.