

## JUDGMENT SUMMARY

<b>Neutral Citation</b>	[2025] ADGMCFI 0022
<b>Case Number</b>	ADGMCFI-2025-160
<b>Name of Case</b>	Micca Ferrero & Others v. Drecford Holding Limited & Others
<b>Judge</b>	Justice Paul Heath KC
<b>Date Issued</b>	12 September 2025
<b>Catchwords</b>	Pre-action disclosure
<b>Cases Cited</b>	Abu Dhabi Commercial Bank PJSC v Manghat [2024] ADGMCFI 0020 Assetco plc v Grant Thornton UK LLP [2013] EWHC 1215 Black v Sumitomo Corporation [2001] EWCA Civ 1819 BTI 2014 LLC v Sequana SA [2023] 2 All ER 303 (UKSC) Carillion Plc (in liq) v KPMG LLP [2020] EWHC 1416 (Comm) Eng Mee Yong v Letchumanan [1980] AC 331 (PC) Hands v Morrison Construction Services Ltd [2006] EWHC 2018 (ChD) Hutchinson 3G UK Ltd. v O2 (UK) Ltd [2008] EWHC 55 (Comm) Total E&P Soudan SA v Edmonds [2007] EWCA Civ 50
<b>Legislation and Authorities Cited</b>	ADGM Commercial Licensing Regulations 2015 ADGM Companies Regulations 2020 ADGM Court Procedure Rules 2016 ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 English Civil Procedure Rules Senior Courts Act 1981 (UK)
<b>Executive Summary</b>	This judgment resulted from applications made by the Claimants—Micca Ferrero, Rida Lababedi, Tiger Trading Limited, and SCI Silverstar 2020 Limited—for pre-action disclosure against the Defendants: Drecford Holding Limited ("Drecford"), Mr. Craig Coughlan, and Mr. Patrick Sulzer. The Court of First Instance ordered pre-action disclosure. The application was brought as a claim under the (now abolished) rule 30 procedure of the

	<p>ADGM Court Procedure Rules 2016 ("ADGM CPR"), pursuant to section 36(2) of the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015.</p> <p>The judgment also dealt with a Summary Judgment Application against Drecford and Mr. Coughlan, who failed to oppose the disclosure request. Mr. Sulzer actively opposed the application, arguing he had minimal involvement and knowledge in the matters that were the subject of the Claimants' potential claim. The Court found that the Claimants successfully established that the Court should exercise of the Court's discretion in ordering disclosure against all three Defendants</p>
<p><b>Overall Summary</b></p>	<p><b>Background</b></p> <p>The Claimants sought orders for pre-action disclosure in relation to an intended claim against Drecford and its directors, Mr. Coughlan and Mr. Sulzer. Drecford was incorporated in the Abu Dhabi Global Market ("ADGM") in 2019, as a Special Purpose Vehicle and Private Company Limited by Shares, established to raise funds for the purchase and transfer of cash crops and commodities. Mr. Coughlan established Drecford and held 50% of the share capital. Mr. Ferrero and Mr. Lababedi each held 25% of Drecford's shares. Mr. Ferrero invested substantially through Tiger Trading, and Mr. Lababedi invested substantially through SCI Silverstar.</p> <p>Mr. Coughlan has been a director since incorporation and was Drecford's authorized signatory. Mr. Sulzer was also appointed director later in 2019, and neither director is recorded as having resigned. Both Mr. Ferrero and Mr. Lababedi dealt principally with Mr. Coughlan.</p> <p>The Claimants alleged they invested further funds (totaling €500,000) through a convertible note ("Note") dated August 2020, relying on Mr. Coughlan's alleged misrepresentations about the nature of Drecford's business and likely returns. Later, in 2023, Drecford issued a prospectus to convert the debt into a bond ("Bond"). The Claimants alleged false representations were made in the prospectus, leading to total investments of between USD 15 million and USD 20 million through the Bond issue.</p> <p>Drecford's ADGM trade licence expired in May 2024 and was not renewed. It lacked a required corporate service provider, putting it in contravention of ADGM commercial legislation for failure to deliver the confirmation statement. Coupon payments due throughout 2024 were not received by investors.</p> <p>Starting in September 2023, Mr. Ferrero attempted to obtain information on Drecford's financial position. The corporate service provider, M-HQ Ltd., resigned in November 2023, after failing to obtain necessary due diligence information from Drecford.</p> <p>Mr. Sulzer opposed disclosure, stating his role as director, appointed in 2019, was "<i>purely administrative</i>". He asserted he had "<i>virtually no</i></p>

	<p><i>knowledge or involvement</i>" in the intended claim and was simply "not in possession of any documents or information" of the nature sought.</p> <p><b>Analysis</b></p> <p>The applications raised questions about the Court's powers to order pre-action disclosure under section 36(2) of the Courts Regulations, which confers the power to order disclosure, and Rule 86(1) of the ADGM CPR, which supplements this jurisdiction. The Court found that although section 36(2) uses "<i>shall</i>" and rule 86(1) uses "<i>can</i>," these terms convey the right to exercise the power rather than making the order mandatory.</p> <p>The Court found that section 36(2) establishes three linked prerequisites (the "<b>likelihood criteria</b>") that must be met before a pre-action disclosure order is made:</p> <ol style="list-style-type: none"><li>1. The applicant (Claimant) is <b>likely</b> to be a party to subsequent proceedings.</li><li>2. The defendant is <b>likely</b> to be a party to the proceedings.</li><li>3. The defendant <b>is likely</b> to have or have had in its possession relevant documents.</li></ol> <p>The Court adopted the interpretation from <i>Black v Sumitomo Corporation</i> that "<i>likely</i>" in this context means "<i>may well</i>," rejecting a high test requiring proof on the balance of probability.</p> <p>The Court was satisfied that the Claimants established all three likelihood criteria. The underlying causes of action include alleged misrepresentation by Mr. Coughlan and potential breaches of duties owed by the directors to the company and stakeholders.</p> <p>Despite Mr. Sulzer's assertion that his role as director of Drecford was merely administrative, the Court held that he should not be excluded from the order because he retained legal and equitable obligations of oversight and supervision by virtue of holding the office of director. Whether he actually possessed documents was separate from whether he must be ordered to search for and disclose them. The Court emphasized that pre-action disclosure is summary in nature and does not necessitate a detailed investigation of complex legal issues.</p> <p>The Court's decision to make an order turned on a balancing exercise aimed at securing a "<i>fair and efficient</i>" system of civil justice, consistent with the overriding objective of the ADGM CPR. Factors speaking in favour of disclosure included:</p> <ul style="list-style-type: none"><li>• The nature of the relationship, where Drecford was controlled by Mr. Coughlan, and the Claimants had limited ability to obtain documents.</li><li>• The asymmetry of financial information between the Claimants and the directors.</li></ul>
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	<ul style="list-style-type: none"><li>• The desirability of allowing the Claimants access to relevant documents to make informed decisions, potentially assisting in resolving the dispute without substantive proceedings and saving costs.</li></ul> <p>The Court was satisfied that the scope of disclosure sought was reasonable and not oppressive.</p> <p><b>Conclusion</b></p> <p>Justice Heath KC concluded that the factors weighed in favour of granting the Disclosure Application against all three Defendants.</p> <p>Although the Claimants sought permission to use disclosed documents in other forums (e.g., arbitration or mediation), the Court was not prepared to grant this on a prospective basis, noting that Rule 89(1) of the ADGM CPR limits their use to Court proceedings.</p> <p>The Claimants succeeded and are entitled to costs for the Disclosure and Summary Judgment Applications, which will be summarily assessed if not agreed. Importantly, the Defendants are also entitled to receive their reasonable costs of making the disclosure from the Claimants. These competing costs were set off against each other.</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.***