

JUDGMENT SUMMARY

Neutral Citation	[2025] ADGMCFI 0019
Case Number	ADGMCFI-2025-101
Name of Case	A24 v. B24
Judge	Justice Paul Heath KC
Date Issued	25 August 2025
Catchwords	Arbitration Agreement. Article 16 of Arbitration Regulations 2015. Whether arbitration agreement null and void, inoperative or incapable of being performed because of one party's failure to pay advance on costs. Stay of proceedings.
Cases Cited	<p>Dubai Cassation Ruling in Appeal No. (3) for the year 2023 (Commercial), issued at the session of 26 July 2023</p> <p>Dubai Court of Cassation, Appeal No. (10) of 2023 – General Panel Decisions, 24 October 2023</p> <p>BDMS Ltd v Rafael Advanced Defence Systems [2014] EWHC 451 (Comm)</p> <p>Enka Insaat Ve Sanayi AS v OOO Insurance Co Chubb [2020] UKSC 38</p> <p>UniCredit Bank GmbH v RusChemAlliance LLC [2024] UKSC 30.</p> <p>Union Properties PJSC and Anor v Trinkler & Partners Ltd and Ors [2025] ADGMCFI 0015.</p>
Legislation and Authorities Cited	<p>UAE Cabinet Decision No. (41) of 2023</p> <p>Abu Dhabi Law No. (4) of 2013 (as amended by Law No. (12) of 2020)</p> <p>ADGM Arbitration Regulations 2015</p> <p>ADGM Court Procedure Rules 2016</p> <p>Federal Law No. (5) of 1985 (Civil Transactions Law)</p> <p>Federal Decree Law No. (50) of 2022 (Commercial Transactions Law)</p> <p>Federal Decree Law No. (35) of 2022 (Law of Evidence in Civil and Commercial Transactions)</p> <p>Federal Decree Law No. (42) of 2022 (Civil Procedure Law)</p> <p>ADGM Application of English Law Regulations 2015</p> <p>Federal Law No. (6) of 2018 (Federal Arbitration Law)</p>
Executive Summary	This judgment concerns a jurisdictional challenge in a dispute between A24 and B24. The core issue revolves around whether an arbitration agreement remains valid after B24 failed to pay its share of advance arbitration costs, leading the arbitration case to be dismissed " <i>without</i>

	<p><i>prejudice</i>". The Court examines UAE law, specifically recent Dubai Court of Cassation rulings, to determine if this non-payment renders the arbitration agreement "<i>null and void, inoperative, or incapable of being performed</i>". Ultimately, the Court grants a stay of proceedings under section 16(2) of the ADGM Arbitration Regulations 2015, compelling the parties back to arbitration, based on the October 2023 Dubai Court of Cassation decision which clarified that non-payment of arbitration costs does not invalidate the arbitration agreement.</p>
Overall Summary	<p>Background</p> <p>A24, a commercial entity providing interior design and installation services, entered into a sub-contracting agreement (the "Agreement") with B24 on 19 May 2020 for works on a residential development project on Al Reem Island. A24 alleges significant delays by B24 in ensuring the site was ready for it to commence work on the due date, leading to a claim for damages of AED 4,662,835.48, plus interest and costs. Al Reem Island, initially onshore Abu Dhabi, became part of the Abu Dhabi Global Market (ADGM) on 24 April 2023, granting the ADGM Court of First Instance exclusive jurisdiction over such disputes.</p> <p>B24 challenged ADGM Court's jurisdiction, arguing that an arbitration clause within the Agreement (the "Arbitration Agreement") mandated the dispute be resolved through arbitration. A24 countered that B24's breach rendered the Arbitration Agreement "<i>unenforceable</i>," or "<i>null and void, inoperative or incapable of being performed</i>" under section 16(2) of the ADGM Arbitration Regulations 2015, thereby enabling court proceedings.</p> <p>The Arbitration Agreement stipulated that any dispute would be resolved by arbitration under the rules of the Abu Dhabi International Arbitration Centre (known as arbitrateAD), following an unsuccessful attempt at amicable resolution. A24 initiated arbitration on 12 August 2024. An arbitral tribunal was partially formed, and on 18 November 2024, arbitrateAD fixed the advance on costs at AED 461,788.01, requesting A24 and B24 to pay their respective shares by 27 November 2024. B24 failed to pay its share.</p> <p>On 16 December 2024, A24 argued to arbitrateAD that B24's non-payment constituted an "<i>express and irrevocable waiver of the arbitration clause</i>," citing a July 2023 Dubai Court of Cassation ruling. A24 requested arbitrateAD either to continue arbitration with B24's payment postponed or to reject the arbitration and close the case. ArbitrateAD, referencing Article 51(4) of its Rules, dismissed the case on 19 December 2024 without prejudice to A24's right to recommence arbitration. Article 6 of the arbitrateAD Rules clarifies that recommencement means initiating a new arbitration, not merely reviving the previous one.</p> <p>Analysis</p> <p>To determine if the Arbitration Agreement was legally or practically at an end, the Court first had to ascertain its governing law. The main Agreement specified "<i>the laws of the United Arab Emirates</i>" as its governing law. Applying common law rules for conflict of laws, informed</p>

	<p>by English law principles as established in <i>Enka Insaat Ve Sanayi AS v OOO Insurance Co Chubb</i> and <i>UniCredit Bank GmbH v RusChemAlliance LLC</i>, the Court concluded that the choice of ADGM as the seat of arbitration alone was insufficient to displace the law governing the main contract as the law of the Arbitration Agreement. Therefore, onshore UAE law governed the question of whether the Arbitration Agreement was null and void, inoperative, or incapable of being performed.</p> <p>The Court then considered two conflicting Dubai Court of Cassation decisions under UAE law. A24 relied on the July 2023 decision, which held that if an arbitration agreement cannot be executed due to non-payment of costs, it becomes void, and courts regain jurisdiction. However, B24 (and the Court itself) brought attention to the October 2023 decision of the General Panel of the Dubai Court of Cassation, which overruled the earlier July 2023 decision. The October 2023 decision, after reviewing Federal Law No. (6) of 2018 (Federal Arbitration Law), concluded that a decision to cease proceedings due to non-payment of costs does not lead to the lapse of the arbitration clause and does not imply a waiver. It affirmed that either party could still invoke the arbitration clause or re-submit the case for arbitration.</p> <p>Justice Heath was persuaded by the October 2023 decision, finding that it clarified the UAE law position on the jurisdictional question. Consequently, the Arbitration Agreement was not deemed "<i>null and void, inoperative, or incapable of being performed</i>".</p> <p>Conclusion</p> <p>The Court thus ordered that the proceedings be stayed pursuant to section 16(2) of the ADGM Arbitration Regulations 2015. The Court also rejected B24's alternative argument that ADGM Courts were an unsuitable forum for disputes involving onshore UAE law, confirming the Court's capacity to handle such matters and stating that the doctrine of <i>forum non conveniens</i> does not apply to questions of jurisdiction within the UAE. No order as to costs was made, as B24 had failed to pay its share of arbitration costs without explanation or assurance of future payment. The judgment explicitly left open the question of what would happen if a defaulting party, like B24, persisted in its refusal to pay costs upon recommencement of arbitration.</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.