

JUDGMENT SUMMARY

Neutral Citation	[2024] ADGMCFI 0003
Case Number	ADGMCFI-2022-265
Name of Case	Union Properties P.J.S.C & Anor. v Trinkler & Partners Ltd & Others
Judge	Justice Sir Andrew Smith
Date Issued	11 March 2024
Catchwords	Security for costs. Statutory test of “reason to believe” unable to pay costs. Whether “just” to order security for costs. Whether claims will be “stifled”. Delay in making applications. Assessment of costs on the standard basis.
Cases Cited	<p>Global Private Investments RSC Ltd v Global Aerospace Underwriting Managers Ltd, [2021] ADGMCFI 0005</p> <p>Sarpd Oil International v Addax Energy, [2016] EWCA 120</p> <p>Jirehouse Capital v Beller, [2008] EWCA 908</p> <p>Re Unisoft (No 2), [1993] BCLC 532, 534</p> <p>Longstaff International v Baker Mackenzie, [2004] EWHC 1852 (Ch)</p> <p>Dena Technology (Thailand) Ltd v Dena Technology Ltd, [2014] EWHC 616 (Comm)</p> <p>Keary Developments Ltd v Tarmac Constructions Ltd, [1995] 3 All ER 534</p> <p>Goldtrail Travel Ltd v Onur Air Taşımacılık AŞ, [2017] UKSC 17</p> <p>Al-Koronky v Rime-Life Entertainment Group Ltd, [2005] EWHC 1688</p> <p>Hotel Portfolio II UK Ltd v Ruhan, [2020] EWHC 233 (Comm)</p> <p>Re Bennet Invest Ltd, [2015] EWHC 1582</p> <p>Pisante v Logothetis, [2020] EWHC 3332 (Comm)</p> <p>Gama Aviation (UK) Ltd v Taleveras Petroleum Trading DMCC, [2019] EWCA Civ 119</p> <p>Monde Petroleum v Westernzagros Ltd, [2015] EWHC 67</p>

Legislation and Authorities Cited	ADGM Court Procedure Rules – Rules 8, 11 and 75
Executive Summary	<p>This judgment considered applications for security for costs. The Court found that there is reason to believe that the Claimants will be unable to pay costs awarded to the Twelfth and Fourth Defendant. The Court ordered payment on account of AED 300,000 to the Twelfth Defendant and security for the Twelfth Defendant's costs in the sum of AED 1 million. The Court also ordered that if the Claimants do not make the payment on account and provide the security ordered, their claim against the Twelfth Defendant will be struck out. The Court made no order on the application of the Fourth Defendant due to lack of evidence on costs.</p>
Overall Summary	<p>Background</p> <p>This Abu Dhabi Global Market (“ADGM”) Court of First Instance (Commercial & Civil Division) judgment concerned applications for security for costs in Case Number ADGMCFI-2022-265. The proceedings were brought by Union Properties P.J.S.C. and its subsidiary, UPP Capital Investment Co. L.L.C. (together, the “Claimants”) against multiple defendants, alleging a fraud involving the unlawful use of AED 320,712,867.84 to purchase P-Notes, the proceeds of which were largely misappropriated.</p> <p>The Claimants claim the Tenth Defendant, Khalifa Alhammadi, was the “controlling mind” of the fraud, operating with the assistance of or through the other defendants. The judgment addresses applications for security for costs made by the Twelfth Defendant, Ahmed Yousef Abdulla Hussain Khouri (the “Khouri Security Application”), and the Fourth Defendant, First Fund Management Limited (“FFM”). A third application by the Claimants for an extension of time was not pursued, and the Sixth Defendant, Paresh Chandrasen Khiara, withdrew his application for relief but it remained live regarding costs. The Court had previously made freezing orders and proprietary injunctions against some defendants, which were later discharged. Previous costs orders had also been made against the Claimants.</p> <p>Analysis</p> <p>The applications for security for costs are governed by Rule 75 of the ADGM Court Procedure Rules (“CPR”) and Practice Direction 7 (“PD7”), which allow the court to order security if it is “just to make such an order”. PD 7.30(b) specifies that the court may consider it just if the claimant is a company and “there is reason to believe that it will be unable to pay the defendant’s costs if ordered to do so”. The Court clarified that the test is whether there is “reason to believe” the claimant will be unable to pay, not proof of inability, and promptness of payment is relevant.</p> <p>The Court found there was reason to believe the Claimants would be unable to pay costs promptly. This conclusion was based on several factors: the Claimants’ delayed payment of a previous AED 375,000 costs order, evidence from the Claimants’ Chief Legal Officer indicating financial struggle and that they would have “no source of finance” for</p>

	<p>security during a business restructuring, and the Claimants' interim financial statement at 30 September 2023 showing current liabilities of AED 1.53 billion exceeding current assets of AED 443 million, with auditors highlighting a "material uncertainty that may cast significant doubt on the Group's ability to continue as a going concern" due to accumulated losses exceeding 50% of share capital. The Court found the Claimants' arguments about their asset position, restructuring plan, expected settlement funds (which were in default), and asset sales lacked sufficient evidence or were unconvincing regarding the availability of liquid funds to pay costs promptly.</p> <p>The Court rejected the Claimants' argument that ordering security would "stifle" their claims, stating the burden was on the Claimants to prove this with full evidence, which they had not done. The Court also considered the merits of the claims and the Claimants' conduct but found them of limited significance to the security applications.</p> <p>Regarding Mr. Khouri's application, the Court ordered a payment on account of AED 300,000 for costs already incurred and subject to assessment. It also ordered security for costs in the sum of AED 1 million covering costs incurred and future costs up to the completion of standard disclosure. The Court indicated that further security could be sought later. The Court dismissed FFM's application for security because FFM had not provided proper evidence of its own separate costs, making assessment impossible.</p> <p>Conclusion</p> <p>The Court ordered the Claimants to pay the Twelfth Defendant, AED 300,000 on account of costs and provide security for his costs in the sum of AED 1 million. If the Claimants fail to make this payment and provide the security, their claim against the Twelfth Defendant shall be struck out. The Court made no order on the substantive FFM Application, granting liberty to reapply, but did order FFM to pay the Claimants' costs of that application in the sum of US\$16,500. The Court also ordered the Sixth Defendant, Mr. Khiara, to pay the Claimants' costs related to his abandoned application in the sum of US\$12,500. The ordered security should be provided by payment into court or a first-class bank guarantee within 28 days.</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.