

JUDGMENT SUMMARY

Neutral Citation	[2023] ADGMCFI 0010
Case Number	ADGMCFI-2022-238
Name of Case	A6 v B6
Judge	Justice William Stone SBS KC
Date Issued	27 April 2023
Catchwords	Application for permission to appeal. Failure to demonstrate the appeal before the Court of Appeal would have a real prospect of success.
Cases Cited	–
Legislation and Authorities Cited	Abu Dhabi Law No. 4 of 2013, as amended by Abu Dhabi Law No. 12 of 2020 (the “ADGM Founding Law”) ADGM Courts Procedure Rules 2016 – Rule 208(4)
Executive Summary	This judgment addresses the Claimant's application for permission to appeal to the Court of Appeal a prior ruling where the Court dismissed the Claimant's request to set aside an arbitral award. Ultimately, the Court dismisses the Claimant's application, finding that an appeal would not have a real prospect of success.
Overall Summary	<p>Background</p> <p>This Abu Dhabi Global Market (“ADGM”) Court of First Instance (Commercial & Civil Division) judgment concerns an application for permission to appeal in the ADGM Courts. The case involves a Claimant (A6) and a Defendant (B6). The underlying matter involves an ICC arbitral award issued on 9 May 2022 (the “Award”), which the Claimant had previously sought to set aside.</p> <p>The jurisdictional circumstances of the case were noted as “<i>somewhat unusual</i>”. Although the contractual seat of the arbitration was Abu Dhabi, the Abu Dhabi Judicial Department Courts declined jurisdiction to set aside the Award. They did so on the basis that jurisdiction rested with the ADGM Courts, purportedly due to an ICC branch office located within the</p>

	<p>ADGM. Both parties subsequently confirmed in writing and through counsel their desire to submit to the jurisdiction of the ADGM Court by 'opting in' pursuant to Abu Dhabi Law No. 4 of 2013 (as amended by Abu Dhabi Law No. 12 of 2020). This legislation allows parties to refer claims or disputes to the ADGM Courts even without a direct nexus to the ADGM.</p> <p>The Court had previously dismissed the Claimant's application to set aside the Award in an Order dated 13 March 2023. The current application before the Court was the Claimant's application for permission to appeal this dismissal to the Court of Appeal (the "Claimant's Application").</p> <p>Analysis</p> <p>The legal threshold for granting permission to appeal under Rule 208(4) of the ADGM Courts Procedure Rules 2016 is that the appeal must have a "real prospect of success" or there must be "<i>some other compelling reason why the appeal should be heard</i>".</p> <p>The Claimant's Application relied solely on the "<i>real prospect of success</i>" limb. The Claimant put forward four specific grounds for appeal: (i) an alleged error of fact regarding the determination of the opt-in clause; (ii) an alleged error of law regarding the applicable procedural law; (iii) an alleged error of law regarding whether irregularities warranted a partial set-aside; and (iv) an alleged error of law regarding the sustainability of a partial set-aside.</p> <p>The Defendant contested each of these grounds, arguing that the Claimant's Application failed to meet the threshold test. The Defendant also contended that grounds (i), (ii), and (iv) were moot because, even if proven, they would not change the outcome of the original case. The Defendant specifically argued that the Claimant had not provided a cogent basis for the alleged judicial error on the merits (ground (iii)).</p> <p>The Court concluded that it was "<i>unable to conclude that any appeal, if sanctioned, would have 'a real prospect of success' under each and any of the four specified heads</i>". The Court stated that nothing presented in the Claimant's Application allowed the Claimant to overcome the statutory hurdle for permission to appeal. Regarding the specific contention of a "<i>mistake of fact</i>" concerning the opt-in provision, the Court disagreed, finding that "<i>the record speaks for itself</i>" on this point.</p> <p>Conclusion</p> <p>Consequently, the Claimant's Application was dismissed. In line with standard practice ('costs are to follow the event'), the costs incurred by the Claimant's Application were awarded to the Defendant, subject to summary assessment if not agreed upon.</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.