

JUDGMENT SUMMARY

Neutral Citation	[2026] ADGMCFI 0013
Case Number	ADGMCFI-2025-262
Name of Case	Sowwah Square Investment – Sole Proprietorship L.L.C. v. Forever Rose Retail Limited
Judge	Justice Paul Heath
Date Issued	12 April 2026
Catchwords	Summary Judgment. No real prospect of successfully defending a claim. Breach of commercial lease. Tenant payments and yield-up costs. Defences of insolvency, surrender negotiations and self-representation dismissed as having no real prospect of success. Unenforceable penalties. Liquidated damages. Late payment fee. Holding over period. Whether a late payment fee is commercially justifiable or out of all proportion to the innocent party's legitimate interests. Proportionality test. Application of the test in Cavendish Square Holding BV v Makdessi.
Legislation Cited	ADGM Courts Procedure Rules 2016
Cases Cited	Union Properties PJSC v Trinkler Partners Ltd [2024] ADGMCFI 0014 127 Hobson Street Ltd v Honey Bees Preschool Ltd [2020] 1 NZLR 179 (SCNZ) Cavendish Square Holding BV v Makdessi [2016] AC 1172 (UKSC) Paciocco v Australia and New Zealand Banking Group Ltd (2016) 258 CLR 525 (HCA) ED & F Mann Liquid Products v Patel [2003] EWCA Civ 472 Eng Mee Yong v Letchumanan s/o Velayutham [1980] AC 311 (PC)
Executive Summary	This ADGM Court of First Instance (Commercial & Civil Division) Judgment considers a summary judgment application brought by Sowwah Square Investment – Sole Proprietorship L.L.C. (" Sowwah ") against its tenant, Forever Rose Retail Limited (" Forever Rose "). Sowwah sought to recover AED 1,199,568.12 for unpaid rent and

	<p>associated costs, yield-up costs, late payment fee, and liquidated damages arising from a commercial lease</p> <p>The Court granted the summary judgment in part, ruling in favour of Sowwah for the unpaid rent and yield-up costs. However, the Court dismissed the application concerning the late payment fee and liquidated damages, finding there was a real prospect that these charges could be successfully defended at trial as unenforceable penalties.</p>
<p>Overall Summary</p>	<p>Background</p> <p>Sowwah leased a retail unit at "The Galleria" mall to Forever Rose following a novation agreement in June 2022. The relationship broke down when Forever Rose failed to make any tenant payments (base rent, service charges, etc.) from October 2023 onwards.</p> <p>Following several reminders and a formal demand in October 2024, Sowwah served a Termination Notice in January 2025 and subsequently carried out reinstatement works on the unit. Sowwah's total claim of AED 1,199,568.12 was broken down into four parts:</p> <ol style="list-style-type: none"> 1. Tenant payments: AED 608,525.79. 2. Yield up costs (reinstatement works): AED 45,885. 3. Late payment fee: AED 207,413.39 (calculated at EIBOR + 8% + VAT, accruing daily). 4. Liquidated damages: AED 337,743.94 (calculated as twice the tenant payments due during the holding-over period). <p>Forever Rose, self-represented by its Director Mr Al-Samadi, opposed the application, arguing that the Forever Rose was insolvent, that the parties had been engaged in surrender negotiations, and that the quantum of the late payment fee and liquidated damages was disputed.</p> <p>Analysis</p> <p>The Court assessed the claim under Rule 68(1) of the ADGM Court Procedure Rules 2016, which allows for summary judgment if a defendant has "<i>no real prospect of successfully defending the claim</i>" and there is no other compelling reason for a trial.</p> <ul style="list-style-type: none"> • Tenant payments and yield up costs: The Court found that Forever Rose's defences—namely insolvency, inability to afford legal counsel, and ongoing surrender negotiations—did not provide a real prospect of successfully defending these claims. The law strictly requires a debtor to pay monies owed under a

	<p>financial instrument, and therefore summary judgment was deemed appropriate for these specific amounts.</p> <ul style="list-style-type: none">• Late payment fee and liquidated damages: These two charges represented approximately 45% of the total claim. Relying on the UK Supreme Court decision in <i>Cavendish Square Holding BV v Makdessi</i>, Justice Heath considered whether these charges amounted to unenforceable penalties. The test asks whether the detriment imposed on the contract breaker is "out of all proportion to any legitimate interest of the innocent party". The Court found that both the aggressively compounding daily late payment fee and the liquidated damages (charging double rent) were arguably out of all proportion to Sowwah's legitimate interests. Consequently, Forever Rose had a "real prospect" of defending against these claims, meaning they must be resolved at trial rather than through summary judgment. <p>Conclusion</p> <p>The Court issued a split decision:</p> <ol style="list-style-type: none">1. Summary judgment was granted in favour of Sowwah in the sum of AED 654,410.79, which comprises the unquestioned tenant payments (AED 608,525.79) and yield up costs (AED 45,885).2. The application regarding the late payment fee and liquidated damages was dismissed. These issues, alongside questions of interest and costs, have been reserved pending a full trial to determine whether those contractual provisions act as unenforceable penalties. The Court noted that this remaining issue should be capable of prompt disposal.
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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.