

JUDGMENT SUMMARY

Neutral Citation	[2024] ADGMCFI 0004
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	9 May 2024
Catchwords	Form of application to the Court. Security for costs by way of a bank guarantee. Variation of Court Order.
Cases Cited	<p>Rosengrens v Safe Deposit Centres Ltd [1984] 1 WLR 1334</p> <p>Tibbles v SIG Plc (t/a Asphaltic Roofing Supplies) [2012] EWCA Civ 518</p> <p>Recovery Partners GB Ltd v Rukhadze [2018] EWHC 95</p> <p>Oak Cash & Carry Ltd v British Gas Trading Ltd [2016] WCA Civ 153</p> <p>Union Properties P.J.S.C. and another v Trinkler & Partners Ltd and others [2024] ADGMCFI 0003</p> <p>Union Properties P.J.S.C. and another v Trinkler & Partners Ltd and others [2023] ADGMCFI 0009</p> <p>Union Properties P.J.S.C. and another v Trinkler & Partners Ltd and others [2023] ADGMCFI 0011</p>
Legislation and Authorities Cited	<p>ADGM Court Procedure Rules 2016 – Rules 1(1), 2(2), 7(5), 8(1), 8(5), 11(2), 11(4) and 64(1)</p> <p>English Civil Procedure Rules 1998 – Rules 3.1(7) and 3.9</p>
Executive Summary	This judgment considers the Claimants' application to vary a previous Court Order regarding security for costs payable to the Twelfth Defendant, or for an extension of time to comply with the Court Order. Ultimately, the Court refused the application to vary the initial Order but granted a limited extension of 14 days for the Claimants to provide security.
Overall Summary	<p>Background</p> <p>This Abu Dhabi Global Market (“ADGM”) Court of First Instance (Commercial & Civil Division) judgment addresses an application by the Claimants, Union Properties PJSC (“UP”) and its wholly-owned subsidiary</p>

	<p>UPP Capital Investment Co LLC (“Capital”), to vary a previous Court Order made on 11 March 2024 (the “March Order”), or alternatively for more time to comply with the March Order or to provide security for costs to Mr Ahmed Yousef Abdulla Hussain Khouri (the Twelfth Defendant).</p> <p>The underlying proceedings, commenced on 14 November 2022, involve allegations of a fraud resulting in the unlawful use of over AED 300 million to purchase participation notes, the proceeds of which were allegedly misappropriated. The Claimants assert Mr Khouri was involved.</p> <p>The March Order required the Claimants by 8 April 2024 to pay Mr Khouri AED 300,000 on account of costs and provide AED 1 million as security for future costs. The security was to be in the form of payment into Court, or a first-class bank guarantee acceptable to Mr Khouri, or another form agreed by him. Crucially, the March Order stated that if the Claimants failed to comply with the March Order, then their claim against Mr Khouri would be struck out without further Order.</p> <p>The Claimants failed to provide security by the deadline. They sought to provide a bank guarantee but attempts to agree on terms with Mr Khouri's representatives and Dubai Islamic Bank (“DIB”) were unsuccessful. The Claimants applied to the Court, initially by email and later formally, seeking various forms of relief, including a declaration that their proposed bank guarantee was acceptable or for an extension of time.</p> <p>Analysis</p> <p>The Court analysed: (i) whether, in view of the Claimants’ acknowledged non-compliance, the Claimants’ claim against Mr Khouri should be struck out under the March Order, or whether the Claimants should be relieved of the consequence of their non-compliance, and given more time to provide security for Mr Khouri’s costs; (ii) if the claim against Mr Khouri is not struck out, whether, as the Claimants seek, the terms of the March Order should be varied; and (iii) if the terms of the March Order are varied as the Claimants seek, whether the security by way of a Bank Guarantee of DIB, as proposed by the Claimants, would provide adequate and satisfactory security for Mr Khouri’s costs.</p> <p>The Court found that the proposed DIB bank guarantee was inadequate, noting issues with: (i) its wording regarding coverage of Court Orders versus contractual obligations; (ii) the specified jurisdiction (which might require enforcement outside ADGM Courts); and (iii) importantly, it only secured the liability of UP, not Capital, despite the March Order covering both Claimants.</p> <p>Conclusion</p> <p>The Court refused to vary the March Order, finding no satisfactory basis to dispense with the requirement that Mr Khouri agree to the security's terms or to accept the proposed form of security.</p> <p>Despite the seriousness of the Claimants' non-compliance, including failing to explain why they did not pay into Court and a history of previous non-compliance with Court Orders, the Court ultimately decided to grant the Claimants a "<i>last chance</i>".</p> <p>The Court refused the Claimants’ application to vary the March Order but granted an extension of 14 days for the Claimants to provide security for</p>
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	Mr Khouri's costs by way of payment into Court (or another form agreed by Mr Khouri). The Court deemed the Claimants' other proposals for security, such as a manager's cheque, unsubstantiated and too late.
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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.