

JUDGMENT SUMMARY

Neutral Citation	[2024] ADGMCFI 0006
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	23 May 2024
Catchwords	Application to strike out proceedings. Application to amend pleadings. Breach of director's duties. Dishonest assistance of breach of fiduciary duties. Compensation under the ADGM Financial Services and Markets Regulations 2015. Conspiracy by unlawful means. Joint liability. Settlement with one wrongdoer.
Cases Cited	<p>F S Cairo (Nile Plaza) LLC v Brownlie [2021] UKSC 45</p> <p>Independents' Advantage Insurance Co Ltd v Cook [2003] EWCA Civ 110</p> <p>Kawasaki Kisen Kaisha Ltd v James Kemball Ltd [2021] EWCA Civ 33</p> <p>Elite Property Holdings v Barclays Bank plc [2019] EWCA Civ</p> <p>Three Rivers District Council v Bank of England (No 3) [2001] UKHL 16</p> <p>JSC Bank of Moscow v Kekhman [2015] EWHC 3073 (Comm)</p> <p>FM Capital Partners Ltd v Marino [2018] EWHC 1768 (Comm)</p> <p>Gladman Commercial Properties v Fisher Hargreaves Proctor & Ors. [2013] EWCA Civ 1466</p>
Legislation and Authorities Cited	<p>UAE Federal Law No 5/1985 (the "UAE Civil Code") – Article 282</p> <p>ADGM Court Procedure Rules 2016 – Rules 9(2), 52 and 68(1)</p> <p>ADGM Financial Services and Markets Regulations 2015 – Section 242</p> <p>ADGM Companies Regulations 2015 – Sections 161, 162, 163, 165 and 167</p> <p>UAE Federal Law No 32/2021 on Commercial Companies – Section 162</p>
Executive Summary	<p>This judgment addresses an application to strike out proceedings against the Ninth Defendant (the "Strike-Out Application"), and an application by the Claimants to amend their pleadings (the "Amendment Application"). The Claimants alleged a fraud involving the misappropriation of funds and Participatory Notes, initially naming multiple defendants including the Ninth Defendant.</p>

	<p>The Court ultimately granted the Strike-Out Application for the claims against the Ninth Defendant, finding that the Claimants' pleadings lacked sufficient particularisation and coherence to establish a viable case against him, including allegations of breach of fiduciary duty, dishonest assistance, claims under the ADGM Financial Services and Markets Regulations, and conspiracy. Conversely, the Amendment Application was refused as the proposed revisions failed to rectify these deficiencies.</p>
Overall Summary	<p>Background</p> <p>This Abu Dhabi Global Market (“ADGM”) Court of First Instance (Commercial & Civil Division) judgment considering: (1) the Ninth Defendant’s (Mr Naser Butti Omair Yousef Almheiri) Strike-Out Application seeking to dismiss the claim against him; and (2) the Claimants’ Amendment Application to modify their Particulars of Claim.</p> <p>The Claimants allege a fraud resulting in the unlawful use of AED 320,712,867.84 to purchase Participatory Notes (“P-Notes”), with most proceeds misappropriated. They contend the Tenth Defendant, (Mr Khalifa Alhammadi), was the controlling mind, assisted by other defendants.</p> <p>Mr. Almheiri was a director of Union Properties PJSC (“UP”) (the First Claimant) and Chairman of UPP Capital Investment LLC (“Capital”) (a wholly-owned subsidiary of the First Claimant). He co-incorporated the Fourth Defendant in the ADGM with Mr. Alhammadi in March 2018 and was a director until May 2018. The fraud allegedly involved transferring funds to Julius Baer, investing in P-Notes, and then transferring significant P-Notes units (364,549,341) to Arqaam Bank Limited, allegedly for misappropriation, rather than delivery to TAP (the First Defendant).</p> <p>Previously, on 7 November 2023, the Court found the Claimants' pleading against Mr. Almheiri lacked primary facts for an inference of dishonesty, partly because two matters (whether FFM (the Fourth Defendant) was a “<i>sham</i>” company and the purpose of a September 2018 letter signed by Mr. Almheiri (the “September Letter”)) were not properly pleaded. The Court adjourned the Strike-Out Application to allow the Claimants to amend their pleading.</p> <p>The Claimants filed a first draft amendment, then a second draft after the first day of the hearing on 13 May 2024 (the “Second Draft”). The Second Draft pleaded (or purported to plead) four causes of action against Mr. Almheiri: breach of director duties as a director of Capital, dishonest assistance, compensation under Section 242 of the ADGM Financial Services and Markets (“FSMR”) Regulations 2015, and conspiracy by unlawful means.</p> <p>Analysis</p> <p>The Court reviewed the Second Draft based on principles for striking out pleadings (no reasonable grounds and abuse of process) and allowing amendments (must be coherent, particularised and supported by evidence establishing an arguable case that carries some conviction). Pleading dishonesty requires pleading facts that justify an inference of dishonesty, which is more likely than innocence or negligence.</p>

	<p>The Court found that the Second Draft was defective. General issues included unclear pleading regarding which allegations applied to Mr. Almheiri due to a qualified definition of "FFM Directors". Specifically:</p> <ul style="list-style-type: none"> • Breach of Capital director duties: The pleading was obscure about the basis for alleged duties under UAE law and improperly referred to provisions concerning managers. Allegations of failure to investigate, exercise independent judgment, and procuring the Investment Management Company ("IMA") with TAP lacked necessary particularisation and evidential support. The argument based on Mr. Almheiri's evidence was deemed "<i>far-fetched</i>". • Dishonest assistance: The pleading did not clearly allege dishonesty against Mr. Almheiri, particularly concerning events after he ceased being an FFM director. His prior positions did not automatically infer dishonesty. • FSMR compensation: Allegations related to events (managing P-Notes, IMA, Service Level Agreement ("SLA") and false statements) that occurred after Mr. Almheiri left FFM, and no relevant false statement by him was pleaded. • Conspiracy by unlawful means: The following matters cited did not provide cogent support for the conspiracy claim against Mr. Almheiri: (1) Mr Almheiri's involvement in FFM's incorporation; (2) Mr Almheiri's position as a director of UP and as the Chairman of Capital; (3) the fact that the directors of Capital procured Capital to enter into the Mandate Agreement and IMA with TAP, and TAP entered into the SLA with FFM, despite FFM being newly incorporated and closely associated with unexperienced persons who were generally directors of UP or Capital, or relatives of those directors; (4) false reports by FFM Directors after Mr Almheiri left; and (5) the September Letter does not support the case that Mr Almheiri was party to the misappropriation. The Claimants' September Letter argument lacked a coherent theory. <p>The Court concluded that none of the versions of the pleadings disclosed reasonable grounds for claims against Mr. Almheiri. The pleading remained unparticularised, incoherent, and not plausible, with no reason to believe that further amendment would cure the deficiencies.</p> <p>Conclusion</p> <p>Accordingly, the Strike-Out Application was granted, and the Amendment Application was refused.</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.