

JUDGMENT SUMMARY

Neutral Citation	[2024] ADGMCFI 0009
Case Number	ADGMCFI-2023-140
Name of Case	Racha Alkhawaja v TPL Investment Management Ltd & Anor.
Judge	Justice Sir Michael Burton GBE
Date Issued	4 September 2024
Catchwords	Agreement conferring non-terminable rights. Validity of agreement under articles of association. Whether agreement authorised. Duomatic principle. Breach of fiduciary duty. Interpretation of 'bad leaver' provision.
Cases Cited	<p>Guinness plc v Saunders [1990] 2 AC 663</p> <p>Tayplan Ltd v Smith [2012] BCC 523</p> <p>Ball v Hughes [2017] EWHC 3228 (Ch)</p> <p>Knight v Frost [1999] BCC 819</p> <p>Fairford Water Ski Club Ltd v Cohoon [2021] BCC 498</p> <p>Re HLC Environmental Projects Ltd [2014] BCC 337</p> <p>L'Estrange v Graucob [1934] 2 KB 394</p> <p>Biggin and Co Ltd v Permanite Ltd [1951] 1 KB 422</p> <p>One Step (Support) Limited v Morris-Garner & Anor [2019] AC 649</p> <p>Watson Laidlaw & Co Ltd v Pott Cassels & Williamson (A Firm) [1914] SC (HL)</p> <p>Yam Seng PTE Ltd v International Trade Corporation Ltd [2013] EWHC 111 (QB)</p> <p>Williams v Leeds United Football Club [2015] IRLR 383</p> <p>Shah v Shah [2002] QB 35</p> <p>Euro Securities & Finance Ltd v Barrett [2023] Ch 279</p> <p>Godden v Merthyr Tydfil Housing Association (unreported, 15 January 1997)</p>
Legislation and Authorities Cited	ADGM Employment Regulations 2019 (Compensation Awards and Limits) Rules 2019 – Article 3(2)

<p>Executive Summary</p>	<p>This judgment primarily considers the issues relating to the Claimant's claims arising from her employment as CEO, specifically her entitlement to certain sums under her Employment Contract and a contentious Incentive Letter Agreement ("ILA"). The judgment addresses the validity and enforceability of the ILA based on the Defendants' company articles and alleged breaches of fiduciary duty, ultimately finding in favour of the Claimant on Employment Contract claims but dismissing her claims under the ILA.</p>
<p>Overall Summary</p>	<p>Background</p> <p>This Abu Dhabi Global Market ("ADGM") Court of First Instance (Employment Division) judgment concerns a claim brought by Ms. Racha Alkhawaja (the "Claimant") against her former employers: TPL Investment Management Ltd (the First Defendant – "TPL ADGM") and TPL REIT Management Company Limited (the Second Defendant – "TPL Pakistan"). TPL ADGM is a 100% subsidiary of TPL Pakistan. The Claimant was employed as CEO of TPL ADGM under an Employment Contract dated 16 May 2022 (the "Employment Contract"). She was also appointed as a director of both Defendants.</p> <p>Prior to joining TPL ADGM, the Claimant and Mr. Mohammed Al Jameel, an ultimate owner and director of the TPL group, reached an agreement regarding her incentive arrangements, set out in an email on 3 April 2021 (the "April Email"). This included a "<i>Carried Interest</i>" provision for 10% revenue share of TPL Pakistan's top line and 20% equity in the ADGM fund management company (TPL ADGM). Morgan Lewis drafted the Incentive Letter Agreement ("ILA") based on the Claimant's instructions. The Claimant pressured Mr. Jameel to sign the ILA, which he eventually did on behalf of both Defendants in early November 2022, backdating it to 14 October 2022.</p> <p>The ILA defined "<i>Incentive Rights</i>" as 20% of TPL ADGM's revenues and 10% of all revenues received by members of the TPL Funds (other than TPL ADGM) as managed or advised by TPL Pakistan. It provided that the Claimant was entitled to receive these funds. The term of the ILA was linked to the existence of "<i>Revenue-Generating Arrangements</i>", unless terminated earlier if the Claimant was deemed a "<i>Bad Leaver</i>". A "<i>Bad Leaver</i>" was defined, in part, by termination for fraud, gross negligence, or wilful misconduct determined by a court. The ILA stated it was duly authorised, executed, and delivered by the Defendants.</p> <p>The Claimant resigned orally on 23 June 2023, with a termination date of 30 September 2023. She left for France and remained there during her notice period, failing to cooperate with handover requests. There was a significant dispute regarding her entitlement under the ILA, with the Claimant claiming entitlement to ongoing percentages ('perpetual' or 'in perpetuity') of revenues from development projects, which the Defendants rejected. The Defendants summarily terminated her employment on 21 August 2023, relying on her lack of cooperation and failure to attend the office when requested.</p> <p>The Claimant claimed unpaid notice period salary, end of service gratuity, flight allowance under the Employment Contract. She also claimed sums</p>

	<p>due to date under the ILA (agreed as US \$1,068,554) and ongoing future losses (estimated around US \$3.6 million). The Defendants accepted the Employment Contract claims (subject to the end of service gratuity based on justified dismissal) but argued that the ILA was void or voidable and, in the alternative, that the Claimant was a Bad Leaver.</p> <p>The Defendants argued the ILA was void as it was not properly authorised according to the articles of association of TPL Pakistan (requiring shareholder approval) and TPL ADGM (requiring director approval). They contended the Duomatic principle (which permits the validity of a contract not the subject of a resolution by a meeting of shareholders if in fact all the shareholders can be shown to have agreed to it) did not apply for TPL Pakistan because there were other shareholders who did not consent. For TPL ADGM, they argued that there was no unanimous decision by the eligible directors as required.</p> <p>The Defendants also argued that the ILA was voidable and avoided due to the Claimant's breach of fiduciary duty in obtaining the draft ILA from Morgan Lewis. They contended she failed to disclose the "<i>unusual</i>" and "<i>perpetual</i>" nature of the ILA terms, which differed significantly from the April Email, and that she obtained Mr. Jameel's signature under pressure while misrepresenting Morgan Lewis's approval of its terms.</p> <p>The Claimant countered that the ILA was validly agreed, relying on the Duomatic principle for TPL Pakistan or estoppel. She denied any breach of fiduciary duty, stating Mr. Jameel had the opportunity to read the ILA. She also argued the Bad Leaver provision did not apply as her actions did not constitute gross negligence or wilful misconduct.</p> <p>Analysis</p> <p>The Court concluded that: (i) the Defendants were not entitled to terminate the Claimant's employment summarily; and (ii) she was not a Bad Leaver. The demand for her attendance in Dubai on minimal notice was impossible to comply with (as she was in France) and did not justify summary termination.</p> <p>However, the Court found that the ILA was not validly authorised by either Defendant in accordance with their articles of association. For TPL Pakistan, the Duomatic principle was not satisfied as there was no evidence that all shareholders consented. For TPL ADGM, there was no unanimous decision by the eligible directors. The Court also held that estoppel did not apply to validate a transaction beyond the company's powers.</p> <p>Furthermore, the Court concluded that if the ILA had been otherwise valid, it would have been voidable and avoided due to the Claimant's breach of fiduciary duty. The Claimant had a duty to disclose the unusual and substantial "<i>perpetual</i>" nature of the entitlement, which she failed to do, taking advantage of Mr. Jameel's position and reliance on her.</p> <p>Conclusion</p> <p>In conclusion, the Claimant's claim under the ILA failed because it was not validly authorised and would have been voidable for breach of fiduciary duty. Judgment was entered against TPL ADGM in the sum of USD 150,027.39, representing the agreed sums under the Employment</p>
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	Contract (unpaid salary, flight allowance, and end of service gratuity). TPL ADGM was also ordered to pay compensation at 5% per annum on this sum under the ADGM Compensation Rules. The Court ordered costs submissions to be filed by the parties.
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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.