

### JUDGMENT SUMMARY

<b>Neutral Citation</b>	[2023] ADGMCFI 0009
<b>Case Number</b>	ADGMCFI-2022-265
<b>Name of Case</b>	Union Properties P.J.S.C & Anor. v. Trinkler & Partners Ltd & Others
<b>Judge</b>	Justice Sir Andrew Smith
<b>Date Issued</b>	01 May 2023
<b>Catchwords</b>	Failure to serve notice under CPR r.25. ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations, 2015, article 5(1): "relating to any criminal offence". Jurisdiction under article 13(8) of Founding Law. Jurisdiction under article 13(7)(a) of Founding Law. Jurisdiction under article 13(7)(b) of Founding Law. Jurisdiction under CPR r.24(2). The doctrine of forum non conveniens, and its application to a choice between UAE jurisdictions. Freezing order: dissipation of assets. Full and frank disclosure on application for ex parte order. Further information about disclosed assets.
<b>Cases Cited</b>	<p>Three Rivers DC v Bank of England, [2001] UKHL 16</p> <p>Qatar Airways Group QCSC v Middle East News FZ LLC, [2020] EWHC 2975</p> <p>Abu Dhabi Commercial Bank v Shetty, [2022] EWHC 529 (Comm)</p> <p>Lungowe v Vedanta Resources Plc, [2019] UKSC 20</p> <p>Spiliada Maritime Corp v Cansulex, [1979] AC 460</p> <p>JSC BTA Bank v Granton Trade Limited, [2010] EWHC 2577 (Comm)</p> <p>Investment Group Private Ltd v Standard Chartered Bank, [2015] DIFC CA 004</p> <p>Fleming v Dubai Islamic Bank PJSC, [2021] ADGMCFI 006</p> <p>Noor Capital PSC v NMC Healthcare Ltd, Claim 1 of 2023 (UAE Federal Supreme Court)</p>
<b>Legislation and Authorities Cited</b>	Misrepresentation Act 1967 (UK) - Section 2(1)

	<p>Application of English Law Regulations 2015</p> <p>ADGM Financial Services and Markets Regulations 2015</p> <p>UAE Civil Code - Article 282</p> <p>ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations, 2015 - Section 5(1)</p> <p>Abu Dhabi Law No. (4) of 2013 (as amended by Abu Dhabi Law No. (12) of 2020) - Sections 13(7)(a), 13(7)(b) and 13(8)</p>
<b>Executive Summary</b>	<p>This judgment considered fraud claims of AED 320M involving P-Notes against a former executive. It affirmed jurisdiction via an ADGM entity and maintained the freezing order, citing an arguable case and dissipation risk. However, the proprietary order was discharged due to speculative evidence. The Court also refused a broad request for further asset information, emphasizing proportionality.</p>
<b>Overall Summary</b>	<p><b>Background</b></p> <p>This Abu Dhabi Global Market (“<b>ADGM</b>”) Court of First Instance (Commercial &amp; Civil Division) judgment concerns multiple applications in a case initiated by Union Properties LLC (“<b>UP</b>”) and UPP Capital Investment Co LLC (“<b>UC</b>”) (Claimants) against thirteen defendants, including Mr Ahmed Khouri (Twelfth Defendant). The Claimants allege a large-scale fraud, amounting to over AED 320 million, involving the unlawful use of funds to purchase Participation Notes (“<b>P-Notes</b>”), the proceeds of which were allegedly misappropriated. Mr Khalifa Alhammadi (Tenth Defendant) is identified as the alleged “<i>controlling mind</i>” of this fraud, with others, including Mr Khouri, purportedly assisting or acting at his direction.</p> <p>The alleged scheme involved transferring Claimant funds to a Julius Baer account, diverting them to P-Notes, and then converting 364 million P-Notes into UP shares held by Mr Al Mulla. Misleading reports were allegedly used to disguise these misappropriations. In November 2022, the Court granted freezing and proprietary injunctions against nine defendants, including Mr Khouri. Mr Khouri subsequently applied to challenge the Court’s jurisdiction, seek discharge of the injunctions, and request an extension of time, while the Claimants sought further information about his assets.</p> <p><b>Analysis</b></p> <p>The Court addressed several applications during hearings on 29 and 30 March 2023. The Extension of Time Application for Mr Khouri was granted without opposition.</p> <p><b>Jurisdiction Application</b></p> <p>Regarding Mr Khouri’s Jurisdiction Application, the Court rejected his arguments. First, his argument that service was invalid due to missing</p>

	<p>notice under Rule 25(2) of the Court Procedure Rules was dismissed; the Court deemed it an excusable irregularity and noted Mr Khouri waived the complaint by acknowledging service.</p> <p>Second, the argument that the claims related to criminal matters, thus falling outside the Court's jurisdiction under Section 5(1) of the Regulations, was rejected because the Court's role is to determine civil liability, irrespective of potential criminal aspects.</p> <p>Third, on jurisdictional gateways, the Court found it had jurisdiction over claims against Mr Khouri under Section 13(7)(a) of the Founding Law, as the claims <i>"involved"</i> First Fund Management Limited ("<b>FFM</b>"), an ADGM-registered entity central to the alleged fraud. Other jurisdictional bases invoked by Claimants were either rejected (e.g., IMA jurisdiction clause not applicable to Mr Khouri, Section 13(7)(b) Founding Law) or noted as alternative bases the Court would have permitted if necessary (CPR Rule 24(2)). The Court concluded there was a <i>"real issue to be tried"</i> against Mr Khouri regarding conspiracy and breach of fiduciary duties. Finally, the <i>forum non conveniens</i> argument, suggesting Switzerland or Dubai onshore courts were more appropriate, was rejected. The Court emphasized that the doctrine generally does not apply to conflicts between different UAE courts, as such conflicts are exclusively resolved by the Federal Supreme Court.</p> <p><b>Discharge Application</b></p> <p>Mr Khouri's Discharge Application concerning the freezing order was refused. The Court found the Claimants had a <i>"good arguable case"</i> against Mr. Khouri for both unlawful conspiracy and breach of fiduciary duties and a <i>"real risk of dissipation"</i> of assets was established due to the alleged sophisticated, international fraud. Although there was some delay in applying for the order, it was not deemed fatal. While acknowledging some limited shortcomings in the Claimants' <i>"full and frank disclosure"</i> during the initial <i>ex parte</i> application, these were not severe enough to warrant discharging the order. The Court did grant Mr. Khouri leave to restore his application for the cross-undertaking in damages to be fortified.</p> <p>Mr Khouri's application to discharge the Proprietary Order was granted and the proprietary order was discharged. The Court determined that the Claimants had not shown a real issue that Mr. Khouri held beneficial property in, or control over, the P-Notes or their traceable proceeds, describing the Claimants' basis for this claim as speculative.</p> <p><b>Further Information Application</b></p> <p>The Claimants' Further Information Application regarding Mr Khouri's assets was refused. The Court deemed the request too broad, going <i>"far beyond"</i> what was necessary to support prospects of enforcing judgment, suggesting it was partly sought to gather evidence for the claims themselves.</p> <p><b>Conclusion</b></p>
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	<p>The Court granted the Extension of Time Application. The Court refused Mr Khouri's Jurisdiction Application, confirming its power to hear the civil claims against him. The Discharge Application for the freezing order was refused, maintaining the injunction, but the Proprietary Order was discharged due to insufficient evidence linking Mr Khouri to the specific assets. The Claimants' Further Information Application was also refused.</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.***