

JUDGMENT SUMMARY

Neutral Citation	[2024] ADGMCFI 0019
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	27 November 2024
Catchwords	Application to strike out proceedings. Supplemental Judgment. Submission that Judgment had not engaged with all arguments.
Cases Cited	Roberts v Gill & Co [2010] UKSC 22 McEneaney v Stevens [2017] EWHC 993 (Ch) National Bank of Kazakhstan v The Bank of New York Mellon SA [2020] EWHC 916 (Com)
Legislation and Authorities Cited	ADGM Court Procedure Rules 2016 – Rule 57
Executive Summary	The supplemental judgment addresses a submission made by Mr Ahmed Khouri, arguing that the Court had not considered all his points. The Court ultimately rejected this submission, clarifying his reasoning concerning arguments around loss and the standing of the Claimants.
Overall Summary	<p>Background</p> <p>This is Abu Dhabi Global Market (“ADGM”) Court of First Instance (Commercial & Civil Division) judgment which supplements a previous judgment dated 15 November 2024 ([2024] ADGMCFI 0014).</p> <p>The case involves Union Properties P.J.S.C (“UPP”) and UPP Capital Investment Co. L.L.C. (“UPP Capital”) as the First and Second Claimants/ Applicants, respectively, and a number of Defendants/ Respondents, including Mr Ahmed Khouri (the “Twelfth Defendant”).</p> <p>The supplemental judgment was issued because Mr Richmond KC, representing the Twelfth Defendant, argued that the initial judgment dated 15 November 2024 had not addressed some of his arguments. While the Court noted that a Judge is not typically obliged to respond to every submission, it decided to issue this supplemental judgment due to the “<i>chequered history of these proceedings</i>” and the possibility of other Defendants raising similar arguments.</p>

	<p>In his skeleton argument, Mr Richmond KC had argued that UPP had suffered no loss and therefore its claims should be struck out because the alleged causes of action against the Twelfth Defendant were in tort and required proof of loss or damage. However, this argument was later abandoned after Mr Dillon-Malone SC, representing the Claimants, argued that UPP was the beneficial owner of “<i>the sums invested and the assets held by [UPP Capital] that are said to have been defrauded</i>” (the “Investment Fund”). The Court stated that even if this argument had not been abandoned, it would have been rejected, as it did not consider the position if, but for the alleged fraud, UPP would have itself have kept the Investment Fund and never transferred it to UPP Capital.</p> <p>Analysis</p> <p>Subsequently, in oral submissions, Mr Richmond KC raised a new argument: if UPP was the beneficial owner of the Investment Fund, then UPP Capital suffered no loss, and therefore UPP Capital's claim should be struck out. The Court rejected this submission for several reasons.</p> <ul style="list-style-type: none"> • Firstly, the Court found this argument to be inconsistent with the law as explained in <i>Roberts v Gill & Co</i> [2010] UKSC 22 and summarised in <i>McEneaney v Stevens</i> [2017] EWHC 993 (Ch): see too <i>National Bank of Kazakhstan v The Bank of New York Mellon SA</i> [2020] EWHC 916 (Comm). According to these cases, if the relationship between UPP Capital and UPP concerning the Investment Fund is that of trustee and beneficiary, claims against third parties should primarily be pursued by UPP Capital as the trustee. While a beneficial owner can bring proceedings in special circumstances, no such circumstances were pleaded in this case. • Secondly, the Court considered it sensible for both UPP Capital and UPP to be parties to the proceedings to ensure that decisions are binding on both, even though the ADGM Court Procedure Rules 2016 state that a judgment against a trustee binds the beneficial owner. Joining both parties minimises the risk of future disputes about the nature of their relationship under UAE law and avoids further litigation. • Thirdly, the Court saw no reason why the Claimants should not argue in the alternative that: if UPP has no claim for damages, then UPP Capital is entitled to recover damages for the wrongdoing. • Fourthly, the Court pointed out that not all of the Claimants' claims are in tort or require proof of loss or damage. There are claims for breach of fiduciary duty for which they seek an account of profits, and Mr Richmond KC's submissions did not address these claims. <p>Conclusion</p> <p>In conclusion, the Court found Mr Richmond KC's new challenge to UPP Capital's claims to be unconvincing. Therefore, the Twelfth Defendant's submission subsequent to the judgment dated 15 November 2024 was rejected.</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.