

JUDGMENT SUMMARY

Neutral Citation	[2024] ADGMCFI 0002
Case Number	ADGMCFI-2023-180
Name of Case	Faisal Hamad Mubarak Al Ayar v. Paul Klinkhamer
Judge	Justice William Stone SBS KC
Date Issued	6 February 2024
Catchwords	Jurisdiction of the Court. Section 16(2) of the ADGM Courts Regulations. Articles 13(7) and (8) of the Founding Law. Whether claim “involving” the Global Market or any of the Global Market Authorities or Establishments. Forum Non Conveniens. Service of proceedings. Personal service.
Cases Cited	A6 v B6 [2023] ADGMCFI 0005 Union Properties P.J.S.C & Anor v Trinkler & Partners Ltd & Others [2023] ADGMCFI 0009 Goel & Ors v Credit Suisse (Switzerland) Limited [2021] DIFC CA 002 Investment Group Private Limited v Standard Chartered Bank [2015] DIFC CA 004 Spiliada Maritime Corp v Cansulex [1987] AC 460
Legislation and Authorities Cited	ADGM Courts Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 – Section 16 Abu Dhabi Law No. (4) of 2013 (as amended by Abu Dhabi Law No. (12) of 2020) – Articles 13(7) and 13(8)
Executive Summary	This judgment considered the Defendant's application challenging its jurisdiction over a claim for repayment of a sum of USD 500,000 plus interest. The Claimant failed to establish a statutory basis for jurisdiction under the ADGM Courts Regulations and the Founding Law. Proceedings were dismissed due to lack of jurisdiction.
Overall Summary	Background This Abu Dhabi Global Market (“ ADGM ”) Court of First Instance (Commercial & Civil Division) judgment concerned an application by the Defendant, Mr Paul Klinkhamer, challenging the jurisdiction of the ADGM Courts to hear a claim brought against him by the Claimant, Mr Faisal

	<p>Hamad Mubarak Al Ayar. The Claimant sought to recover USD 500,000, plus accumulated interest, totalling USD 839,834.48. This sum was allegedly a loan provided via three promissory notes dated in 2015 and 2016.</p> <p>A central dispute between the parties concerns the nature of the funds: the Claimant asserts they were a loan, while the Defendant contends they were for investment purposes. The funds were transferred in tranches to the Defendant's personal bank account at Abu Dhabi Commercial Bank ("ADCB"), Khalidiya Branch, which is an onshore Abu Dhabi bank. The promissory notes themselves were allegedly signed in Kuwait, and payments were from a Kuwaiti bank account.</p> <p>Notably, this case was not the Claimant's first attempt at civil litigation in the UAE to recover these funds; a similar claim was previously filed in the DIFC Courts. The DIFC Courts recorded that they had "<i>no jurisdiction to hear and determine this claim</i>" because there was no opt-in clause or any connection with the DIFC in the case file or agreement between the parties. The DIFC proceedings were described as having been discontinued or stopped and were no longer active.</p> <p>Analysis</p> <p>The Defendant's application, made under Rule 38 of the ADGM Courts Procedure Rules 2016, sought a declaration that the Court lacked jurisdiction or, alternatively, the Court would not exercise its jurisdiction. The Court's jurisdiction is statutory, governed by the ADGM Courts Regulations 2015 and the Founding Law, specifically section 16(2) and Articles 13(7) and (8). Jurisdiction must fit within one of the statutory gateways.</p> <p>Initially, the Claimant's pleaded case did not appear to satisfy any of these gateways, as the transaction's connections were primarily with Kuwait and onshore Abu Dhabi, not the ADGM. However, during oral submissions, the Claimant argued for a "<i>narrow gateway</i>" under Article 13(7)(a) of the Founding Law, suggesting the claim involved a "<i>Global Market Establishment</i>" by virtue of an ADCB entity (like "<i>ADCB Asset Management Leasing</i>") having offices within the ADGM jurisdiction.</p> <p>The Court carefully considered this argument but found it faced significant difficulties. Firstly, there was no evidence presented regarding the precise legal status or activities of the alleged ADCB entity within ADGM. Secondly, although the term "<i>involving</i>" in Article 13(7)(a) is wide and doesn't require the Global Market Establishment to be a party, as held in <i>Union Properties</i>, there was no evidence that this ADGM entity played any role in the transfer of funds to the Defendant's onshore ADCB account. Therefore, the claim could not be said to "<i>involve</i>" a Global Market Establishment.</p> <p>The Court also considered the 'opt-in' jurisdiction under Article 13(8) but found it inapplicable. While one promissory note predated the full opening of ADGM Courts, the others did not, and the parties could have included an opt-in clause or agreed post-dispute, which they did not.</p> <p>Given the finding of no jurisdiction, the Court deemed it unnecessary to decide the Defendant's alternative argument of <i>forum non conveniens</i>, which proposed Kuwait or Portugal as more appropriate forums. The Court</p>
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	<p>did note the Claimant's argument that ADGM was the only English law court in the Middle East suitable for the dispute but disagreed that the choice of governing law automatically determined jurisdiction.</p> <p>Finally, the Court addressed the dispute over the service of proceedings, noting that the Defendant had challenged the legitimacy of the purported personal service in the UAE, given his residence in Portugal. The Court found that the purported personal service was "<i>not legitimately effected</i>" according to the CPR. However, this issue was ultimately deemed "<i>arid</i>" because the Defendant had acknowledged service and engaged with the proceedings by filing the application.</p> <p>Conclusion</p> <p>The ADGM Court held that the Claimant failed to establish any statutory basis for jurisdiction under section 16(2) of the ADGM Courts Regulations or Articles 13(7) or (8) of the Founding Law.</p> <p>Accordingly, the Court granted the Defendant's application. The proceedings were dismissed.</p> <p>As agreed by the parties, costs are to follow the event, meaning the Claimant must pay the Defendant's costs of the application and the proceedings. The Claimant was given time to respond to the Defendant's statement of costs before summary determination.</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.