

JUDGMENT SUMMARY

Neutral Citation	[2023] ADGMCFI 0008
Case Number	ADGMCFI-2020-015
Name of Case	AC Network Holding Limited & Others v Polymath Ekar SPV1 & Others
Judge	Justice William Stone SBS KC
Date Issued	7 April 2023
Catchwords	Assessment of costs; Without Prejudice communications; Part 18 of the ADGM CPR; Shareholders' dispute.
Cases Cited	<p>Global Energy Horizons v Gray [2021] EWCA Civ 123</p> <p>Straker v Tudor Rose [2007] EWCA Civ 368</p> <p>Halsey v Milton Keynes General NHS Trust [2004] EWCA Civ 1288</p> <p>PGF II SA v OMFS Company 1 Ltd [2013] EWCA Civ 1288</p> <p>Garritt-Critchley v Ronnan [2014] EWHC 1774 (Ch).</p>
Legislation and Authorities Cited	–
Executive Summary	<p>This judgment concerned the allocation of costs. The Court awarded Claimants 70% of their costs from May 2022, after they secured a USD 779,500 judgment. Claimants were deemed the successful party, establishing liability despite a much lower award than claimed. However, their unreasonable refusal to mediate led to a costs reduction, while the Defendants' non-compliant settlement offers were noted.</p>
Overall Summary	<p>Background</p> <p>This Abu Dhabi Global Market (“ADGM”) Court of First Instance (Commercial & Civil Division) judgment concerned the allocation of costs following the Court's earlier judgments on liability (15 November 2022) and quantum (7 February 2023). The Claimants, AC Network Holding Limited, AC Pool Holding Limited, Khalil Mohamed Binladin, Dalia Khalil Binladin, and Horizon Light Investments LLC, had obtained a judgment</p>

	<p>against the First to Fourth Defendants (Polymathe Ekar SPV1, Polymath Ekar SPV2, Vilhelm Nikolai Paus Hedberg, and Ravi Nagesh Bhusari) in the sum of USD 779,500, plus interest. The total claim initially sought by the Claimants was USD 37,147,200. Both sides filed submissions regarding costs, remaining "resolutely divided". Given the significant amount of costs expended, the Court determined it was not in a position to make a summary assessment and would instead address issues of principle, with costs subject to detailed assessment later.</p> <p>Analysis</p> <p>A central issue was determining the "successful party". The Defendants argued they were successful because the damages awarded were significantly lower than the Claimants' demand (USD 779,000 vs. USD 37.1 million) and the Court's valuation of Ekar Holding Limited (USD 3 million) was far below the Claimants' valuation (USD 87.2 million). They contended they should recover their costs. The Claimants, conversely, asserted their entitlement to costs on a standard basis, arguing that a party establishing liability and being awarded damages is typically considered successful, and the Defendants should have made a Part 18 Offer to protect their position. Citing English Court of Appeal cases <i>Global Energy Horizons v Gray</i> and <i>Straker v Tudor Rose</i>, the Claimants emphasized that the "most important thing is to identify the party who is to pay money to the other". The Court concurred with the Claimants, stating that the relatively small recovery did not characterize the Claimants as the 'losing' party. It found that the Claimants succeeded on the two overarching issues: whether the "Drag Notice" involved a bona fide purchaser and whether the Defendants' Counterclaim should succeed. The fundamental question for the Court was whether there was "good reason to depart from the well-established principle that costs should follow the event".</p> <p>The Court then scrutinised settlement attempts. The Defendants pointed to a "July Offer" of USD 1 million made on 19 July 2022, arguing it was a reasonable and proportionate offer that the Claimants failed to beat. However, the Claimants argued, and the Court agreed, that this offer was not compliant with Part 18 of the ADGM Court Procedure Rules (CPR), as it failed to specify a 21-day acceptance period or offer costs in addition to the principal sum. The Court noted that by 19 July 2022, the Claimants' costs already exceeded USD 1 million, meaning the offer would not have even covered their costs to date.</p> <p>Regarding a mediation offer made by the Defendants on 7 April 2022, which the Claimants did not engage with, the Defendants cited cases like <i>Halsey v Milton Keynes General NHS Trust</i> to argue that the Claimants' failure to mediate was unreasonable and should lead to an uplifted costs recovery on an indemnity basis. The Claimants countered that without prejudice negotiations were ongoing, mediation would have been premature before expert reports were exchanged, and any sanction should be minor. The Court concluded that declining mediation was "unreasonable in all the circumstances" and provided a basis for disallowing part of the Claimants' costs.</p>
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	<p>The Defendants also highlighted their early disclosure of a preliminary FTI Consulting report in February 2022, which indicated a low valuation of Ekar, arguing this should have prompted the Claimants to settle on reasonable terms. The Claimants objected to the reference to this "without prejudice" document. While acknowledging the impropriety of exhibiting the without prejudice letter, the Court accepted that the Claimants had early sight of the report and were aware of the low valuation.</p> <p>Other related considerations were dismissed by the Court as grounds for departing from the general costs rule. These included the Claimants' delayed election of remedy (considered "part and parcel of the usual run of litigation"), allegations of irrelevant personal claims and attacks (dismissed as "cut and thrust of the trial"), and "irrelevant allegations of backdating" (a legitimate pursuit given "egregious and misguided behaviour"). Finally, the Court declined to order costs against Mr. Hashemi (Fifth Defendant), emphasizing that the dismissal of personal claims against him "weighs heavily in the balance". The Court also made specific orders regarding the costs of six interlocutory applications, with some having no order as to costs and others being bifurcated. The proportionality of costs would be addressed during detailed assessment.</p> <p>Conclusion</p> <p>In exercising its discretion, the Court ordered that the Claimants are to have their costs of the proceedings, but with recovery limited to 70% of such costs from 1 May 2022. These costs are subject to detailed assessment on a standard basis. The Defendants' application for costs was dismissed.</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.