

JUDGMENT SUMMARY

Neutral Citation	[2025] ADGMCFI 0018
Case Number	ADGMCFI-2025-198
Name of Case	A22 & B22 v. C22
Judge	Justice Paul Heath KC
Date Issued	13 August 2025
Catchwords	Anti-suit injunction. Jurisdiction under Sections 16 and 41 of the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015. Whether grant of interim anti-suit injunction “just and convenient”. Exercise of discretion.
Cases Cited	<p>A15 v B15 [2024] ADGMCFI 0012</p> <p>A17 v B17 [2025] ADGMCFI 0001</p> <p>Abu Dhabi Commercial Bank PJSC v Manghat [2024] ADGMCFI 0010</p> <p>AES Ust-Kamenogorsk Hydropower Plant LLP v Ust-Kamenogorsk Hydropower Plant JSC [2013] UKSC 35</p> <p>AIG Europe SA v John Wood Group Plc [2021] EWHC 2567 (Comm): [2022] EWCA Civ 781</p> <p>Bankers Trust Co v PT Jakarta International Hotels and Development [1999] 1 All ER (Comm) 785</p> <p>Bankers Trust Co v PT Mayora (Unreported, 20 January 1999, Commercial Court)</p> <p>Carmon Reestrutura-Engenharia e Servicos Tecnicos Especiais, (SU) LDA v Cuenda [2024] DIFC CA 003</p> <p>Dubai Court of Cassation No. 51/1992 (24 May 1992)</p> <p>Ecobank Transnational Incorporated v Tanoh [2016] 1 WLR 2231 (CA)</p> <p>Enka Insaat Ve Sanayi AS v OOO Insurance Co Chubb [2020] UKSC 38</p> <p>Ledger v Leeor [2022] DIFC ARB 16</p> <p>Nest Investment Holding Lebanon SAL v Deloitte and Touche (ME) [2018] DIFC CA 011</p> <p>Nuriel v Nuzhat [2024] DIFC ARB 018</p> <p>QBE Europe SA/NV v Generali Espana de Seguros y Reaseguros [2022] EWHC 2062 (Comm)</p>

	<p>Transfield Shipping Inc v Chiping Xinfu Huaya Alumina Co Ltd [2009] EWHC 3629 (QB)</p> <p>UniCredit Bank GmbH v RusChemAlliance LLC [2024] UKSC 30</p>
<p>Legislation and Authorities Cited</p>	<p>Abu Dhabi Law No. (4) of 2013 (as amended by Abu Dhabi Law (No. 12) of 2020)</p> <p>ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015</p> <p>ADGM Arbitration Regulations 2015</p> <p>Arbitration Act 1996 (UK)</p> <p>Senior Courts Act 1981 (UK)</p> <p>UAE Civil Code (Law No. 5 of 1985 concerning the issuance of the civil transactions law of the UAE)</p> <p>UAE Commercial Maritime Law (Federal Law No. 43 of 2023)</p> <p>UAE Arbitration Law (Federal Law No. 6 of 2018)</p>
<p>Executive Summary</p>	<p>The Court declined to issue an interim anti-suit injunction sought by the Applicants, A22 and B22, against C22. A22 and B22 filed anti-suit injunction proceedings seeking to prevent C22 from continuing legal proceedings before the onshore Abu Dhabi Courts (the “Onshore Proceedings”), arguing that the dispute was subject to an arbitration agreement. The Court declared that it had jurisdiction to hear the application for an anti-suit injunction, relying on Section 41 of Abu Dhabi Law No. (4) of 2013 (the “Founding Law”), which confers powers on ADGM Courts similar to those of the English Courts under the Senior Courts Act 1981 (UK). However, the Court ultimately dismissed the application, finding that while the existence of an arbitration agreement was arguable, it has not been established with a “<i>high degree of probability</i>,” and considerations of comity towards the onshore courts and the Applicants’ own delay in seeking relief were strong factors against granting an anti-suit injunction.</p>
<p>Overall Summary</p>	<p>Background</p> <p>The dispute arose out of a contract between A22 and D22 (who was not a party to the Claim). D22 was an insured party under a “<i>Construction All Risks Policy</i>”. C22, its insurer, engaged A22 for marine warranty surveyor services for an oil field project. During the project, items being transported were damaged due to inadequate sea fastenings. C22 initially declined cover to D22 but was subsequently ordered by the Abu Dhabi Court of Cassation to indemnify D22 for approximately USD 14.5 million.</p> <p>C22 commenced the Onshore Proceeding against D22 and later joined A22 and B22, alleging that they caused loss to D22. A22 and B22 argued that C22’s claims, which they characterised as arising from subrogated rights, were subject to an arbitration agreement incorporated into a 2022 Service Order concluded between D22 and A22. This Service Order, which included an arbitration clause, was issued almost a year after the loss-events occurred and three months after C22 declined D22’s claim.</p>

	<p>Analysis</p> <p>The Court considered: (i) whether the Court had the power to hear and determine the anti-suit injunction application; and (ii) if jurisdiction existed, whether the Court should exercise it in favour of granting the injunction.</p> <p>On jurisdiction, the Court determined that its jurisdiction is statutory, derived from the Founding Law and “<i>Global Market Regulations</i>” such as the ADGM Courts Regulations 2015 and ADGM Arbitration Regulations 2015. Specifically, Section 41 of the ADGM Courts Regulations, allowed the Court of First Instance to grant injunctions where it appears “just and convenient.” This section is similar to Section 37 of the Senior Courts Act 1981 (UK). The Court noted that the UK Supreme Court has consistently held that Section 37 is the source of power for anti-suit injunctions to enforce arbitration agreements. The Court rejected C22’s argument that Section 12 of the ADGM Arbitration Regulations removed this jurisdiction, clarifying that relief was sought under the ADGM Courts Regulations, not the Arbitration Regulations. Therefore, the ADGM Court held that it had jurisdiction to issue an interim anti-suit injunction.</p> <p>On the exercise of discretion, the Court assumed, for the purpose of the interim application, several points in favour of the Applicants, including that C22’s claims were based on subrogated rights and that B22 had standing. The ultimate test for granting an injunction was whether it is “<i>just and convenient</i>”. The Court adopted principles from <i>QBE Europe SA/NV v Generali Espana de Seguros y Reaseguros</i> 2022] EWHC 2062 (Comm), which require an applicant to establish with a “<i>high degree of probability</i>” that an arbitration agreement exists to govern the dispute.</p> <p>Applying this threshold test, the Court found that while there was a “<i>good arguable case</i>,” there was not a “<i>high degree of probability</i>” that a valid arbitration agreement existed. This doubt arose from questions regarding the incorporation of the arbitration agreement by reference under UAE Federal Arbitration Law, the timing of the 2022 Service Order (issued long after the incident), and B22’s involvement as a non-party to the contract.</p> <p>Furthermore, even if the “<i>high degree of probability</i>” threshold had been met, the Court would have declined to exercise its discretion due to “<i>strong reasons</i>” related to comity and delay. ADGM Courts, as courts of Abu Dhabi, must show respect for the processes of the onshore courts, which were already seized of the dispute and a jurisdictional challenge. The Applicants’ dissatisfaction with the onshore court’s expert panel was not a sufficient reason to interfere. The Applicants’ delay in seeking anti-suit injunction relief was also conduct militating against granting relief; they had waited six months after the Onshore Proceeding began and only after an adverse preliminary expert report was issued, before bringing the anti-suit injunction proceedings.</p> <p>Conclusion</p> <p>The Court declared that it although it had jurisdiction to hear and determine the anti-suit injunction application, it should be dismissed.</p>
--	--

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.