

## JUDGMENT SUMMARY

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| <b>Neutral Citation</b>                  | [2025] ADGMCFI 0009   |
| <b>Case Number</b>                       | ADGMCFI-2024-045  |
| <b>Name of Case</b>                      | Faysal Mohamad Awad v 3AM Property Investment Company LLC & Anor  |
| <b>Judge</b>                             | Justice Sir Andrew Smith  |
| <b>Date Issued</b>                       | 13 May 2025   |
| <b>Catchwords</b>                        | Observing procedures for costs applications. Assessment of costs on the standard basis. Whether success fee recoverable.  |
| <b>Cases Cited</b>                       | Turcon v Assaf and anor [2025] ADGM CFI 0002<br>Excelsior Commercial and Industrial Holdings Ltd [2002] EWCA Civ 879  |
| <b>Legislation and Authorities Cited</b> | ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 – Section 49<br>ADGM Court Procedure Rules – Rules 195, 197(1), 198 and 200(1)<br>Practice Direction 9 – Paragraphs 9.20 and 9.21 and Sections D and E   |
| <b>Executive Summary</b>                 | This judgment concerns costs in a case between Faysal Mohamad Awad (the Claimant) and 3AM Property Investment Company LLC (the First Defendant) and Adel Abdulhameed Ibrahim Abdulla Alhosani (the Second Defendant).<br>The Court awarded the Claimant a percentage of his standard costs against the First Defendant but excluded the success fee and associated VAT for now, allowing the Claimant to pursue those costs later if certain conditions are met.  |
| <b>Overall Summary</b>                   | <b>Background</b><br>This Abu Dhabi Global Market (“ADGM”) Court of First Instance (Commercial & Civil Division) judgment concerns the determination of costs following a previous judgment by the Court in proceedings between Faysal Mohamad Awad (the Claimant) and 3AM Property Investment Company LLC (the First Defendant) and Adel Abdulhameed Ibrahim Abdulla Alhosani (the Second Defendant). The main judgment was issued on 7 March 2025, after a trial that took place in January 2025. A hearing |

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|  | <p>was held on 6 May 2025 to consider the relief to be ordered based on the main judgment and the costs of the proceedings to date.</p> <p>In the judgment dated 7 March 2025, the Court upheld many of Mr Awad's claims against 3AM. Key findings included:</p> <ul style="list-style-type: none"><li>• the Land Investment Contract (the “<b>LIC</b>”) dated 23 October 2008 is a valid and enforceable contract between Mr Awad and 3AM;</li><li>• Mr Awad contributed AED 379,782,054.10 towards the Investment Project and is entitled to recover AED 167,057,638.60 from 3AM upon the debt for it accruing due;</li><li>• 3AM acted in breach of the LIC by preventing Mr Awad from assuming financial and technical management and fulfilling his responsibilities; and</li><li>• Mr Awad's claims were not barred by limitation.</li></ul> <p>However, Mr Awad was not wholly successful against 3AM, as the Court rejected his arguments for a proprietary interest in Leaf Tower, the timing of his entitlement to recover contributions (and compensation for late reimbursement), and his complaint about 3AM improperly preventing sales of properties. Furthermore, all claims made by Mr Awad against the Second Defendant, Mr Alhosani, were dismissed.</p> <p><b>Analysis</b></p> <p>Mr Awad applied for an order requiring the Defendants to pay his costs, totalling AED 4,090,990.16. This sum was itemised to include Court filing fees (AED 363,557.50 and AED 9,181.25), professional fees paid to his legal representatives, Middle East Alliance Legal Consultancy LLC (“<b>MEALC</b>”), in the amount of AED 200,000, and VAT on these fees (AED 10,000). Crucially, it also included a success fee agreed with MEALC under their engagement letter, calculated as 2% of the amount Mr Awad was entitled to recover (AED 167,057,638.60), plus VAT on the success fee. The Defendants did not oppose this application, nor did either Defendant apply for their own costs.</p> <p>Although Mr Awad did not strictly follow the procedures for costs applications outlined in the ADGM Court Procedure Rules 2016 (the “<b>CPR</b>”), the Court was prepared to treat his submissions as an application for summarily assessed costs given the circumstances and the lack of objection from the Defendants, finding that refusing costs on this ground would be disproportionate.</p> <p>The Court noted that the starting point for awarding costs in the ADGM Courts is normally the principle that costs follow the event, meaning the unsuccessful party pays the successful party's costs. Applying this principle:</p> <ul style="list-style-type: none"><li>• Mr Awad was unsuccessful in his claims against Mr Alhosani, and therefore, he is not entitled to an order for costs against Mr Alhosani or to recover costs related to those proceedings; and</li><li>• Mr Awad was considered the “<i>successful party</i>” in the proceedings against 3AM, having achieved a “<i>considerable measure of success</i>”.</li></ul> |
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|  | <p>Consequently, the starting point is that he is entitled to recover costs from 3AM. However, because he was not wholly successful against 3AM, the Court decided that this partial success should be reflected in the award. The Court therefore awarded Mr Awad 75% of the costs that he incurred in respect of the claims against 3AM.</p> <p>The Court rejected Mr Awad's implicit contention that costs should be assessed on the indemnity basis. It found no conduct or circumstances in the case that took it "<i>out of the norm</i>" to justify such an order, citing the principle from <i>Excelsior Commercial and Industrial Holdings Ltd</i>. Therefore, Mr Awad's costs were to be assessed on the standard basis. This means costs must be proportionate to the issues, reasonably incurred, and reasonable in amount, with any doubt resolved in favour of 3AM (Rule 198 of the CPR).</p> <p>Regarding the success fee component of Mr Awad's claim, the Court noted that the engagement letter specified the fee was payable based on "<i>any amount recovered from the Defendants</i>" or a settlement. While the Court determined Mr Awad is entitled to recover AED 167,057,638.60, this entitlement has not yet accrued due, and Mr Awad has not yet recovered any amount from either Defendant, nor has there been a relevant settlement. As it is currently uncertain whether Mr Awad will be obliged to pay the success fee to MEALC, the Court found it premature to determine this part of the costs application. The Court therefore did not award costs in respect of the success fee or its associated VAT in this judgment.</p> <p>The remainder of Mr Awad's costs, specifically the Court fees (totalling AED 372,738.75), the AED 200,000 professional fees for MEALC, and the VAT thereon (AED 10,000), were deemed proportionate, reasonably incurred, and reasonable in amount. The total of these specific costs components considered for assessment was AED 582,758.75.</p> <p><b>Conclusion</b></p> <p>The Court ordered that the First Defendant, 3AM Property Investment Company LLC, shall pay the Claimant, Faysal Mohamad Awad, costs.</p> <p>The amount awarded is AED 437,069.06, assessed on the standard basis. This figure was calculated as 75% of the assessed costs excluding the Success Fee and associated VAT (75% of AED 582,758.75).</p> <p>The Court did not award costs relating to the success fee or the VAT thereon in this judgment. However, Mr Awad was granted liberty to restore his costs application specifically in respect of the success fee and its VAT if and when he has recovered an amount in connection with the proceedings or a settlement is reached.</p> <p>No costs were awarded against the Second Defendant, Mr Adel Abdulhameed Ibrahim Abdulla Alhosani.</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.***