

JUDGMENT SUMMARY

Neutral Citation	[2023] ADGMCFI 0017
Case Number	ADGMCFI-2021-042
Name of Case	NMC Healthcare Ltd (In Administration) (Subject to a Deed of Company Arrangement) and Others v Dubai Islamic Bank PJSC and Others
Judge	Justice Sir Andrew Smith
Date Issued	16 October 2023
Catchwords	Determining issues of foreign law. Adverse inferences from failure to adduce evidence. UAE law, doctrine that fraud vitiates all. UAE law: abuse of rights, article 106 of the UAE Civil Code. UAE law: contractual interpretation, article 265 of UAE Civil Code. UAE law: contract void for want of subject matter, article 210 of the UAE Civil Code. UAE law: rectification, article 197 of the UAE Civil Code. Rectification: governing law. Rectification, ADGM law. UAE law: gift of future property, article 632 of the UAE Civil Code. UAE law agency, actual and ostensible authority. Acts of company manager: article 83(2) of the UAE Companies Law. UAE law, ratification and application of article 135 of the UAE Civil Code. UAE law, unjust enrichment, articles, 318, 319, 324 of the UAE Civil Code. Remedy of declaration.
Cases Cited	<p> Iraqi Civilians v Ministry of Defence, [2016] UKSC 25 Byers v Saudi National Bank, [2022] EWCA Civ 43 Wisniewski v Central Manchester Health Authority, [1998] PIQR 324 Royal Mail Group Ltd v Efofi, [2021] UKCS 33 Case No. 55 of 2016 (16 January 2017), Abu Dhabi Court of Cassation Case No. 524 of 2000 (18 April 2000), UAE Federal Supreme Court Case No. 135 of 21 (21 November 2000), UAE Federal Supreme Court Case No. 389 of 2001 (3 February 2002), Dubai Court of Cassation Cassation Appeal No. 205 of 17 (1 December 1949), Egyptian Court of Cassation Case No. 435 of 21 (12 June 2001), UAE Federal Supreme Court Case No. 153 of 23 (10 November 2002), UAE Federal Supreme Court Case No. 52 of 29 (30 September 2009), UAE Federal Supreme Court Case No. 137 of 23 (10 January 2004), Dubai Court of Cassation Case No. 202 of 13 (10 March 1992), UAE Federal Supreme Court Case No. 280 of 2012 (10 March 2013), Abu Dhabi Court of Cassation National Commercial Bank v Wimborne, (1978) 5 BPR 11958 (NSW) 41 </p>

	<p>United States Surgical Corp v Hospital Products International Pty Ltd, [1982] 2 NSWLR 766</p> <p>FSHC Group Holdings Ltd v GLAS Trust Corp Ltd, [2019] EWCA Civ 1361</p> <p>Case No. 280 of 2008 (16 June 2009), Dubai Court of Cassation</p> <p>Appeals Nos 7 & 10 of 1 (25 February 2007), UAE Federal Supreme Court</p> <p>Case No. 493 of 2013 (30 October 2013), Abu Dhabi Court of Cassation</p> <p>Case No. 179 of 2013 (7 January 2014), Dubai Court of Cassation</p> <p>Akfar Capital Ltd v Fikry, [2017] ADGMCFI 1</p>
Legislation and Authorities Cited	<p>Federal Law No. (5) of 1985 on the Civil Transactions Law of the United Arab Emirates (the “UAE Civil Code”) – Articles 1,2, 29 to 70, 104-106, 129, 132, 135, 137, 141, 149 to 156, 193, 194, 195, 197, 198, 201, 210, 213, 214, 215, 257 to 266, 318, 319, 324, 614, 632 and 924 to 961</p> <p>Federal Law No 2 of 2015 concerning Commercial Companies (the “Companies Law”) – Articles 23, 25, 83(2), 153 and 154</p> <p>Federal Law No 50 of 2022, the Commercial Transactions Law (the “Commercial Code”) – Article 390</p> <p>Egyptian Law No 131 of 1948, the Egyptian Civil Code – Articles 150 and 486</p>
Executive Summary	<p>This judgment considered claims brought by NMC Healthcare Ltd (in administration) and 31 other companies (the “Claimants” or “NGCs”) against Dubai Islamic Bank PJSC (“DIB”) concerning the meaning and effect of two Assignments of Receivables Agreements (“ARAs”) from April 2018. The central question was whether these ARAs assigned the Claimants’ rights in “<i>Insurance Receivables</i>” to DIB. The Court found the ARAs were void. DIB’s rectification counterclaim and NGCs’ unjust enrichment claim were dismissed.</p>
Overall Summary	<p>Background</p> <p>This Abu Dhabi Global Market (“ADGM”) Court of First Instance (Commercial & Civil Division) judgment concerned a dispute between NMC Healthcare Ltd (“NMCH”) and other Claimants (the “Non-Guarantor Claimants” or “NGCs”) against Dubai Islamic Bank PJSC (“DIB”) and several insurance companies. The central issues revolved around the interpretation and effect of two Assignment of Receivables Agreements (“ARAs”) dated April 2018, specifically whether they assigned the NGCs’ rights to “<i>Insurance Receivables</i>” from health insurance arrangements.</p> <p>The broader context is the insolvency of the NMC Group, a major private healthcare provider, due to alleged extensive fraud involving over US\$4.3 billion in undisclosed debts. While NMC Group operating subsidiaries were licensed to provide healthcare and receive insurance payments, NMCH, the holding company, was not.</p> <p>DIB, a creditor, claimed an interest in these receivables, asserting an absolute assignment. The NGCs disputed DIB’s claims, arguing that the ARAs did not transfer their interests and were legally invalid or void.</p>

	<p>Analysis</p> <p>The Court addressed several key legal issues:</p> <ol style="list-style-type: none"> 1. Interpretation of the ARAs: The NGCs contended that the ARAs, on their true construction, assigned only rights and interests of NMCH (the holding company), not its subsidiaries (the NGCs). DIB argued the intention was to assign receivables from both NMCH and its subsidiaries, claiming that a blank Annexure A and missing signature blocks were errors. Applying Article 265(1) of the UAE Civil Code, which states that clear contract wording should not be disregarded to ascertain intent, the Court found the ARAs' language unambiguous: NMCH undertook to assign its rights (if any). Related transaction documents were also found not to alter this clear meaning. 2. Voidness of ARAs: Since NMCH was a holding company and not licensed to provide medical services, it was not entitled to any Insurance Receivables. The Court concluded that the ARAs lacked an essential subject matter (NMCH's interests in these receivables) and were therefore void under Article 210 of the UAE Civil Code. 3. Rectification Arguments: DIB sought to rectify the ARAs to include NGCs as assignors, arguing a common mistake. The Court rejected DIB's claim for rectification. It found no shared mistake that the ARAs failed to record an agreement between DIB and the NGCs. Rectification under UAE law (Article 197) only applies to clerical errors in recording an agreement, not to fundamental mistakes about the contract's subject matter (which renders it void). The Court also held that ADGM law did not govern rectification for a contract under UAE law, and DIB failed to prove the common intention required for rectification under English/ADGM law. 4. Agency Arguments: DIB contended that Mr. Manghat or Dr. Shetty had actual or ostensible authority to execute the ARAs on behalf of the NGCs. The Court determined that the formal requirements for agency under UAE law were not met. Specifically, there was no explicit declaration of agency in the ARAs or other written statements. While Mr. Manghat and Dr. Shetty had general powers, the specific powers related to dealing with banks or creating security often required joint action not taken, or were subject to value limits that would likely be exceeded by the assignments. The argument for ostensible authority was also rejected due to the lack of conduct by the NGCs to create such an appearance and DIB's failure to follow its own due diligence procedures. Therefore, the NGCs were never party to or bound by the ARAs. 5. Retrospective Validation: DIB argued the NGCs implicitly ratified the ARAs by allowing insurance payments into the Amanat account. The Court found no evidence of explicit or implied
--	--

	<p>ratification, noting that unassigned funds had previously flowed into the account, and that inter-company communications did not bind the NGCs.</p> <p>6. Unjust Enrichment The NGCs' claim for unjust enrichment or restitution against DIB for funds received in the Amanat account (under UAE Civil Code Articles 318, 319, 324) was dismissed. The Court clarified that the NGCs held a chose in action against the insurers, not "<i>money</i>" with NAS, and that payments into the Amanat account created a contractual relationship solely between NMCH and DIB, without creating a direct claim for the NGCs against DIB. DIB's actions with the account were deemed lawful under its contract with NMCH.</p> <p>Conclusion</p> <p>The Court found that the ARAs did not effectively assign any rights or interests of the NGCs in Insurance Receivables. The ARAs were declared void because NMC Healthcare Ltd, as the designated assignor, did not possess the rights it purported to assign. DIB's counterclaim for rectification of the ARAs was dismissed, as was the NGCs' claim for restitution or unjust enrichment against DIB. Further submissions were invited regarding declaratory relief sought by the NGCs against DIB and claims against other Insurer Defendants.</p>
--	---

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.