



ADGM COURTS

محكمة سوق أبوظبي العالمي

15 March 2023 02:08 PM



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 FIRST INSTANCE
COMMERCIAL AND CIVIL DIVISION
BETWEEN**

AC NETWORK HOLDING LIMITED
First Claimant

AC POOL HOLDING LIMITED
Second Claimant

KHALIL MOHAMED BINLADIN
Third Claimant

DALIA KHALIL BINLADIN
Fourth Claimant

HORIZON LIGHT INVESTMENTS LLC
Fifth Claimant

and

POLYMATH EKAR SPV1
First Defendant

POLYMATH EKAR SPV2
Second Defendant

VILHELM NIKOLAI PAUS HEDBERG
Third Defendant

RAVI NAGESH BHUSARI
Fourth Defendant

ALI HASHEMI
Fifth Defendant

LUX 2 INVCO
Sixth Defendant

CLARA FORMATIONS LIMITED
Seventh Defendant

EKAR HOLDING LIMITED
Eighth Defendant

JUDGMENT OF JUSTICE WILLIAM STONE SBS QC



Neutral Citation:	[2023] ADGMCFI 0004
Before:	Justice William Stone SBS KC
Decision Date:	7 February 2023
Hearing Dates:	5 – 22 September 2022 inclusive, and 24 and 25 October 2022
Decision:	<ol style="list-style-type: none"> 1. Judgment be entered against the First to Fourth Defendants and each of them in the terms following: <ol style="list-style-type: none"> a. in favour of the First Claimant in the sum of US\$251,600.00; b. in favour of the Second Claimant in the sum of US\$356,900.00; c. in favour of the Third Claimant in the sum of US\$96,000.00; d. in favour of the Fourth Claimant in the sum of US\$37,500.00; and e. in favour of the Fifth Claimant in the sum of US\$37,500.00. 2. Interest is to be paid upon each of the sums at the rate of 5% per annum for the period from 27 April 2020 to the date of payment.
Date of Order:	7 February 2023
Catchwords:	Shareholders' dispute; Valuation of company at date of breach; Expert evidence of value
Legislation Cited:	ADGM Courts Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015
Case Number:	ADGMCFI-2020-015
Parties and representation:	<p>Mr David Halpern KC for the Claimants Instructed by Al Tamimi & Company</p> <p>Mr Alan Choo-Choy KC for the First to Sixth and Eighth Defendants Instructed by DLA Piper Middle East LLP</p>



JUDGMENT

This Case

1. This further Judgment in this case provides the conclusion to the principal Judgment dated 15 November 2022 (the “**Judgment**”), in which (at paragraph 280) the Court valued the entire share capital of the Seventh Defendant, Ekar Holding Limited (“**Ekar**”) at US\$3 million.
2. The difficulty which arose was that the expert evidence received by the Court during the trial had focused solely upon the valuation of Ekar as at 27 April 2020, and that the experts, Mr Cottle for the Claimants and Mr Davie for the Defendants, had not been asked to value the individual parcels of shares held by the Claimants, which valuation was required in order that any judgment upon liability could be rendered in terms of the individual claims.
3. Accordingly, by Order of this Court dated 15 November 2022 (the “**Order**”) the expert witnesses respectively retained by the Claimants and Defendants were requested to reconvene, and if possible to agree, their further assessment of the value of the Claimants’ individual shareholdings as at 27 April 2020, which was taken by the Court to have been the date of contractual breach.
4. The Order further recited that such further assessment should be made in light of (1) the Court’s judgment as to the market value of the entire share capital of Ekar; (2) the characteristics as to the voting rights, size of shareholding, and preferential rights of distribution of surplus assets (as may be the case) of each of the Claimants’ individual shareholdings as at the relevant date.

Further Expert Evidence/ Submissions

5. Accordingly, the valuation experts, Mr Cottle and Mr Davie, filed a Second Joint Statement dated 23 December 2022 (the “**Experts’ Second Joint Statement**”), which was followed by a joint letter dated 24 January 2023 correcting an oversight in the Experts’ Second Joint Statement regarding the voting rights of the shares held by one of the Claimants; this corrective statement reflected an oversight as to the lesser voting rights of the class of shares owned by AC Pool Holding Limited (“**AC Pool**”), but in the event this has no bearing upon the conclusion reached by the Court as to the minority discount to be applied to the individual parcels of shares the subject of this Judgment.
6. In addition to the further expert evidence, the Court has received helpful submissions from leading counsel involved in this case, Mr Halpern KC and Mr Choo-Choy KC.
7. It is not in dispute that the concept of ‘market value’ is to be adopted as the basis of value, this being defined as “*the estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm’s length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.*”
8. It is also not in dispute that the shareholdings in question should be subject to minority discounts, in terms of which the experts have agreed commonly applied mid-point ranges for such discounts; thus it is agreed that the valuation of minority shareholdings of less than 10% would attract a 50% discount, for shareholdings of between 10%-25% a discount of 35%, and when valuing shareholdings of between 25%-49% a 25% discount.
9. At first blush this would seem a relatively straightforward matrix to apply, and indeed the experts have prepared a useful Table summarising the value of the Claimants’ individual shareholdings



on this basis. However, Mr Cottle has advanced propositions which, if accepted, would affect the minority discount potentially to be applied in instances of two minority shareholders.

Mr Cottle's Alternative Arguments

10. In the Experts' Second Joint Statement Mr Cottle propounds two arguments differing from the 'market value' approach which he accepts otherwise is ordinarily adopted. These alternative contentions are:
 - a. that to the extent that the impact of the Order is to place the Defendants in a position where they acquire absolute control of the company, then they would be akin to 'Special Purchasers', and that as a result the fair price for those shares would be at a premium relative to that which an arm's length third party may pay for that minority interest; and
 - b. that since it appeared that Audacia Capital Holding Limited ("**Audacia**") owned, controlled and managed the respective shareholdings of AC Network Holding Limited ("**AC Network**") and AC Pool as a single shareholding, for the purpose of a market valuation of the Claimants' shares there are grounds to treat these shares as a single shareholding bloc, with the result that this combined shareholding would have a greater degree of influence than each shareholding considered separately, and thus it would be appropriate to arrogate to such combined shareholding a lesser minority discount.
11. In the event the 'special purchasers' argument is not pursued; in his submission Mr Halpern makes this clear and accepts that damages should be calculated on the basis of market value, and that the only outstanding issue between the parties as to quantum is whether the shares individually held by AC Network and AC Pool should be combined for valuation purposes.
12. Mr Halpern expressly supports this 'combination argument', and argues that Mr Davie's preferred view in the Experts' Second Joint Statement (at paragraph 3.4) that the shareholding of AC Pool and AC Network should be valued separately is wrong, pointing out that in his observations Mr Davie quotes the trial evidence of Mr Hussein that whilst the AC Network and AC Pool interests were owned separately, they were controlled together by Audacia because AC Network (Audacia's wholly owned subsidiary) had retained the entirety of AC Pool's voting rights, and thus Audacia had as much control over the votes of both shareholders as Polymath Holdings had over the combined shareholdings of Polymath Ekar SPV1 and Polymath Ekar SPV2.
13. It followed, submitted Mr Halpern, that if, as should be the case, the shareholdings of AC Network and AC Pool are combined, it was agreed between the experts that this situation gave Audacia 24.25% of the votes, which in turn would put the combined shareholding at the top end of the 10-25% discount bracket and would mean that in order for Audacia to be able to block any decision requiring a special majority, it would need the support of only another 0.76% of the votes, and that on this basis the appropriate discount figure to be applied to the combined shareholding would be 30% and not 35%.
14. This argument had developed when it had been thought, erroneously, that the combined shareholdings of AC Network and AC Pool had amounted to 31.2%, which would have allowed the holder to block reserved matters requiring consent from shareholders with at least 75% of the voting rights, and so would have had relatively more influence than a shareholding of less than 25%; belated recognition that the Series B1 shares owned by AC Pool only entitled the holders to 0.5 votes per share, has now reduced the combined share of the votes of AC Network and AC Pool to 24.25%, and hence, even acting together, these two entities would not be in position to block a vote on a reserved matter absent support from another shareholder. Nevertheless, the 'single bloc' argument, even in weakened numerical form, is maintained.



15. In opposition to this contention the central submission of Mr Choo-Choy is that the suggestion that a notion of value other than market value of the individual parcels of shares is inconsistent with the terms of the Judgment and Order.
16. He points to the Court's express rejection of the Claimants' argument that the Court should adopt the concept of undiscounted fair value, relying upon the compensatory principle of damages for breach of contract and, by analogy, with unfair prejudice claims by minority shareholders, and argues that it would be "*nonsensical*" for the Court on the one hand to have rejected the notion of fair value without minority discount, only then to request valuation of the Claimants' individual shareholdings otherwise than by using the market value approach.
17. Mr Choo-Choy submits that the Cottle 'combined bloc' approach is simply wrong, and ignores the clear terms of the Judgment and Order, which required the experts to value each Claimants' individual parcel of shares.
18. The Court agrees with these contentions, and can see no warrant for considering the shareholdings of AC Network and AC Pool other than separately: both are separate legal entities, and each owns a distinct parcel of shares, and thus has suffered its own separate loss by reference to the value of that individual parcel. It is perhaps appropriate to add that the Court had no intention, when framing the Order, that the situation should be considered differently.
19. Table 1 (at para 4.9 of the Experts' Second Joint Statement) represents the agreement of Mr Davie and Mr Cottle as to the market value of the Claimants' individual shareholdings with the AC Network and AC Pool shareholdings considered separately, this being premised upon the Court's finding that the value of 100% of the Ekar shares as at the relevant date was US\$3 million.

Experts' Agreement on Individual Shareholdings

20. There are five individual shareholdings thus considered and agreed.
 - a. Mr K Binladin, whose 2,266,582 Ordinary shares of Ekar are equivalent to 6.4% of Ekar's shares, and attract a pro-rated value of US\$92,000;
 - b. Ms D Binladin, whose 900,000 Ordinary shares are equivalent to 2.5% of Ekar's shares, and attract a pro-rated value of US\$75,000;
 - c. Horizon Light Investments LLC ("**Horizon**"), whose 865,796 Ordinary shares are equivalent to 2.5% of Ekar's shares, and attract a pro-rated value of US\$75,000;
 - d. AC Network, whose 4,542,138 Ordinary shares are equivalent to 12.9% of Ekar's shares, and attract a pro-rated value of US\$387,000; and
 - e. AC Pool, whose 6,483,001 Series B1 shares are equivalent to 18.3% of Ekar's shares, and attract a pro-rated value of US\$549,000
21. In each instance the agreed midpoint minority discount bandings have been applied, so that the shareholdings of Mr K Binladin, Ms D Binladin, and Horizon attract a 50% discount, whilst those of AC Network and AC Pool each a 35% discount.
22. This produces the following individual shareholding valuations:
 - a. AC Network: US\$251,600.00
 - b. AC Pool: US\$356,900.00



- c. Mr K Binladin: US\$96,000.00
 - d. Ms D Binladin: US\$37,500.00
 - e. Horizon: US\$37,500.00
23. The Court accepts these sums as representing the damages suffered by the Claimants consequent upon the contractual breach of the Shareholders' Agreement dated 29 October 2019 on the part of the First to Fourth Defendants (*vide* Judgment, paragraph 142).

Final Judgment

24. It follows that Judgment is to be entered in favour the Claimants against the First to Fourth Defendants and each of them in terms of the sums set out in paragraph 22 of this Judgment.

Interest

25. In the respective party submissions upon interest payable, reference is made to provisions relating to costs within the ADGM Courts Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations (at Rule 8 and Rule 39(2)), the ADGM Court Procedure Rules 2016 (at Rule 179), and the ADGM Courts Practice Direction 2, Commercial and Civil Claims, Section K, and in particular section 2.109, which reads:

"Where interest is payable on a judgment debt and there is no agreed rate, it shall be at the rate of 5 per cent per annum from the date that judgment is given until payment".

26. No dispute is raised by the Defendants regarding the Claimants' position that simple interest on any damages awarded should be payable at the rate of 5% per annum from 27 April 2020 until the date on which the Court issues this judgment on quantum, but criticism is raised as the calculation proffered of the amount of interest accrued on the principal amount of damages as at 30 January 2023, and thereafter accruing interest at a daily rate upon such accrued sum, which the Defendants point out would introduce an unwanted element of compound interest.
27. In the context of interest payable upon the judgment sums the Court prefers the more usual formula of ordering interest to accrue upon the respective principal sums due at the rate of 5% per annum as from 27 April 2020 to the date of payment. In no circumstance is this a difficult calculation susceptible to controversy, and there appears to be no particular advantage in the immediate calculation of an accrued sum certain as at the date of this Judgment, with daily accretions to follow thereafter until payment.



Re-Issued by:

Linda Fitz-Alan
Registrar, ADGM Courts
15 March 2023