



In the name of
His Highness Sheikh Mohamed bin Zayed Al Nahyan
President of the United Arab Emirates/ Ruler of the Emirate of Abu Dhabi

**COURT OF APPEAL
BETWEEN**

UNION PROPERTIES PJSC

First Appellant

and

UPP CAPITAL INVESTMENT CO LLC

Second Appellant

and

NASSER BUTTI OMAIR YOUSEF ALMHEIRI

Respondent

JUDGMENT

Chief Justice, Lord David Hope
Justice Kenneth Hayne
Justice Sir Nicholas Patten



Neutral Citation:	[2025] ADGMCA 0001
Before:	Chief Justice, Lord David Hope Justice Kenneth Hayne Justice Sir Nicholas Patten
Decision Date:	25 June 2025
Decision:	1. Appeal dismissed. 2. The Appellants shall pay the Respondent's costs on the standard basis as agreed or to be subject to a detailed assessment of costs.
Hearing Date:	13 June 2025
Date of Order:	25 June 2025
Catchwords:	Appeal against strike out order. Fresh evidence on appeal. Tests to be satisfied for evidence to be admitted.
Legislation and Other Authorities Cited:	ADGM Court Procedure Rules
Cases Cited:	Ladd v. Marshall [1954] 1 WLR 1498 Transview Properties Limited v. City Site Properties Ltd [2009] EWCA Civ 1255 Tajik Aluminium Plant v. Ermatov [2008] EWCA Civ 54 Kawasaki Kisen Kaisha Ltd v James Kemball Ltd [2021] EWCA Civ 33 Elite Property Holdings v Barclays Bank plc [2019] EWCA Civ Three Rivers District Council v Bank of England (No 3), [2001] UKHL 16 JSC Bank of Moscow v Kekhman, [2015] EWHC 3073 (Comm)
Case Number:	ADGMCA-2025-001
Parties and Representation:	Mr Nils De Wolff, Counsel, Greenberg Traurig Limited for the Appellant Mr Sean Brannigan KC for the Respondent (Instructed by Al Aidarous Advocates & Legal Consultants LLC)

JUDGMENT

1. This is an appeal by the claimants, Union Properties P.J.S.C (“UP”) and UPP Capital Investment Co. LLC (“UPPC”) against an order of Justice Sir Andrew Smith made on 23 May 2024 by which he refused an application by the claimants to amend the particulars of claim and struck out the claim against the ninth defendant, Mr Naser Butti Omair Yousef Almheiri, a former director and the Chairman of both UP and UPPC. The claimants ask the court to grant the appeal on the basis



of new evidence, to set aside the order of 23 May 2024 and to reinstate the claim against Mr Almheiri.

2. Both UP and UPPC are incorporated in Dubai. UP is a quoted real estate development company. UPPC is a private company and a wholly owned subsidiary of UP. According to the particulars of claim it was established in 2002 to undertake and hold investments in equities on behalf of UP. Mr Almheiri was a director and the chairman of UP between April 2017 and September 2019 and the chairman of UPPC between June 2017 and November 2021.
3. In the action, the claimants seek orders for damages and restitution in respect of the sum of AED 320,717,867.84 which they allege was unlawfully used to purchase 391,789,341 units of P- Notes most of which have been misappropriated. In order to understand how the strike out application has come about and the nature and scope of the issues on this appeal, it is necessary to provide a brief summary of the various stages in the alleged fraud.
4. In July 2017, UPPC opened an account with Bank, Julius Baer and Co. Ltd (“**JB**”) in Switzerland through which to channel investment in an Egyptian developer. Funds for this purpose (amounting to AED 337m) were transferred between February and June 2018 from UP to UPPC and deposited in the JB account. The claimants plead that the investment in Egyptian Palm Hills Development (referred to as the **PHD Fund**) was delayed and in the interim UPPC instructed JB to invest AED287m of the monies it held in a local JB fund known as the UAE Focus Fund.
5. On 19 June 2018, the Investment Committee of UPPC decided to postpone any investment in the PHD Fund and to exit from the UAE Focus Fund due, it is said, to the under performance of that fund. The units purchased in the Focus Fund were redeemed by JB on 5 and 9 July 2018 for AED 270m (a loss of about AED 17m) and the proceeds credited to UPPC’s JB account. JB were then instructed to purchase the 391,789,341 units of P-Notes using the cash which had remained in the JB account and the monies obtained from the redemption of the units in the UAE Focus Fund. A total of AED 320m (the exact figure is given earlier) was used for this purpose and the P-Notes were purchased in various tranches between 3 and 27 July 2018.
6. P-Notes (sometimes called Participation Notes) are units in a fund invested in shares. In this case the AED 320m was invested in three kinds of P- Notes; Al Salam Bank P- Notes (AED31m); Union Insurance P-Notes (AED.2.5m); and UP P-Notes (AED291.5m). Although the claim relates to the entire AED 320 m we are primarily concerned (in terms of the pleaded case) with the UP P-Notes which were units in a fund comprising UP shares. All of the P-Notes held by JB were transferred between the end of August and 5 October 2018 to Arqaam Bank Limited (“**Arqaam**”) which was the issuer of the notes and converted by Arqaam into shares in the relevant companies. The 25,840,000 Al Salam notes were converted to shares in Al Salam Bank Bahrain and these shares were then transferred to an account held by UPPC with SICO BSC. No claim of misappropriation is therefore made in respect of these shares. Similarly, the judge was not concerned with the subsequent history of the Union Insurance notes which were sold and the proceeds used to pay transaction charges. The amendment and strike out applications were primarily concerned with the transfers of 180 million of the UP P-Notes delivered to Arqaam on 20 September 2018 and the transfer of 185,549,341 UP notes delivered to Arqaam on 5 October 2018. The judge referred to these as the second and the fourth transfers and for ease of identification, and we shall do the same.



7. The transfers and conversion of the UP P-Notes was part of a wider arrangement for the transfer of the investments from JB to the custody and control of another Swiss asset management company called Trinkler and Partners (“**TAP**”) whose CEO was Mr Thomas Trinkler. TAP and Mr Trinkler are the first and second defendants to the claim. Mr Trinkler was also a director of the fourth defendant, First Fund Management Ltd (“**FFM**”) which is a private company that was registered in the ADGM by Mr Almheiri and his brother-in-law, Mr Khalifa Hasan Ali Saleh Alhammadi who is the tenth defendant. Mr Alhammadi was a director of UP between August 2018 and December 2019, the CEO of UP between December 2019 and March 2020 and the Vice Chairman and subsequently the Chairman between March 2020 and November 2021. He was also a director of UPPC between June 2017 and November 2021 and during that time a member of UPPC’s Investment Committee. Another director and member of the Investment Committee in the same period was the twelfth defendant, Mr Ahmed Yousef Abdulla Hussain Khouri who was also the CEO of UP between July 2017 and July 2018 and the managing director of UP between July 2018 and December 2019.

8. In June 2018, UPPC entered into a Mandate Agreement and an Investment Management Agreement with TAP (“**the IMA**”) under which TAP was authorised to direct the investment and re-investment of UPPC assets in securities and cash in return for payment of management service and performance fees. The IMA also gave TAP sole and absolute discretion as to the choice of investments subject to any special instructions given by UPPC. On 4 September 2018, TAP entered into a service level agreement with FFM (“**the SLA**”) under which FFM was to provide the services of an investment manager again for a fee. The evidence includes letters signed by Mr Khouri and Mr Alhammadi instructing JB to make the second and fourth transfers of the P-Notes to TAP although the notes were in fact then delivered to Arqaam in order to be converted into UP shares. The transfer to Arqaam may not be significant in itself because as the issuer of the P-Notes it would have to be involved in their conversion or redemption and it is not alleged that Arqaam was itself privy to any fraud or unlawful activity. What is however significant is that neither the P-Notes nor any of the underlying shares ever found their way to either TAP or FFM. Arqaam proceeded to transfer the shares to Mr Hassan Al Mulla who is or was the principal of Hassan Al Mulla Advocates and Legal Consultants and had acted in the past for both UP, UPPC and FFM.

9. Notwithstanding that neither the P-Notes nor the UP shares had ever reached TAP or FFM both companies continued to bill UPPC for management services. FFM wrote to TAP to confirm that it had received the second and fourth transfers of the notes on 20 September 2018 and 2 October 2018 and TAP informed UPPC that it held the 364,549,341 units of P-Notes some of which, it said, had been subsequently sold and re-invested.

10. Eventually in late 2021, UP was alerted by the financial authority in the UAE to the possibility of a fraud having been committed by Mr Alhammadi who was then dismissed. A new board of directors was appointed. Investigations subsequently revealed that neither TAP nor FFM had ever received the UP notes or shares and that the reports confirming the receipt of the assets and their subsequent investment were fabrications. The claimants’ investigations indicated that Mr Al Mulla had received the UP shares which were then either sold or distributed *in specie*. Mr Alhammadi is said to have received large sums from the sale of the shares which he and his family have used to purchase properties in the UAE. Most of the notes or UP shares contained in the second and fourth transfers and the proceeds from their sale have not been recovered.



11. The claim was issued on 14 November 2022. There were 13 defendants including Mr Almheiri, Mr Alhammadi and Mr Khouri. At the time of the hearing before Justice Sir Andrew Smith it was alleged that the controlling mind of the fraud was Mr Alhammadi. The claimants relied on the letter of 23 June 1981 from Mr Alhammadi and Mr Khouri which instructed JB to redeem the Focus Fund units and their subsequent instructions to JB to purchase the P-Notes with the proceeds. It was pleaded (in [17] of the particulars of claim) that “*the UPP Capital Directors*” caused UPPC to enter into the Mandate Agreement and the IMA with TAP and (in [26]) that Mr Alhammadi and Mr Khouri instructed JB to transfer the P-Notes to TAP. The claimants also pleaded that the UP shares were transferred to Mr Al Mulla on their instructions. The original particulars of claim included a claim that the defendants had conspired to injure the claimants by unlawful means relying *inter alia* on the instructions by Mr Alhammadi and Mr Khouri to purchase the P-Notes, the incorporation of FFM by Mr Alhammadi and Mr Almheiri; and the making of the SLA by TAP with FFM. FFM was alleged to have been set up for the purposes of the conspiracy and not for any proper purpose.

12. The hearing of the strike out and the amendment application was protracted. Mr Almheiri issued his strike out application on 29 August 2023 which came on for hearing on 7 November 2023. The judge gave an oral ruling to the effect that the pleading as it then stood did not allege primary facts from which an inference of dishonesty could properly be drawn. There was no distinct allegation that Mr Almheiri had incorporated FFM for the purposes of the conspiracy and his signature to a letter of 10 September 2018 relating to the sale of the P-Notes (which was relied on as showing that he had authorised or approved the transfer of the notes to Arqaam) was not sufficient to support an allegation of dishonesty unless it could be alleged that it was signed for an improper purpose.

13. The judge, however, accepted that defects of this kind could be cured by amendment and therefore adjourned the strike out application to allow the claimants to make an application to amend. This they did on 8 December 2023 supported by a witness statement from Mr de Wolff which exhibited a proposed new draft pleading. This contained an allegation that FFM was incorporated by Mr Almheiri and Mr Alhammadi as a sham company to conceal a fraud. It is not necessary for us to refer to the detail of the pleading because it was eventually accepted by Mr Dillon - Malone SC who appeared for the claimants that the draft pleading was defective. It is however worth noting that in the draft the letter of 10 September 2018 was now said to be relevant to the transfer of the 25,840,000 Al Salam Bank P-Notes which as we have explained earlier are not included in the claim.

14. The second draft pleading (which the judge described as significantly altered) was produced on the second day of the hearing. It set out four causes of action against Mr Almheiri: (i) a claim for breach of duty as a director of UPPC based on an allegation that he authorised the transfer of the P-Notes to Arqaam and failed to investigate and exercise independent judgement or oversight; (ii) a claim of dishonest assistance alleging that Mr Almheiri procured other defendants to act in breach of their fiduciary duties to UP and UPPC; (iii) a claim for compensation under section 242 of the *ADGM Financial Services and Markets Regulations 2015*; and (iv) a claim for damages for conspiracy by unlawful means.



15. The position of Mr Almheiri before the judge and on this appeal has been that the claimants have pleaded a sufficiently arguable case that they have been defrauded by the transfer of the P-Notes out of the JB account and the subsequent misappropriation and sale of the UP shares following their receipt by Mr Al Mulla from Arqaam. His challenge is to the allegation that he was a party to the conspiracy and misappropriation of these assets which he says is not supported by any credible evidence and is not properly pleaded even in the proposed amended particulars of claim.
16. The claimants made it clear before the judge that they did not allege that Mr Almheiri had been dishonest either in establishing FFM or in giving the instructions contained in the 10 September 2018 letter. The letter, which as we have mentioned, was pleaded in the first draft as relevant to the transfer of the Al Salam Bank notes was however relied upon as being in some way connected to the fourth transfer of the UP notes. But the judge held that on the evidence this appears to have been authorised by the letter from Mr Alhammadi and Mr Khouri dated 24 September 2018 and that the claimants had provided no coherent theory as to how the transfer was attributable to the 10 September letter.
17. The judge dealt in some detail with each of the causes of action pleaded against Mr Almheiri but for the purposes of this appeal it is only necessary to summarise them. In relation to the claim based on breach of duty as a director of UPPC the first draft pleading had failed to recognise that as Dubai registered companies, the *ADGM Companies Regulations* had no application to them. In the second draft it was alleged that the same duties were owed under UAE Federal Law No. 32/2021 on Commercial Companies (“**CCL**”) but the judge accepted Mr Almheiri’s argument that it was not clear which duties were said to arise under the CCL. He also held that the draft pleading on this issue was not sufficiently particularised. The allegation in paragraph 50G that Mr Almheiri had authorised the transfer of the notes to Arqaam was presumably based (although it did not say so) on the 10 September 2018 letter which the judge had rejected as relevant for the reasons explained earlier. In paragraph 50G(b) it was pleaded that Mr Almheiri had failed to investigate or exercise any independent judgment or oversight in relation to the fraudulent dealings with company assets and in 50J that as one of the directors of UPPC, Mr Almheiri had procured the company to enter into the IMA with TAP knowing that no bona fide asset management services would be provided. The judge held that these allegations were not properly particularised or supported by any satisfactory evidence.
18. We note in passing that what the claimants did also plead was that Mr Alhammadi and Mr Khouri as members of UPPC’s Investment Committee had oversight of the investment decisions made on behalf of the company (50B); that it was Mr Khouri who was responsible for the transfer of the AED 337m into the JB account (50F); and that it was Mr Alhammadi and Mr Khouri who instructed JB to redeem the Focus Fund units and to use the proceeds to purchase the P-Notes which they then transferred to TAP (50I).
19. The allegation against Mr Almheiri of dishonestly assisting the other directors of UPPC to breach their fiduciary duties to the company was pleaded in general terms against “*the FFM directors*” without further particularity. The dishonesty of the directors is pleaded (in 50L) to be something which can be inferred from the fact that no trust assets were ever received or managed by FFM and that FFM nevertheless produced false reports showing the assets which it said were under its management. The claimants had of course disowned any suggestion that Mr Almheiri had been dishonest in setting up FFM and he ceased to be a director of that company on 22 May 2018.



The judge said that he could not tell from the pleading whether all or which of the particulars of dishonesty were intended to apply to Mr Almheiri nor did it explain how he dishonestly assisted the alleged breaches of duty after he ceased to be a director.

20. The allegation of conspiracy to injure by unlawful means is contained in paragraphs 82A to 80G of the second draft which is an amalgam of the pleading of conspiracy in the first draft together with some further particulars. The matters which are said to support the inference of a conspiracy are set out in paragraph 82C. The judge (at [55]-[56]) said this about them:

55. *The matters that concern, or might conceivably be directed against, Mr Almheiri are these:*

- a. *The fact that he and Mr Alhammadi incorporated FFM in March 2018: para 82C(c).*
- b. *The “relationship” between the Defendants, which, as far as Mr Almheiri is concerned, appears to be that he was a director of UP, the Chairman of Capital and, until 22 May 2018, a director of FFM: para 82C(d).*
- c. *The fact that the directors of Capital “procured [Capital] to enter into the Mandate Agreement and IMA with TAP, and TAP entered into the SLA with FFM”, despite FFM being newly incorporated and closely associated with unexperienced persons who were generally directors of UP or Capital, or relatives of those directors: para 82C(e).*
- d. *The fact that “the FFM Directors” falsely represented to UP and Capital that they had received and maintained custody of the P-Notes: para 82C(f).*
- e. *The fact that “the FFM Directors” provided false trading reports that the P-Notes were being used for active trading in stocks: para 82C(g).*
- f. *The “circumstances supporting the conclusion that FFM was established as a company and the fact that it had no legitimate purpose”: para 82(j).*
- g. *The “record of contradictory and/or false instructions in relation to P-Notes and the absence of inquiry or monitoring in relation to how those instructions were acted upon”: para 82(k).*

56. *I have already commented on these various matters, and I can deal with the conspiracy claim summarily. Given that the Claimants do not allege that the incorporation of FFM involved any dishonesty on the part of Mr Almheiri, I cannot accept that matters (i) or (vi) above provide any cogent support for the contention that he was party to a combination of the kind alleged. Nor does the fact that Mr Almheiri was a director of UP and Chairman of Capital and, for a brief time, a director of FFM. I am not impressed by the allegation that Mr Almheiri “procured” the Mandate Agreement, the IMA and the TAP be made: see para 44 above. The alleged false representations and false reports were made, if at all, when Mr Almheiri was not a director of FFM, and these allegations do not support a case against him. The only instructions said to have been given by Mr Almheiri in relation to the P-Notes is the 10 September 2018 letter, and given that it is not said to have been dishonest, it does not support the case that he was party to their misappropriation. A failure to inquire or monitor is too vague to assist the Claimants and is not relevant to the allegation that he was party to a combination.*



21. The judge therefore refused the amendment application and struck out the claim against Mr Almheiri. The claimants' notice of appeal seeks the setting aside of the strike out order but does not challenge the judge's order refusing permission to amend the particulars of claim in the form of the second draft. The claimants accept that he was entitled for the reasons which he gave to refuse permission to amend the particulars of claim in that form. It therefore followed that the claim against Mr Almheiri should be struck out. The present challenge to that order is based on new evidence which the claimants say was not available at the May 2024 hearing, but which would, had it been available, have had an important influence on the outcome of the strike out application. If the new evidence is admitted, then the claimants also ask this court to reinstate the claim against Mr Almheiri and to give them permission to serve and file re-amended particulars of claim on each of the defendants who remain parties to the proceedings. To this end Mr de Wolff has annexed to his argument filed in support of the appeal a draft of the proposed pleading which indicates in purple the amendments which the claimants seek in respect of Mr Almheiri.
22. The particulars of claim have undergone a number of significant changes since the strike out order was made. In particular, the claims in deceit and for negligent statement against Mr Trinkler and other FFM directors have been re-pleaded as have the allegations of breach of director's duty in part G of the pleading which are made against various of the UPPC directors including M.r Khouri and Mr Almheiri. The claim of dishonest assistance made against Mr Trinkler, the fifth defendant, Mr Klar and the sixth defendant, Mr Khiara (but not now against Mr Almheiri) has also been re-pleaded as has the claim for compensation under section 242 FSMR. There is also a re-pleaded claim for unlawful means conspiracy which alleges that a number of the defendants including Mr Alhammadi and Mr Khouri acted in concert with the common intention of misappropriating the transferred funds and used unlawful means to do so. Those unlawful means are specified in paragraph 107 of the pleading and include the breaches of director's duty set out in section G and the acts of dishonest assistance set out in section I. In paragraph 106 of the pleading the claimants set out the facts which they claim support the inference of the conspiracy. These include the incorporation of FFM in March 2018; the instructions given by Mr Alhammadi and Mr Khouri to JB to purchase the 364,549,341 units of P-Notes; the concealment by those two defendants of the actual investments underlying the notes (the UP shares); the circumstances surrounding the diversion of the trust assets by Mr Alhammadi and Mr Khouri; the misappropriation of the proceeds of the UP shares; the procurement of UPPC to enter into the mandate agreement and the IMA with TAP; and the various trading reports provided to UPPC which contained false statements about the assets under management with TAP and FFM.
23. The judge gave the claimants permission to make these amendments on 9 December 2024. The question for this court is whether we should permit the new evidence to be admitted and if so whether the proposed amendments which reinstate Mr Almheiri as a defendant should be allowed. Mr Almheiri opposes both of these applications. The new evidence comprises five witness statements and their exhibits. These are: the third witness statement of Mr Alhammadi dated 28 June 2024 ("**KAH3**"); the fifth witness statement of Dr Clemens Daburon dated 4 July 2024 ("**CAD5**"); the first witness statement of Sarah Malik dated 1 August 2024 ("**SM1**"); the fourth witness statement of Mr Alhammadi dated 23rd August 2024 ("**KAH4**") and the fourth witness statement of Amna Alhammadi also dated 23 August 2024 ("**AAH4**"). In order to understand the circumstances in which these statements were made we need to mention two other events in the history of the litigation.



24. In June 2023, the claimants entered into what is described as a Final Settlement Agreement with a number of the defendants including Mr Alhammadi and Mr Khouri. The agreement states in its recitals that the parties have agreed on the full and final settlement of all actual and potential claims and causes of action by the claimants and clause 2.1(a) specifies a settlement sum of AED 620m which was to be paid in two tranches of AED 300m and 320m. Clause 3.6 provides that any recovery from parties not included in the settlement agreement will be deducted from the second tranche of the settlement sum and that the AED 320m will be satisfied by the sale of movable and immovable assets by the Custodian appointed under the agreement.
25. Notwithstanding this agreement the proceedings against the contracting defendants continued and on 15 April 2024, Justice Sir Andrew Smith granted judgment in default against Mr Alhammadi and his sister Amna Alhammadi. Each of the five witness statements relied on by the claimants as new evidence was made either by or on behalf of one of the defendants in various applications brought by them in the proceedings. KAH3, KAH4 and AAH4 are witness statements made by Mr Alhammadi and his sister in support of their applications (which were ultimately unsuccessful) to set aside the judgments in default. CD5 and SM1 are witness statements by the lawyers acting for Mr Klar and Mr Khouri in opposition to the claimants' application for permission to file amended particulars of claim and in the case of Mr Khouri, in support of his application to strike out the claim against him.
26. To succeed on their applications to set aside the judgments in default, ADGM Court Procedure Rules ("CPR") rule 41(2) required Mr Alhammadi and his sister to demonstrate that their applications had been made promptly and that they had a real prospect of successfully defending the claim. To meet the second of these requirements, Mr Alhammadi made a number of brief points in KAH3 about the scale of his involvement in the alleged fraud. He accepted that he was a director of UPPC between June 2017 and November 2021 and the chairman of its investment committee. The proposal to redeem the units in the Focus Fund and to place the monies with TAP for future investment was, he said, the recommendation of Mr Klar, who was the Vice President of Finance, and accorded with Mr Almheiri's wish to open channels with Swiss banks and fund managers. The TAP proposal was approved by all of the members of the investment committee and Mr Alhammadi and Mr Khouri gave the instructions to JB to redeem the units on 23rd June 2018. He also accepts that he and Mr Khouri signed instructions to JB to purchase the P-Notes but the decision to make the purchase came, he says, from Mr Almheiri on whose directions the Investment Committee acted. Mr Alhammadi denies, however, signing any instructions to JB to transfer the P-Notes to TAP and says that the documents relied on by the claimants are forgeries. Similarly, he denies arranging the transfer of the notes to Arqaam, being involved in the production of the false statements about the receipt and management of the trust assets or obtaining any benefit from the alleged fraud.
27. CD5 is largely a critique of the claimants' proposed pleading but Dr Daburon does say in paragraph 23 that Mr Almheiri was the leading individual in the set-up of the schemes which are the subject of the claim. No further details are given as to what Dr Daburon means by this or as to what is the factual basis for this statement.
28. Much more significant is the evidence contained in SM1. The witness statement was made on behalf of Mr Khouri in opposition to the claimants' application for permission to file amended particulars of claim which they made following the strike out order of 23 May 2024. Much of the witness statement consists of submissions about the proposed pleading and the relevant legal



principles to be applied but it begins with a summary of the factual background and exhibits various letters which are now relied on by the claimants as indicative of Mr Almheiri's involvement in the fraud.

29. The general point made by Ms Malik is that Mr Khouri signed documents in the belief that they had been vetted and approved by the relevant departments of the claimant companies including the Audit and Risk Department. She says that Mr Alhammadi (who was a Director of UPPC between 2017 and 2021) was the head of the Audit Committee and that, to use her words, he comprehensively controlled the management of UPPC with the accounts team of UP reporting directly to him. She says that all investment decisions for UP were taken by UPPC on the basis of instructions from the Investment Committee "under the overarching supervision, guidance and control" of the chairman of UP, Mr Almheiri. The Investment Committee consisted of three members, Mr Alhammadi, Mr Khouri and Mr Jonathan Nicholl who had previously worked with Mr Alhammadi at JB. It was Mr Almheiri who appointed Mr Alhammadi to exclusively handle the investments of UP through UPPC. Mr Khouri, she says, relied on the financial expertise of Mr Alhammadi and Mr Nicholl "as well as guidance from Mr Almheiri".
30. To illustrate these points Ms Malik exhibits three letters sent to Mr Khouri and each apparently signed by Mr Almheiri. The first letter dated 1 February 2018 is in terms an instruction from Mr Almheiri to transfer AED 337m from UP to the UPPC account with JB for investment. Ms Malik says that Mr Khouri had raised concerns about the transfer of funds from UP to UPPC in order to make investments in equities, but in the letter Mr Almheiri says that the transfer is being made to diversify the risk of the company given the current challenging economic situation in Dubai; that the selection of JB was based on the recommendations of the Investment Committee and in particular, Mr Alhammadi; and that he and Mr Alhammadi would be responsible for the decision to invest in equities and the selection of JB.
31. The second letter dated 28 June 2018 is said to have been written after Mr Khouri queried the recommendation by Mr Alhammadi to replace JB with TAP. In the letter Mr Almheiri says that JB were being replaced because they were "not performing the role as per our requirements" and that he had approved the transfer of the portfolio to TAP. The letter goes on to say that the decision to proceed with TAP has been made by Mr Almheiri as recommended by Mr Alhammadi and that Mr Khouri (who was not specialised in investment matters) was accordingly absolved from any responsibility for the appointment including the contractual terms which Mr Almheiri had also reviewed.
32. The third letter is dated 20 September 2018 and relates to an addendum to the IMA with TAP under which the funds would be locked in for three years. The request for the lock-in is said in the letter to have come from TAP in order to give them a longer term commitment on the investment portfolio. Mr Almheiri says in the letter that the recommendation for the lock in came from Mr Alhammadi. Ms Malik says that the purpose of the letter was to reassure Mr Khouri about the effect of the lock in on the liquidity of UP. In the letter Mr Almheiri recognises this as a possible problem but says he is working on alternatives to mitigate the potential liquidity issues.
33. The next witness statement which we need to refer to is that of Mr de Wolff dated 26 July 2024 ("NDW29"). This is a response to KAH3 and provides the context for what follows in KAH4. Mr de Wolff says in the witness statement that the claimants' essential case against Mr Alhammadi has not changed. He then sets out the principal allegations against him in relation to the fraud,



including that he instructed JB to purchase the notes; fabricated paperwork to show that the assets had been transferred from JB to TAP; instructed JB to deliver the notes to Arqaam for conversion; established FFM in order to conceal the misappropriation of the notes; and purchased properties at undervalues from UP using some of the proceeds from the sale of the UP shares that had been transferred to Mr Al Mulla after the conversion of the P-Notes. In relation to Mr Alhammadi's statement that he acted on the directions of Mr Almheiri, Mr de Wolff says that Mr Almheiri was not on the Investment Committee and that it was Mr Alhammadi and Mr Khouri who gave instructions to JB to purchase the notes. There was no evidence, he says, that the instructions emanated from Mr Almheiri.

34. NDW29 caused Mr Alhammadi to respond with KAH4. Most of the witness statement comprises a series of denials of the various allegations contained in NDW29 but in paragraph 16 Mr Alhammadi repeats his earlier evidence that the Investment Committee did not act independently of the board of UP and that in signing letters for the transfer of assets he and Mr Khouri were acting on the instructions of the board and in particular the chairman, Mr Almheiri. What however is central to the present appeal is what Mr Alhammadi says in response to the allegation by Mr de Wolff that he and his family benefited financially from the fraud by using part of the monies to purchase properties which were subsequently transferred to companies owned by his sister. He says that in the interests of seeking a swift resolution of the matter he has obtained an expert report from the Abu Dhabi courts which evidences the transfer of funds from bank accounts of Mr Al Mulla to the accounts of Mr Almheiri and his wife. This is a report by Mr Salah Issa Ibrahim Sayed Ahmed Al-Brmawi (the "**Salah Report**") dated 27 July 2024.
35. In the report, Mr Al-Brmawi says that its purpose is to provide an itemised statement of the amounts transferred from Mr Al Mulla and Bluestone Capital Investment Company ("**Bluestone**"), one of Mr Almheiri's companies, to Mr and Mrs. Almheiri identifying the amounts; the accounts from which the funds were transferred; the holders of those accounts and the accounts to which the transfers were made. This will involve, the Salah Report states, examining the submitted documents and itemising the amounts transferred. There then follows a list of the amounts which were transferred to Mr and Mrs. Almheiri from Mr Al Mulla's account no. 1015075883802 and a list of the transfers made from Bluestone to Mr Almheiri and another of his companies, Al Sidr Investment Company. There is no explanation in the Salah Report as to the significance of the transfers from Bluestone all of which occurred in 2017. The list of transfers from Mr Al Mulla to Mr and Mrs Almheiri shows that between 2 April 2018 and 16 January 2020 a total of AED 118,611,892 was paid to Mr Almheiri and a further AED 2,500,000 to his wife. Attached to the Salah Report are various documents including the bank statements of Mr Al Mulla recording the transfers listed in the report. In the case of Mrs Almheiri, these give the bank details of the transferee, but the details of the account to which the funds were transferred are not contained in the entries relating to Mr Almheiri. At the end of the Salah Report Mr Al-Brmawi states that it has been prepared from the documents provided by the applicants for the report but no further details are given as to who the applicants are, what is the source of the documents, precisely what documents were supplied, and what were the instructions given to Mr Al-Brmawi which caused him to include in his report the transfers from Bluestone made in 2017 before any of the events which led to the alleged fraud.
36. For completeness, we need to refer to AAH4. This was made to support Ms Alhammadi's application to set aside the judgment in default obtained against her. In it she denies that FFM was established in order to facilitate the fraud. It was set up, she says, by Mr Almheiri and her



brother as part of Mr Almheiri's vision of creating one of the largest asset management companies in the ADGM. She agreed to take over ownership of the company in 2018 on the understanding that Mr Almheiri had assets worth AED 2bn and intended to place all of his investments in FFM. She denies purchasing properties with any of the proceeds of the fraud. The properties, she says, were bought using a loan from First Abu Dhabi Bank.

37. The claimants have concentrated their attention on the payments made to Mr and Mrs Almheiri by Mr Al Mulla in the period from 25 September 2018 to 16 January 2020. The payments total AED 51,711,892. The start date of 25 September 2018 is shortly after Mr Al Mulla came into possession of the UP shares following the conversion of the P- Notes by Arqaam. On the basis of this and the other evidence, including the letters produced by Ms Malik, the claimants seek permission to file re-amended particulars of claim restoring Mr Almheiri as a defendant. The principal amendments now sought are to allege:
- a. that the instructions to JB to redeem the Focus Fund units were given by Mr Alhammadi and Mr Khouri at Mr Almheiri's direction (paragraph 26);
 - b. that Mr Alhammadi and Mr Khouri caused UPPC to enter into the mandate agreement and the IMA at Mr Almheiri's direction (paragraphs 28 and 30);
 - c. that TAP entered into the SLA with FFM with the knowledge and at the direction of Mr Almheiri (paragraph 36);
 - d. that the instructions to JB transfer the notes to TAP were given by Mr Alhammadi and Mr Khouri at Mr Almheiri's direction (paragraph 39); and
 - e. that between 25 September 2018 and 16 January 2020 Mr Al Mulla transferred to Mr and Mrs Almheiri the AED 51 million from the proceeds of the sale of the shares obtained from the conversion of the P-Notes (paragraph 46).
38. On the basis of these allegations, the claimants wish to add Mr Almheiri as a defendant to the following claims:
- a. Breach of director's duty. This is alleged to be the purchase of the P-Notes with the funds transferred from UP in the knowledge that they would be used to facilitate the dissipation of assets; the making of the mandate agreement and the IMA when Mr Almheiri knew that no bona fide asset management services would be provided; and the diversion of the UP shares to Mr Mulla: (paragraphs 73, 76 and 77);
 - b. Knowing receipt and unjust enrichment. This is a new claim based on the allegation that Mr Al Mulla transferred the AED 51m to Mr and Mrs. Almheiri out of the proceeds of the UP shares in breach of trust which Mr Almheiri dishonestly received knowing that the money came from that source: (paragraphs 83 to 92); and
 - c. Unlawful means conspiracy. Mr Almheiri is alleged to have been a party to the conspiracy to injure the claimants by misappropriating the transferred funds. The facts on which the claimants rely to support the allegation include the matters we have referred to in paragraph 37 above and the fact that Mr Almheiri and his wife received the AED 51 million from the proceeds of the fraud. The unlawful means pleaded are his breach of director's duty and the knowing receipt of these monies.



39. Mr Almheiri responded to the new evidence in his witness statement of 8 November 2024 (NA6). He accepts that he had a pre-existing relationship with Mr Alhammadi and that Mr Al Mulla acted as his lawyer. Bluestone was established with Mr Alhammadi as an investment company and was managed by him. Some of the witness statement is argument rather than evidence but Mr Almheiri denies that any of the payments to him from Mr Al Mulla have any connection with the sale of the P-Notes. He says that he has reviewed his bank statements for the relevant period and that there are no transfers which match the dates and amounts stated in the attachments to the Salah Report. He does not however produce his own bank statements to confirm this. What he does produce is documentation which he says explains the payment of AED 60m on 2 April 2018 which is one of the items on the list in the report. This, he says, relates to a sale and purchase agreement with Bin Butti International Holdings dated 20 March 2018. It is not, however, one of the payments which the claimants allege was made from the proceeds of the fraud.
40. In relation to the letters produced by Ms Malik, Mr Almheiri says that they refer to matters which he would have left to the Investment Committee and he has produced copies of the minutes of investment committee meetings held on 25 January 2018 and 19 June 2018 which relate to the earlier decision to invest in PHD Fund and then in June the decision not to proceed with this JB investment but instead to enter into an IMA with TAP. Both minutes are signed by all three members of the investment committee.
41. It is common ground that in order to admit fresh evidence on an appeal under CPR Rule 211(4) this court will be guided by the overriding objective (CPR Rule 2(2)) and in that light apply the principles set out by the English Court of Appeal in *Ladd v. Marshall* [1954] 1 WLR 1498. The claimants must therefore show that the evidence could not with reasonable diligence have been obtained in time for use at the earlier hearing; that if admitted it would probably have had an important influence on the result of the case; and that it is apparently credible. All three tests must be satisfied, and a failure to satisfy any one of them will lead to the application being refused. There is some authority that the public interest in securing finality in litigation will require the court to be satisfied that a re-hearing is imperative in the interests of justice (see *Transview Properties Limited v. City Site Properties Ltd* [2009] EWCA Civ 1255 at [23]) but the English Court of Appeal has also indicated that in the case of an appeal against an interlocutory decision a more generous approach may sometimes be appropriate as to whether the fresh evidence should be taken into account when deciding the appeal: see *Tajik Aluminium Plant v. Ermatov* [2008] EWCA Civ 54. In this case it is preferable to take the words used in *Ladd v Marshall* without any such qualification.
42. In relation to the first of the *Ladd v. Marshall* criteria Mr de Wolff submits that none of the new evidence relied on could have been obtained by the claimants with reasonable diligence before the May hearing. The evidence comprises five witness statements, each of which was made after the strike out hearing and the Salah Report was not in existence until 27 July 2024. The claimants have also faced considerable difficulties in obtaining contemporaneous documentation relevant to the various transactions referred to in the pleadings. Mr Khaled Chaaban, the Chief Legal Officer of UP, explains in his witness statement of 22nd August 2024 (made in response to SM1), that prejudicial documents are believed to have been deleted by UP's former management team and that other parties such as Arqaam, JB and Mashreq Bank have been largely unco-operative in relation to the release of what records they may still hold. Mr Almheiri says in his witness statement that the claimants could have obtained some of the relevant material on which they now rely, such as the bank statements of Mr Al Mulla, much earlier and in particular after various



of these defendants had executed the settlement agreement. In the written argument filed in response to the appeal it said that no real efforts appear to have been made by the claimants to communicate with defendants such as Mr Alhammadi after he had signed the agreement and that the claimant simply applied for and obtained a default judgment against him. The material contained in the five witness statements comprising the new evidence was produced in response to the default judgment and the application for permission to amend. But that, it is said, does not answer the question whether it could reasonably have been obtained before May 2024.

43. We are not persuaded by these submissions. There is no requirement in the settlement agreement for the defendants to provide the claimants with information and access to documents and the suggestion which is made that the claimants could themselves have commissioned the Salah Report prior to the May hearing seems to me unrealistic. Even if the judgments in default had not been obtained so as to prompt the making of the witness statements which comprise part of the new evidence there is nothing to suggest that Mr Mulla would have voluntarily provided the claimants with confidential documentation such as bank statements ahead of disclosure in the action or that the claimants could reasonably have expected him to do so. We are not therefore satisfied that the new material could with due diligence have been produced in time for the strike out hearing.
44. The more difficult issues are whether the new material would probably have had an important influence on the result of the case and whether the evidence is apparently credible. To some extent the two issues coincide because in order to allow the amendments which the claimants now seek we have to determine whether the new allegations against Mr Almheiri which they wish to plead are coherent and credible so as to justify the pleas of dishonesty and conspiracy. In deciding whether to give the claimants permission to amend in the form of the second draft, the judge quoted extracts from some well-known authorities on amendment and the pleading of allegations of dishonesty. They are worth repeating;

27. I shall cite just two authorities about amendment applications. In Kawasaki Kisen Kaisha Ltd v James Kemball Ltd [2021] EWCA Civ 33, Popplewell LJ gave this guidance:

“(1) It is not enough that the claim is merely arguable; it must carry some degree of conviction: ...

(2) The pleading must be coherent and properly particularised: ...

(3) The pleading must be supported by evidence which establishes a factual basis which meets the merits test; it is not sufficient simply to plead allegations which if true would establish a claim; there must be evidential material which establishes a sufficiently arguable case that the allegations are correct...” (at para 18).

28. Similarly, in Elite Property Holdings v Barclays Bank plc [2019] EWCA Civ, Asplin LJ said: “For the amendments to be allowed the [Applicants] need to show that they have a real as opposed to fanciful prospect of success which is one that is more than merely arguable and carries some degree of conviction:....A claim does not have such a prospect where (a) it is possible to say with confidence that the factual



basis for the claim is fanciful because it is entirely without substance; (b) the claimant does not have material to support at least a prima facie case that the allegations are correct; and/or (c) the claim has pleaded insufficient facts in support of their case to entitle the Court to draw the necessary inferences:...The court is entitled to reject a version of the facts which is implausible, self-contradictory or not supported by the contemporaneous documents and it is appropriate for the court to consider whether the proposed pleading is coherent and contains the properly particularised elements of the cause of action relied upon” (at paras 41 and 42).

29. *With regard to pleading allegations of dishonesty, bad faith and comparable misconduct, I again refer to the two authorities mentioned in my ruling on 7 November 2023:*

- a. *In Three Rivers District Council v Bank of England (No 3), [2001] UKHL 16, Lord Hope said, “Of course, the allegation of fraud, dishonesty or bad faith must be supported by particulars. The other party is entitled to notice of the particulars on which the allegation is based. If they are not capable of supporting the allegation, the allegation itself may be struck out. But it is not a proper ground for striking out the allegation that the particulars may be found, after trial, to amount not to fraud, dishonesty or bad faith but to negligence” (at para 55).*
- b. *In JSC Bank of Moscow v Kekhman, [2015] EWHC 3073 (Comm), Popplewell J, having examined the speeches of Lord Hope and others in the Three Rivers DC case, said: “The claimant does not have to plead primary facts which are only consistent with dishonesty. The correct test is whether or not, on the basis of the primary facts pleaded, an inference of dishonesty is more likely than one of innocence or negligence. As Lord Millett put it, there must be some fact ‘which tilts the balance and justifies an inference of dishonesty’. At the interlocutory stage, when the court is considering whether the plea of fraud is a proper one or whether to strike it out, the court is not concerned with whether the evidence at trial will or will not establish fraud but only with whether facts are pleaded which would justify the plea of fraud. If the plea is justified, then the case must go forward to trial and assessment of whether the evidence justifies the inference is a matter for the trial judge. ...” (at para 20).*

45. It follows from this that in order for the new evidence to be admissible under the second and third limbs of the *Ladd v. Marshall* test it must not only be credible in itself but it must also provide a solid basis for the allegations which it is used to support in the amended pleading: *Tajik Aluminum Plant v Ermatov*, para 26. We have to be satisfied that had the new material been available and deployed before the judge in the way it is in the new draft pleading, then he would probably have given permission to amend and refused to strike out the claim against Mr Almheiri.
46. Mr Almheiri challenges both the credibility of the new material and its use to support the proposed amended case against him. The allegations that it was he who in effect orchestrated the fraud and benefited from it financially come from the evidence of Mr Alhammadi and Mr



Khouri contained in KAH3 and SM1. This is, Mr Almheiri says, the evidence of proven fraudsters who have acknowledged their liability by entering into the settlement agreement and in the case of Mr Alhammadi who is now subject to a judgment. Credibility is obviously an issue in relation to the statements contained in the witness statements. The evidence of Mr Alhammadi that the decision to purchase the notes came from Mr Almheiri and that he was the ultimate beneficiary of the fraud is very recent and arguably a change of position influenced by the settlement agreement and the judgment in default. But what Mr Alhammadi says about the early stages of the fraud is also significant in weighing up the strength of the claim now made against Mr Almheiri. Although the claimants' case is that the fraud (and presumably therefore the conspiracy) began with the transfer of the AED 337m from UP to UPPC some of the new evidence is in fact inconsistent with that. The first of the three letters produced by Ms Malik dated 1 February 2018 is on its face an instruction from Mr Almheiri to Mr Khouri to transfer the AED 337m to UPPC's account with JB. But the letter does give a reason for the transfer and says that diversification of the company's investments into equities had the approval of Mr Alhammadi. Mr Alhammadi does not contradict this in KAH3. He says that because the Investment Committee was reconsidering its proposed investment in the PHD Fund, a decision was made to put the monies in the UAE Focus Fund and that on 19 June 2018 the Investment Committee met again to discuss potential investment opportunities. The minutes of that meeting are exhibited to NA6 and confirm what Mr Alhammadi has said. Importantly, they also record that the proposal to move UPPC's investments from JB to TAP came from Mr Klar and was supported by the Investment Committee. Mr Alhammadi says in KAH3 that the decision was made because Mr Almheiri was keen on opening channels with Swiss Banks and fund managers, but it was Mr Klar who, he says, sourced the potential investment opportunity with TAP.

47. The letter of 28 June 2018 exhibited to SM1 is consistent with this. Mr Almheiri says in the letter that he has approved the transfer of the UPPC portfolio to TAP following its selection by the Investment Committee. Read with what Mr Alhammadi says in KAH3, this is simply consequential on the acceptance by the Investment Committee of Mr Klar's proposal. Mr Alhammadi's evidence (paragraph 34) is that thereafter the plan was for TAP to manage the investment in accordance with the IMA.
48. The next issue concerning Mr Almheiri is the purchase of the P-Notes and their transfer to TAP. Mr Alhammadi accepts that Mr Khouri signed the instructions to JB to purchase the notes although he says in KAH3 that the decision came from Mr Almheiri. But he denies signing the instructions to transfer the notes to TAP and says that the documents relied on by the claimants are forgeries. There is the obvious question as to why Mr Alhammadi should disown his involvement in the transfers of the notes to TAP when he accepts that he had agreed at the Investment Committee meeting on 19 June 2018 that UPPC investments should be transferred to that company. But be that as it may his evidence is at face value inconsistent with paragraph 39 of the proposed pleading in which the claimants allege that Mr Alhammadi and Mr Khouri signed the letters of instruction at Mr Almheiri's direction. There is no other documentary material which is relied on in support of that plea.
49. As we mentioned earlier the conversion of the P-Notes to UP shares necessitated their being returned to Arqaam but the significance of this step is that it resulted in trust assets leaving JB and subsequently being transferred to Mr Al Mulla instead of being returned to TAP or FFM for investment in accordance with the IMA and the SLA. Although it is alleged in the draft pleading that Mr Almheiri procured or approved both the IMA and the SLA, it is not alleged that he was



responsible for the generation of the false reports indicating that the assets had been received by TAP and FFM and invested. But it is pleaded (based on an unsigned letter from Arqaam dated 16 September 2018) that the P-Notes were delivered to Arqaam and converted into UP shares which were then transferred to a number of accounts in the name of Mr Al Mulla. The claimants plead in paragraph 45 of the proposed amended particulars of claim that it is their belief that the transfers to Arqaam were made on the instructions of Mr Alhammadi, Mr Khouri or Mr Almheiri, because the terms of JB's mandate required transfers to be authorised by any two of these three persons. There is however no evidence that Mr Almheiri was one of those who gave the instructions. Mr Alhammadi, however, denies that he was involved.

50. This brings us to the Salah Report. This is on any view the most important evidence because if it can support a claim that Mr Almheiri benefited directly from the fraud then it confirms the witness evidence given by Mr Alhammadi and his sister and throws into a different light Mr Almheiri's involvement in the purchase of the P-Notes and the appointment of TAP which may otherwise be explicable in terms of a change in UP's investment strategy. Although Mr Alhammadi states in KAH3 that he has been provided with SWIFT transfers to show that Mr Almheiri was the ultimate beneficiary of funds from the fraud he has not produced those documents. What he exhibits to KAH4 is a report from Mr Al-Brmawi which he says evidences the transfer of funds from Mr Al Mulla to Mr Almheiri. The report describes itself as an expert advisory report from The Abu Dhabi Commercial Court but there is no indication as to whether the report is connected to litigation in that court and if so between whom. Mr Al-Brmawi says in his report that its purpose is to provide a statement of the amounts transferred from Mr Al Mulla and Bluestone but under the heading "*Disputed Claim*" he says that the applicants for the report (whom he does not name) have stated that they have transferred amounts to Mr and Mrs Almheiri and their associated companies and have requested that these amounts be itemised identifying the accounts from which the transfers were made, the account holders and the accounts to which the transfers were made. Although the listed transferors are Bluestone and Mr Al Mulla one assumes that they are not the persons who commissioned the report. The report also refers to documents having been submitted to the expert, but they are not identified nor is there any further statement of the instructions which the expert has received.
51. As explained earlier, the report then sets out a list of payments from an account of Mr Al Mulla to Mr and Mrs Almheiri which were made between 2 April 2018 and 16 January 2020 followed by a list of payments made by Bluestone in 2017. The dates of the payments listed show that the report is clearly not aimed at identifying payments which may be linked to the fraud on UP. The payments from Bluestone in 2017 are clearly not relevant to that nor are the two payments made in April 2018. What the claimants have done is simply to take the payments to Mr and Mrs Almheiri between September 2018 and January 2020 and rely on these as being part of the proceeds of the fraud. These are the payments (AED 51m) which are now pleaded in paragraph 46 of the draft amended particulars of claim as having been derived from the sale by Mr Al Mulla of the UP shares and which are relied on in Part I of the pleading as the foundation of the claim against Mr Almheiri for knowing receipt. That claim, as we have mentioned, necessitates proof of dishonesty. For this purpose the claimants rely, inter alia, on Mr Almheiri's authorisation of the purchase of the P-Notes, the allegation that he instructed Mr Alhammadi and Mr Khouri to sign paperwork to show that the second and fourth transfers of the 365m units of P-Notes had been made to TAP when in fact they had not and the allegation that Mr Almheiri knew that the AED 51m came from the proceeds of the UP shares. The receipt of these monies is also relied on together with Mr Almheiri's alleged breach of duty as a director of UP as providing the unlawful means for the



purposes of the claim of conspiracy. That conspiracy, in the proposed amended pleading, is also based upon the allegation that Mr Almheiri gave Mr Khouri the instructions to purchase the P-Notes and procured UPPC to enter into the IMA and the SLA.

52. The Salah Report is therefore central to the claimants' amended case against Mr Almheiri. Without credible evidence that he and his wife received the AED 51 million out of the proceeds of the fraud there is nothing in the new evidence to suggest a case of conspiracy or knowing receipt against him except for the letters produced by Ms Malik and what Mr Alhammadi and his sister say in their witness statements. As we have already explained, the letters and Mr Almheiri's involvement in the purchase of the P- Notes and the transfer of UPPC's investments to TAP are all explicable as part of a change in investment strategy which, even if initiated by Mr Almheiri, was endorsed by the Investment Committee. The evidence from Mr Alhammadi that it was Mr Klar who identified TAP as a suitable successor to JB makes it difficult to accept that these steps were obviously part of a pre-conceived fraud orchestrated by Mr Almheiri. We do not therefore consider that that evidence alone would have caused the judge to refuse to strike out the claim against him.
53. The claimants are not of course to be criticised for the inadequacies of this evidence or the state of the Salah Report. All of the new evidence has been provided by various of the defendants for their own purposes. But the burden is on the claimants to make out a sufficient case against Mr Almheiri on the new evidence and the Salah Report is the only material before the court which is relied on as showing that he profited from the fraud.
54. The first and perhaps most obvious point to make about the Salah Report is that it does not contain any material which actually links the listed payments to the proceeds of the UP shares. As far as one can see this was not the purpose of the report or the exercise which Mr Al-Brmawi was instructed to carry out. The bank statements annexed to the report which we have already commented on give no indication of the source of the funds or even the details of the accounts to which the funds were transferred. Mr Almheiri says that they are also an incomplete record of all the dealings between him and Mr Al Mulla in the period and that he cannot reconcile the details of the payments relied on with his own bank statements. Since he has not produced those, one cannot take that any further.
55. In our view the material in the Salah Report does not provide a sufficient basis for the use which is sought to be made of it in the draft amended pleading. It is not and was not intended to be a tracing exercise in respect of the monies received by Mr Al Mulla from the fraud and it cannot be relied on for that purpose. Unless there is material to link the payments to the proceeds of the shares then much of the new proposed pleading falls away. There is no basis for a claim in knowing receipt or for an allegation of dishonesty. As things stand no particulars are given of the allegation in paragraph 86(f) that Mr Almheiri knew that the monies referred to in the report came from the fraud and none of the facts pleaded earlier in paragraph 86 can support that inference or the allegation of dishonesty. If the claim in knowing receipt cannot stand then for essentially the same reasons the claimants cannot justify the plea of conspiracy. For these reasons we take the view that the new evidence does not satisfy the second and third conditions for its admissibility and that the judge would not have reached a different conclusion had it been available to him at the time of the strike out hearing last year.



56. We therefore refuse to admit the evidence and dismiss the appeal with costs.



Issued by:

A handwritten signature in blue ink, appearing to read "Linda Fitz-Alan".

Linda Fitz-Alan
Registrar, ADGM Courts
25 June 2025