

JUDGMENT SUMMARY

Neutral Citation	[2024] ADGMCFI 0014
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	15 November 2024
Catchwords	Application to strike out proceedings. Application for summary judgment. Application to amend pleadings. Representation by conduct. Delay and abuse of process.
Cases Cited	<p>Union Properties P.J.S.C & Anor. v Trinkler & Partners Ltd & Others [2024] ADGMCFI 0006</p> <p>Union Properties P.J.S.C & Anor. v Trinkler & Partners Ltd & Others [2023] ADGMCFI 0009</p> <p>Union Properties P.J.S.C & Anor. v Trinkler & Partners Ltd & Others [2023] ADGMCFI 0011</p> <p>Union Properties P.J.S.C & Anor. v Trinkler & Partners Ltd & Others [2024] ADGMCFI 0004</p> <p>Union Properties P.J.S.C & Anor. v Trinkler & Partners Ltd & Others [2024] ADGMCFI 0003</p> <p>Independents' Advantage Insurance Co Ltd v Cook [2003] EWCA Civ 1103</p> <p>ED&F Man Liquid Products Ltd v Patel [2003] EWCA Civ 472</p> <p>Korea National Insurance Corp v Allianz Global Corporate & Specialty AG [2007] EWCA Civ 1066</p> <p>King v Stiefel [2021] EWHC 1045 (Comm)</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>Peek v Gurney (1873) LR 6 HL 377</p> <p>Bradford Third Equitable Benefit Building Society v Borders [1941] 2 All ER 205</p> <p>Wearn v HNH International Holdings Limited [2014] EWHC 3542 (Ch)</p>

	<p>The Owners and/or Bailees of the Cargo of the Ship Panamax Star v The Owners of the Ship Awk [2013] EWHC 4076 (Admlty)</p> <p>Broxton v McClelland [1995] EMLR 485</p> <p>Mueen-Uddin v Secretary of State for the Home Department [2024] UKSC 21</p> <p>Jameel (Yousef) v Dow Jones Company Inc [2005] EWCA (Civ) 75</p>
Legislation and Authorities Cited	<p>ADGM Financial Services and Markets Regulations 2015</p> <p>ADGM Court Procedure Rules 2016 – Rules 9(2), 19, 52(2), 53(1) and 68(1)</p> <p>UAE Federal Decree Law 2/2015 on Commercial Companies – Articles 84 and 167</p> <p>UAE Federal Decree Law 32/2021 on Commercial Companies – Article 169</p>
Executive Summary	<p>This judgment addresses two main applications: (i) the Claimants' application to amend their Particulars of Claim; and (ii) the Twelfth Defendant, Mr Ahmed Khouri's, application to strike out or stay proceedings against him, or for summary judgment.</p> <p>The core of the dispute revolves around allegations of a fraudulent scheme involving the misappropriation of assets through investments in participatory notes. The Judge ultimately allowed some amendments but refusing the strike-out and summary judgment applications against Mr Khouri.</p>
Overall Summary	<p>Background</p> <p>This judgment of the Abu Dhabi Global Market (“ADGM”) Court of First Instance (Commercial & Civil Division) addresses two main applications: (i) the Claimants' application to amend their Particulars of Claim; and (ii) the Twelfth Defendant, Mr Ahmed Khouri's, application to strike out or stay proceedings against him, or for summary judgment.</p> <p>The case relates to an alleged fraudulent scheme for the misappropriation of Union Properties P.J.S.C's (“UP”) assets via its subsidiary UPP Capital Investment Co. L.L.C. (“Capital”). The scheme allegedly involved using AED 320,717,867.84 belonging to UP to purchase via Capital 391,789,341 units of participatory notes (“P-Notes”), whose underlying investments were almost exclusively shares in UP. These shares were then sold, and the proceeds were allegedly diverted between February 2019 and June 2021, falsely reported as investments in other stocks. The Claimants believe a substantial portion of the diverted funds was used to purchase real property assets owned by UP at an undervalue. None of the Defendants who responded to the Claim have disputed that a fraud of this kind occurred; their responses have focused on who was a party to it.</p> <p>Mr Khouri was UP's Chief Executive Officer and Managing Director at different times and a director of Capital and on its Investment Committee from June 2017 to November 2021. According to the Claimants, Mr Khouri, along with Mr Alhammadi, instructed Julius Baer to redeem investments and use the proceeds to invest in the P-Notes.</p>

<p>The claim primarily concerns P-Notes later converted into UP shares and allegedly transferred to accounts of the Thirteenth Defendant, Mr Al Mulla, which the Claimants believe were held under instructions of the Tenth Defendant (Mr Alhammadi), the Twelfth Defendant (Mr Khouri) or the Ninth Defendant (Mr Almheiri).</p> <p>The Claimants plead that the First Defendant, Trinkler & Partners Limited (“TAP”), and/or the Fourth Defendant, First Fund Management Limited, provided false reports of stock trading to conceal the diversion of funds. Mr Khouri was copied on an email from Mr Alhammadi to UP’s Finance Director which described the P-Notes as “<i>Diversified Notes</i>”, a description the Judge found misleading given the underlying UP shares. The Claimants submit that Mr Khouri’s failure to correct this suggests collusion to mislead the Claimants about their funds.</p> <p>The proceedings were initiated in November 2022, and the Court made freezing orders and proprietary injunctions, which were later discharged in May 2023. Claims were brought against the Defendants on various bases, including deceit or negligent misrepresentation, conspiracy by unlawful means, breach of fiduciary duties, dishonest assistance of breach of fiduciary duties, liabilities under the ADGM Financial Services and Markets Regulations 2015, unjust enrichment, and breach of contract.</p> <p>Mr Khouri had previously challenged the Court’s jurisdiction and sought to discharge the freezing order against him, both of which were refused by the Court in April 2023. The Judge concluded there were “<i>real issues to be tried both that Mr Khouri as party to a conspiracy... and that he acted in breach of his fiduciary duties</i>”.</p> <p>Mr Khouri’s current application sought strike out or summary judgment on the grounds: (i) that there was no sufficient basis for the Claimants’ case that he was dishonest or participated in a conspiracy; (ii) that the claims against him were an abuse of process; and (iii) that the Claimants had contravened Court orders.</p> <p>Analysis</p> <p>The Court applied legal principles for striking out statements of case, pursuant to Rule 9(2) of the ADGM Court Procedure Rules 2016 (“CPR”), and summary judgment, pursuant to CPR Rule 68(1)), focusing on whether the claims had a realistic prospect of succeeding.</p> <p>In cases alleging fraud, cogent evidence is required, pleadings are scrutinised closely, and dishonesty cannot be inferred from facts equally consistent with honesty, but the Court adopts a “<i>generous</i>” approach to pleadings given that fraudulent conduct is often shrouded in secrecy.</p> <p>A claimant does not have to plead facts only consistent with dishonesty, but facts justifying an inference that dishonesty is “<i>more likely than one of innocence or negligence</i>” (citing <i>JSC Bank of Moscow v Kekhman</i> [2015] EWHC 3073 (Comm)).</p> <p>Regarding the proposed claims against Mr Khouri in deceit or negligent misrepresentation, the Court found the pleading defective. It was unclear when or how the alleged representations were made, particularly concerning statements about transferring P-Notes to TAP. While the email copied to Mr Khouri might provide a basis for arguing he associated</p>

	<p>himself with the misleading description of "<i>Diversified Notes</i>", the pleading was not set out in proper detail, did not clearly state how the email to UP's Finance Director constituted a representation to Capital, and failed to plead reliance or causation. The Court refused permission to introduce these claims against Mr Khouri by amendment.</p> <p>Mr Khouri presented new evidence, arguing that he worked within a complex corporate structure, relied on the expertise and guidance of others (Mr Alhammadi, Mr Nicoll, Mr Almheiri), and believed instructions were legitimate. He relied on letters from the Ninth Defendant, Mr Almheiri, which he contended exonerated him from responsibility for investment decisions and absolved him from responsibility for signing documents related to TAP's appointment. He also highlighted events in late 2019 where he investigated Capital's finances, sought to convene Investment Committee meetings, arranged an investigation by lawyers, and subsequently resigned, arguing these were inconsistent with collusion.</p> <p>While the Court acknowledged that Mr Khouri's evidence, if genuine, is inconsistent with the alleged scheme, there were "<i>significant question marks</i>" about the provenance and authenticity of the letters from Mr Almheiri. The Judge noted that Mr Khouri had not presented these letters in previous applications where he challenged the case against him. Despite Mr Khouri's new evidence, the Court was not persuaded to depart from its April 2023 conclusion that "<i>there are real issues to be tried on the claims against Mr Khouri both in conspiracy and for breach of his fiduciary duties</i>". The conspiracy claim is based on inference, which is not unusual in such cases, and the possibility of further evidence from Julius Baer supports allowing the claims to proceed to trial. The claim for breach of directors' duties was considered to essentially reshape the conspiracy claim and also requires a finding of dishonesty or collusion, which remains arguable.</p> <p>The Court refused permission to amend the pleading concerning directors' duties to rely on Article 84 of the UAE Federal Decree Law 2/2015 on Commercial Companies (as amended), as it concerns "<i>managers</i>" and the Claimants did not plead that Mr Khouri, the Fifth Defendant (Mr Klar), and the Eight Defendant (Mr Almansoori) were managers at the material times, and the proposition that directors are managers for this purpose under UAE law was not pleaded or self-evident.</p> <p>Mr Khouri's arguments for striking out based on abuse of process or failure to comply with court orders were also rejected. The Court found that while the proceedings had not been pursued efficiently, there was no inordinate or inexcusable delay combined with an absence of intention to take the case to trial.</p> <p>Previous shortcomings in the pleading were not considered sufficient to justify striking out. The Court accepted the Claimants' evidence that documents may have been deleted and that they are actively seeking information, refuting the argument of negligible investigation attempts. The Court also reiterated its previous decision to grant the Claimants relief from the sanction of strike out for failing to provide security for Mr Khouri's costs by a deadline. Arguments that the case was not "<i>worth the candle</i>" given a potential settlement with other parties were rejected, as the</p>
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	<p>Claimants are claiming a substantial sum and there is no clear evidence they have security to recover their full claim from the settling parties.</p> <p>The Claimants' application to amend their Particulars of Claim was granted to the extent stated in the judgment, but specific proposed amendments were refused, particularly those introducing claims in deceit or negligent misrepresentation against Mr Khouri and relying on Article 84. Amendments related to preliminary matters, description of parties, assets, the claim outline, orders, settlement agreements, reservation of rights, known sequence of events, dishonest assistance, FSMR claims, unlawful conspiracy, equitable relief, loss and damage, and joint tortfeasor liability were generally permitted.</p> <p>Conclusion</p> <p>The Court refused Mr Khouri's application to strike out or stay proceedings or for summary judgment. The Claimants were ordered to file and serve an amended pleading by 29 November 2024 in accordance with the permitted amendments.</p> <p>The Judge also added a postscript noting that further material submitted informally by the Claimants after the judgment was concluded did not change any of his decisions or reasoning.</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.