

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**

**IN THE MATTER OF NMC HEALTHCARE LIMITED (IN ADMINISTRATION) (SUBJECT TO A DEED OF  
COMPANY ARRANGEMENT) AND THE COMPANIES LISTED IN SCHEDULE 1 TO THE  
ADMINISTRATION APPLICATION**

and

**IN THE MATTER OF THE ADGM INSOLVENCY REGULATIONS 2022**

**SECURE CAPITAL EQUIPMENT L.L.C**

Applicant

and

**NMC HEALTHCARE LIMITED**

**(IN ADMINISTRATION) (SUBJECT TO A DEED OF COMPANY ARRANGEMENT)**

Respondent

**JUDGMENT OF JUSTICE SIR ANDREW SMITH**



<b>Neutral Citation:</b>	[2026] ADGMCFI 0011
<b>Before:</b>	Justice Sir Andrew Smith
<b>Decision Date:</b>	15 April 2026
<b>Decision:</b>	<ol style="list-style-type: none"> <li>1. The Application is refused.</li> <li>2. Unless otherwise ordered, any consequential applications shall be dealt with without an oral hearing. Any consequential applications, other than for permission to appeal, are to be filed and served by <b>5.00 pm GST on 22 April 2026</b>.</li> </ol>
<b>Hearing Date:</b>	7 April 2026
<b>Order:</b>	<ol style="list-style-type: none"> <li>1. The Application is refused.</li> <li>2. Unless otherwise ordered, any consequential applications shall be dealt with without an oral hearing. Any consequential applications, other than for permission to appeal, are to be filed and served by <b>5.00 pm GST on 22 April 2026</b>.</li> <li>3. Liberty to apply.</li> </ol>
<b>Catchwords:</b>	Administration Order. Moratorium upon claims against a company in administration. Monetary claim. Proprietary claim. Proof of debt in the administration. Undertaking not to pursue proceedings.
<b>Cases Cited:</b>	<p><i>NMC Healthcare Limited v Noor Capital PSC</i> [2022] ADGMCFI 0003</p> <p><i>Noor Capital PSC v NMC Healthcare Limited</i> [2026] ADGMCFI 0004</p> <p><i>Re Atlantic Computer Systems Plc</i> [1992] Ch 505</p> <p><i>CargoLogicAir Ltd v WWTAI AirOpCo 1 Bermuda Ltd</i> [2024] EWHC 508 (Comm)</p> <p><i>Hardwick Game Farm v Suffolk Agricultural and Poultry Producers Association Ltd</i> [1966] 1 WLR 287</p> <p><i>Glencore International AG v Metro Trading International Inc</i> [2001] CLC 1732</p> <p><i>South Coast Construction Ltd v Iverson Road Ltd</i> [2017] EWHC 61 (TCC)</p>
<b>Legislation Cited:</b>	<p><i>ADGM Insolvency Regulations 2022</i></p> <p><i>ADGM Insolvency Regulations 2015</i></p>
<b>Case Number:</b>	ADGMCFI-2020-020
<b>Parties and Representation:</b>	<p><b>Applicant</b></p> <p>Mr John-Patrick Asimakis of Counsel (Instructed by Al Naqbi &amp; Partners) and Mr Mohamad Fayad of Al Naqbi &amp; Partners</p>



**Respondent**

Mr Adam Al-Attar KC and Mr Matthew Abraham of Counsel  
(Instructed by Quinn Emanuel Urquhart & Sullivan UK LLP)

## JUDGMENT

### Introduction

1. This is my judgment on an application made on 17 February 2026 (the “**Application**”) against NMC Healthcare Limited (“**NMCH**”) by Secure Capital Equipment LLC (“**Secure Capital**”), a company incorporated in Dubai, which previously operated under the name “*Guidance ATEL Equipment Owned by REDA Industrial Materials One Person Company L.L.C.*”. Secure Capital is said to be a company that specialises in leasing equipment, especially hospital and medical equipment in hospitals and laboratories in the United Arab Emirates (the “**UAE**”).
2. NMCH is a company registered in the Abu Dhabi Global Market (“**ADGM**”). It was in the NMC Group, the parent company of which, NMC Health PLC, was listed on the London Stock Exchange in 2012. The origin of the NMC Group is a family pharmaceutical business that was established in the UAE in the 1970s and expanded *inter alia* to operate hospitals and other medical facilities.
3. By an Order of 9 April 2020, the English High Court placed NMC Health PLC into administration. By an Order of this Court dated 27 September 2020 (the “**Administration Order**”), NMCH and 35 associated companies were placed into administration. Section 45(5) of the *ADGM Insolvency Regulations 2022* (“**IR22**”) (like section 45(5) of its predecessor, the *ADGM Insolvency Regulations 2015* (“**IR15**”), which was in force when the Administration Order was made) provides with regard to a company in administration that:

*“No legal process (including legal proceedings) may be instituted or continued against the Company or property of the Company except (a) with the consent of the administrator of the Company; or (b) with the permission of the Court”.*

Paragraph 5(f) of the Administration Order expressly states this prohibition.

4. NMCH is still in administration. Section 45(5) of IR22 and paragraph 5(f) of the Administration Order still apply in relation to it. By the Application, Secure Capital applies for permission to “*continue proceedings before the Dubai Courts, including Dubai Court Case No. 276/2022 - Commercial (Full Jurisdiction)*” (the “**Dubai Proceedings**”).
5. The Application is supported by a Witness Statement of Mr Saleem Albelbisi, the General Manager of Secure Capital. NMCH responded with a Witness Statement of Mr Richard Dixon Fleming of Alvarez & Marsal Europe LLP, one of its Joint Administrators. Mr Albelbisi replied with a Second Witness Statement.

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ADGMCFI-2020-020 - IN THE MATTER OF NMC HEALTHCARE LTD (IN ADMINISTRATION) (SUBJECT TO A DEED OF COMPANY ARRANGEMENT) AND THE COMPANIES LISTED IN SCHEDULE 1 TO THE ADMINISTRATION APPLICATION AND IN THE MATTER OF THE ADGM INSOLVENCY REGULATIONS 2022 - SECURE CAPITAL EQUIPMENT L.L.C v NMC HEALTHCARE LIMITED (IN ADMINISTRATION) (SUBJECT TO A DEED OF COMPANY ARRANGEMENT)



6. The Application was heard on 7 April 2026. Secure Capital was represented by Mr John-Patrick Asimakis of Counsel and Mr Mohamad Fayad of Al Naqbi & Partners. NMCH was represented by Mr Adam Al-Attar KC and Mr Matthew Abraham of Counsel.
7. At the hearing, I permitted the Parties to present further evidence on one point that emerged during the hearing: see paragraph 76 below. On 11 April 2026, Secure Capital filed a Witness Statement of Mr Saeed Ahmed, a Credit Risk Manager at Secure Capital, and NMCH filed a Second Witness Statement of Mr Fleming.

### The Dispute

8. Secure Capital's claim against NMCH concerns a Master Lease Agreement dated 22 March 2017 made between Secure Capital as the Lessor, NMCH as the Lessee and NMC Health PLC as the Guarantor (the “**MLA**”).
9. The MLA is governed by and is to be construed in accordance with the laws of the Dubai International Financial Centre (the “**DIFC**”). The MLA applied to equipment described in any “*Equipment Schedule*” substantially in a prescribed form, and clause 1 provided that, at the time that an “*Equipment Schedule*” was executed, the equipment described in it was to be either owned by the Lessor or procured by NMCH acting as an agent for the Lessor. The “*Equipment Schedule*” was to specify the “*Basic Term*” of the lease.
10. Clause 4(a) of the MLA provided for the accrual of rent payable by NMCH and stated that: “*All Rent due by Lessee hereunder is an absolute and unconditional obligation of Lessee, which may not be abated or offset for any reason whatsoever ...*”.
11. Clause 5(c) provided that the “*Lessee will at all times keep the Equipment in its sole possession and control. The Equipment shall not be moved from the location stated in the applicable Equipment Schedule without the prior written consent of Lessor, however, the Lessee can move the equipment within its Group hospitals due to medical urgency as decided by the hospital administrator*”.
12. Clause 5(h) provided that “*At the termination of the applicable Equipment Schedule, Lessee shall, at its expense, return the Equipment and all of the service records, software, and software documentation, subject thereto to Lessor at the location designated by Lessor ...*”.
13. Clause 6(a) provided that the “*Lessee shall have no interest in the Equipment other than the rights acquired as a lessee hereunder and the Equipment shall remain personal property ...*”.
14. Finally, clause 9(b) provided that “*Upon the occurrence of an Event of Default, Lessor may at its option do any of the following: (i) by notice to Lessee terminate this Master Agreement as to any or all Equipment Schedules; (ii) whether or not this Master Agreement is terminated as to any or all Equipment Schedules, take possession of any or all of the Equipment listed on any or all Equipment Schedules, wherever situated ...*”. Under clause 9(a), “*Events of Default*”

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included a failure by the Lessee to pay an instalment of rent “*on or before the date when the same becomes due and payable*”; and the Lessor ceasing to do business as a going concern, or filing a voluntary petition in bankruptcy, or being adjudicated a bankrupt or insolvent, or entering into an insolvency process.

15. The evidence on the Application refers to two Schedules executed under the MLA. By an addendum to the MLA dated 16 June 2021, Secure Capital and NMCH (and others) settled all claims and demands in respect of equipment leased under Equipment Schedule 4001-2017-001 (the “**001 Schedule**” and the “**001 Equipment**”). They have not resolved their differences about equipment leased are under a Schedule numbered 4001-2018-002 (the “**002 Schedule**”), and the Application is about the lease of this equipment.
16. The 002 Schedule lists 32 items of equipment (the “**002 Equipment**”) which are said to have cost AED 36,698,592 in total. It incorporated the terms of the MLA. The lease of the 002 Equipment was to commence on 15 March 2018, and it was for a “*Basic Term*” of 60 months. The “*Basic Rent*” was AED 730,596 per month, payable in arrears. The 002 Schedule specified the “*Name & Location of NMC Subsidiary where equipment is installed*” as being departments of “*EH Jumeirah*”, that is, the Emirates Hospital, Jumeirah, Dubai. The 002 Schedule also states: “*All equipment are supplied by Modular Concepts LLC*”. Modular Concepts LLC (“**Modular Concepts**”), which is based in Dubai, is described by Mr Albelbisi as a “*turnkey project handler recommended by NMCH at the relevant time*”.
17. NMCH duly paid rent for the 002 Equipment until February 2020, when it fell into arrears. It has paid no rent at all since September 2020. Secure Capital has demanded the return of the 002 Equipment, but it has not been delivered up to it.
18. By an email dated 25 April 2021, NMCH put forward proposals about the 001 Equipment. It wrote that a balance of AED 19.05 million payable under the 001 Schedule should be paid in thirteen instalments from May 2021 until May 2022, and that NMCH should pay an additional AED 500,000 conditional on it “*taking full ownership of the equipment covered by this lease agreement after the final instalment is paid in May 2022*”. Mr Asimakis submitted that NMCH thereby confirmed that the ownership of the 001 Equipment remained vested in Secure Capital, and that “*NMCH cannot now take a contrary position in respect of the 002 Schedule Equipment*”. I do not accept the submission about the 002 Equipment, but since, as I should explain, NMCH makes no claim to ownership of the 002 Equipment or any other proprietary interest in it, I need say no more about this point.
19. By an email of 27 April 2021, Secure Capital wrote to NMCH about the leases under both Schedules to the MLA. With regard to the 002 Schedule, it wrote:

*“NMC will help us recover the leased assets by providing the following documentation.*

*a. Authorization letter from NMC to repossess Equipment from Emirates Hospital.*



b. Copy of operations and management agreement pursuant to which NMC delivered the leased assets to Emirates Hospital.

c. Copy of delivery order (acknowledge[d] by Emirates Hospital) or any other document which shows that NMC delivered/installed our assets at Emirates Hospital's premises.

The requirements ... (above) will help us file an asset repossession claim against Emirates Hospital”.

20. On 16 June 2021 (the same date as the 001 Schedule Settlement Agreement was executed), NMCH wrote to Secure Capital about the 002 Equipment. It stated:

*“The Equipment ... was, at the time that the Master Lease Agreement was entered into, located at Emirates Hospital, ... which we understand is operated by Emirates Hospital Group LLC (“Emirates Hospital”). Both NMC and the Joint Administrators confirm that they have no objection to you contacting Emirates Hospital directly with a view to arranging with them a new agreement, any other arrangements as agreed between yourselves or the return of the Equipment. In the event that you have claims arising out of the Master Lease Agreement against any of the entities in administration you can gain access to the claims portal ...”.*

### The Administration of NMCH

21. By the Administration Order, Mr Fleming and Mr Benjamin Thom Cairns were appointed as Joint Administrators of NMCH and the other 35 companies that were put into administration. Both the IR15 and IR22 provide for the creditors of a company in administration to enter into a Deed Company Arrangement (a “DOCA”). Section 76 of both the IR15 and the IR22 provides as follows:

*“(1) A Deed of Company Arrangement binds all creditors of the Company, so far as concerns claims arising on or before the day specified in the Deed of Company Arrangement ...*

...

*(3) Subsection (1) does not affect a right that an owner or lessor of property has in relation to that property ...”.*

22. Mr Fleming summarises the relevant history of the administration in his evidence:

*“The NMC Group was a major healthcare provider operating across the UAE and internationally. The administration was necessary due to serious financial*



*difficulties resulting from a serious fraud that had been perpetrated on the NMC Group, and the need for urgent stabilisation.*

*On 9 August 2021, details of the proposed restructuring of the NMC Group by way of deeds of company arrangement ... were formally presented to creditors in the Revised Administrator's Proposals. It was considered that the DOCAs presented the best way to maximise value for creditors. ...*

*A creditors' meeting then followed on 1 September 2021, at which it was resolved by an overwhelming majority of creditors, among other things, that NMCH and certain other NMC Group companies would execute the applicable deeds ... . The DOCAs were executed and became effective on 21 September 2021 ... .*

*The DOCAs are governed by ADGM law and their terms bind all creditors, including Secure Capital pursuant to Section 76(1) of the ADGM Insolvency Regulations ... .*

*On 25 March 2022, the DOCA restructuring was effected and 34 of the NMC Group companies exited administration allowing the operations of many of the hospitals and medical centres to be preserved thereby maximising the returns of all creditors ... . NMCH, however, remained in administration to pursue litigation recoveries for the benefit of creditors (where it remains to this day)".*

23. Thus, the restructuring involved the execution of DOCAs by NMCH and 34 of the other companies in administration (the "**NMCH DOCA**" and the "**Related DOCAs**", respectively).
24. Mr Fleming then referred to an Order that I made on 1 April 2022 ("**April 2022 Order**") in which I made declarations about the terms of the DOCAs in order to assist with enforcement and recognition of the DOCA process in the onshore Courts of the UAE. By paragraph 5 of the April 2022 Order, I declared that, under the terms of the DOCAs, "*without the consent of the Deed Administrators or the leave of the Court the relevant Deed Company Creditors shall not ... begin, take any further steps in, or continue ... any legal proceedings ...*".
25. In a judgment dated 4 April 2022, *NMC Healthcare Limited v Noor Capital PSC [2022] ADGMCFI 0003*, I summarised the overall scheme of the DOCA arrangements as follows:

*"In broad outline, the scheme of the proposed DOCAs was to allow creditors to submit claims for proof, such proofs being in the administration of the relevant debtor company as well as under the relevant DOCA; and proving creditors were to share rateably in the value of the Group through instruments of entitlement in the restructured Group. A new company in the Group was to take over the subsidiary companies and through them the operating businesses, principally through transfers of shares owned by NMCH. (Under section 81 of the IR, the administrator of a DOCA may transfer shares in the company with the written consent of the owner of the shares or the Court's leave.) Thus, the subsidiary companies were to*



*continue as going concerns. NMCH was to continue in administration in order to collect and distribute assets so as to achieve the best result for its creditors as a whole”.*

26. I add to this explanation that, under the scheme, the creditors of the NMC Companies were treated as “*Group Creditors*” and were to share in the assets of the NMC Group: in that way, the structure of the separate companies in the NMC Group was overridden. The scheme was put into effect through two companies: NMC Holdco SPV Ltd (“**Holdco**”), the holding company of the new structure that had been incorporated to acquire substantially all the assets of the NMC Companies; and NMC Opco SPV Ltd (“**Opco**”), the newly incorporated operating company of the Holdco Group. The creditors of the NMC Group were to participate in the new structure by being issued with so-called “*DOCA Creditor Entitlements*”.
27. Accordingly, the NMCH DOCA included this recital: “*The Restructuring is proposed to be achieved by way of this Deed in conjunction with the Related DOCAs and the Restructuring Documents. Amongst other things, the Restructuring provides for: ... (ii) the transfer of the Completion Transfer Assets to Opco and/or its nominee(s) pursuant to the terms of this Deed and the Restructuring Documents*”.
28. The transfer of the “*Completion Transfer Assets*” to Opco was dealt with by clause 7.8 of the NMCH DOCA, which requires the Deed Administrators to execute all relevant documents to enable the transfer of the “*Completion Transfer Assets*”.
29. The terms of the NMCH DOCA included these provisions at clause 8.1, under the heading “*Property available to meet Admitted Group Claims*”:

*“The DOCA Creditor Entitlements are the property available to pay the Admitted Group Claims of Admitted Group Creditors ... . No other Property of the Deed Company or each other Group DOCA Company will be available to pay such claims”*; and

*“Group Creditors are only entitled to receive the DOCA Creditor Entitlements that are declared by the Deed Administrators and the Deed Company and provided for in this Deed and the Related DOCAs and the Restructuring Documents, and the right of recourse in respect of each Group Creditor Claim is solely limited to such DOCA Creditor Entitlements”.*

The Deed Administrators were Mr Fleming and Mr Cairns.

30. Under the headings “*Release and Discharge of [NMCH] Claims*” and “*Partial discharge of claims against [NMCH]*”, clause 13.1 of the NMCH DOCA, provided as follows:

*“(a) Holdco will issue the LTD EPM Entitlements to the [NMCH] Creditors ... at the time specified in the Restructuring Implementation Deed (the “**Holdco Issuance**”).*



*(b) The Holdco Issuance shall be treated as discharging the relevant [NMCH] Creditor's claim against [NMCH] pro tanto, notwithstanding that it is made by Holdco".*

31. Sub-clause 13.4, headed "Agreement not to Claim" provided:

*"Each [NMCH] Creditor that is bound by this Clause 13 will not, without the consent of the Deed Administrators:*

*(a) commence or continue, or instruct, direct or authorise any other person to commence or continue any proceedings arising out of; and*

*(b) exercise or attempt to exercise any self-help remedy ... ,*

*in connection with or with respect to their [NMCH] Claims or any other associated claim howsoever arising in any jurisdiction or forum ...".*

32. Sub-clause 13.5 of the NMCH DOCA was headed "Waiver", and it provided:

*"(a) In accordance with and at the time specified in the Restructuring Implementation Deed and subject to the provisions of Clause 13.1 above, each [NMCH] Creditor shall acknowledge that it may discover facts in addition or different to those which it presently knows or believes to be true with respect to the subject matter of this Deed, but it is its intention to fully and finally forever settle and release any and all matters, disputes or differences, whether known or unknown, suspected or unsuspected, which presently exist, may later exist or previously have existed between it, [NMCH] and/or the Released Parties in respect of the claims released in accordance with this Clause 13, and that in furtherance of this intention, the waivers, releases and discharges given in this Deed and the Restructuring Implementation Deed shall be and shall remain in effect as full and complete general waivers, releases and discharges notwithstanding the discovery or existence of any such additional or different facts.*

*(b) The distribution of LTD EPM Entitlements shall be treated by the [NMCH] Creditors as settlement of all and any claims and Liabilities against [NMCH] waived or released under this Deed and/or the Restructuring Implementation Deed to the extent outlined in Clause 13.1 above".*

### **Secure Capital's Claims in the Administration**

33. Secure Capital submitted a proof of debt in the administration on 28 April 2021. It referred to the MLA and the two Schedules, and noted that: *"Even though there is no security held by [Secure Capital], however the ownership of the equipment leased to [NMCH] lies with [Secure Capital] and is being used by [NMCH] and other co-lessees and by hospital(s) under their*



*'operations and management'*". It also stated that: *"Title of the leased assets remains with [Secure Capital] as owner of the leased assets, i.e. medical equipment ..."*.

34. On 17 February 2022, the Joint Administrators wrote to Secure Capital inviting it to complete an Admitted Group Creditor Letter ("**AGCL**") in relation to its claim. On 10 April 2022, Secure Capital executed the AGCL, including a Confirmation and Release Deed which was scheduled thereto. Mr Albelbisi signed the AGCL, Confirmation and Release Deed in his capacity as the General Manager of Secure Capital.
35. The Confirmation and Release Deed provide as follows:
- (i) that Secure Capital *"accepts its DOCA Creditor Entitlements on the terms set out in the [NMCH] DOCA and the Related DOCAs (as applicable) and it agrees to be irrevocably and unconditionally bound by the [NMCH] DOCA and the Related DOCAs"* (clause 2(e));
  - (ii) that Secure Capital would not *"seek or attempt nor aid or facilitate any other person to dispute, set aside, challenge, compromise or question in any jurisdiction the validity and efficacy of the cancellation and/or write-down of its [NMCH] Claims"* (clause 2(h));
  - (iii) that Secure Capital agreed *"to submit to the ADGM jurisdiction in relation to its Group Claim, any matters arising out of or in relation to the DOCAs or any other matter in connection with the Restructuring"* (clause 2(l)); and
  - (iv) that Secure Capital would not *"without the consent of the [NMCH] Deed Administrator:*
    - (a) commence or continue, or instruct, direct or authorise any other person to commence or continue any proceedings arising out of; and*
    - (b) exercise or attempt to exercise any self-help remedy ... ,**against the Deed Administrators, [NMCH], or the DOCAs Companies in connection with or with respect to their Admitted Group Claims that have been released by the DOCAs or any other associated claim howsoever arising in any jurisdiction or forum other than the DOCAs"*.
36. By completing the AGCL, Secure Capital became entitled to receive *"DOCA Creditor Entitlements"* and such Entitlements have been issued to it. Mr Fleming's evidence, which was not disputed, is that approaches have been made to Secure Capital *"regarding collection of the DOCA Creditor Entitlements"*. It is not quite clear to me what is meant by *"collection of the DOCA Creditor Entitlements"*, or whether Secure Capital has in fact collected them. However, DOCA Creditor Entitlements were issued to Secure Capital, and under the structure of the DOCA arrangements, creditors' claims were discharged by the issue of DOCA Creditor Entitlements: see clause 13.1 of the NMCH DOCA at paragraph 30 above.



## The Dubai Proceedings

37. Secure Capital brought the Dubai Proceedings on 6 October 2022 against Emirates Hospital Group LLC (“**Emirates Hospital**”) as the First Defendant and NMCH as the Second Defendant. Its claims are stated in a case summary of the Dubai Court (according to the translation that is in evidence) as follows:

*“To order the Defendants, jointly and severally, to return the [002 Equipment] with this judgment being enforceable with immediate effect; and to order the Defendants, jointly and severally, to pay an amount of AED 19,510,928, representing the total fair rental value due in accordance with the Lease Agreement for the entire period of use of the equipment until its actual delivery, together with compensation for loss of profit in the amount of AED 6,575,364, for a total amount of AED 26,086,292, in addition to legal interest at the rate of 12 % per annum.*

*To order the Defendants, jointly and severally, to pay court fees, expenses and legal costs ...”.*

38. Mr Asimakis referred to Secure Capital's claim for an order that Emirates Hospital and NMCH be jointly and severally required to return the 002 Equipment as the “**Proprietary Claim**”, and the claim for an order that they be jointly and severally liable to pay the total of the unpaid rent and loss of profits as the “**Monetary Claim**”. He described the Monetary Claim as being “*ancillary to the Proprietary Claim*”, but I cannot accept that characterisation assists Secure Capital's Application. In the Dubai Proceedings, it makes both Claims, and neither necessarily depends upon the other.
39. On 21 December 2022, the Dubai Court of First Instance stayed the Dubai Proceedings pending completion of ratification of a restructuring plan in respect of Emirates Hospital pursuant to a judgment of the Abu Dhabi Court of First Instance. Secure Capital appealed against the stay, but on 14 February 2023 the Dubai Court of Appeal dismissed the appeal and affirmed the stay. Accordingly, proceedings were suspended pending a restructuring process in relation to Emirates Hospital and its assets.
40. On 12 September 2023, Secure Capital applied to the Dubai Court for the Dubai Proceedings to be resumed following the completion of the ratification of the Emirates Hospital restructuring, and on 26 September 2023 the Court lifted the stay and re-listed the Dubai Proceedings. On Secure Capital's application of 4 October 2023, Mr Salem Mohammed Salem Balami was joined as a party in his capacity as bankruptcy trustee or restructuring representative of Emirates Hospital.
41. On 28 December 2023, the Dubai Court approved the appointment of an engineering expert. In her first report of 24 April 2024, the Expert, Ms Aida Omar Ali, observed that the 002 Equipment had been “*received and accepted*” by NMCH, and that “[p]ursuant to the request of [NMCH] in its capacity as Lessee, such devices were received and installed (place of performance of the

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agreement) at Emirates Hospital, Jumeirah”. She also observed that until February 2020 NMCH had paid rent in respect of the 002 Equipment, but thereafter it paid only “sporadic” amounts before ceasing payments entirely. Nevertheless, NMCH had “failed to return the leased medical equipment” to Secure Capital. Ms Ali concluded that NMCH “failed to fulfil its obligations set out in the provisions of [the 002 Schedule]” in that NMCH “did not comply with payment of the agreed monthly rental throughout the entire period of use” and that, in addition, “the equipment was not returned to the Lessor”. She also found that Emirates Hospital “maintains possession of the disputed medical equipment”. Nevertheless, Ms Ali considered that Secure Capital “has no entitlement to recover these equipment items ... due to the absence of substantiated documentary evidence supporting such claim”. She also concluded that Secure Capital’s appropriate relief was that NMCH should pay all outstanding and overdue amounts in respect of the 002 Equipment and that NMCH should return it “in strict accordance with the express provisions of the [MLA]”.

42. After Ms Ali had issued her first report, Secure Capital, as it appears from the documents before me, applied successfully to have Modular Concepts joined as a party to the Proceedings.
43. Following objections to the first report from both Secure Capital and NMCH, the Court remitted the matter to Ms Ali, who issued a second or supplementary report dated 1 May 2025. She again concluded that Secure Capital had not established a right against Emirates Hospital to recover the 002 Equipment: that “[n]o documentary evidence was established to prove [Secure Capital's] entitlement ... to recover the [002 Equipment] and accordingly the Expert concludes to the same result set out in her previous report”. She also concluded with regard to NMCH and Modular Concepts as follows: “The involvement of both [NMCH] and [Modular Concepts] ... in a commercial fraud operation against [Secure Capital] is established, on the pretext of purchasing medical equipment pursuant to [the 002 Schedule] for leasing a group of medical devices, and their failure to fulfil their obligation to execute the purchase of the equipment and to ensure that ownership of such equipment would revert to [Secure Capital] (full ownership)”. She continued: “The Expert establishes that both [NMCH] and [Modular Concepts] ... used deceptive methods from the outset with the aim of unlawfully obtaining [Secure Capital's] funds”.
44. The basis for this conclusion about NMCH and Modular Concepts included the following:
  - a. Ms Ali noted that she had received no response or cooperation from Modular Concepts despite many attempts to contact it;
  - b. Ms Ali inferred that Modular Concepts had “disposed of the amount of AED 35,781,128 transferred to it by [Secure Capital] for purposes unrelated to the purchase of medical equipment”; and
  - c. Ms Ali also concluded that NMCH's “acknowledgment of the presence of the leased equipment at the premises of [Emirates Hospital], in addition to extracting insurance certificates listing it as an insured party ... constitutes a misleading act carried out by

[NMCH] against [Secure Capital] in order to conceal the reality of the commercial fraud operation, whereas it was incumbent upon [NMCH] to prove ownership of the equipment in favour of [Secure Capital] by registering purchase contracts for such equipment in [Secure Capital's] name in accordance with the contractual terms, which did not occur”.

45. On 26 May 2025, the Dubai Court issued a judgment that determined:
- a. with regard to Emirates Hospital and Mr Balami, that the Court has no jurisdiction to hear the action, jurisdiction lying with the Abu Dhabi Bankruptcy Court;
  - b. with regard to NMCH, that the Court has jurisdiction to hear the claims against it; and
  - c. with regard to NMCH and Modular Concepts, that “*the proceedings are stayed pending [Secure Capital] obtaining the approval or permission stipulated in the judgment of the [ADGM Courts] ... with a determination of costs reserved*”. I take this to refer to my April 2022 Order.
46. NMCH did not appeal against the determination that the Dubai Court had jurisdiction over the claims against it. Secure Capital appealed both against the conclusion the Court had no jurisdiction over the claims against Emirates Hospital and Mr Balami, and against the stay of proceedings against NMCH and Modular Concepts. On 16 September 2025, the Dubai Court of Appeal allowed the appeal with regard to the claims against Emirates Hospital and Mr Balami, but it upheld the stay of the proceedings against NMCH and Modular Concepts.

### **The Discretion to Lift the Moratorium**

47. The relevant English legislation is in the same terms as section 45 of the IR22, and both Mr Asimakis and Mr Al-Attar cited in support of their clients' contentions the judgment of the English Court of Appeal in *Re Atlantic Computer Systems Plc [1992] Ch 505* and in particular the guidance at page 542 about when proceedings against a company in administration should be permitted. Before going to the guidance itself, it is important to keep in mind the Court's introduction to it:

*“In the course of argument we were invited to give guidance on the principles to be applied on applications for the grant of leave ... . It is an invitation to which we are reluctant to accede, for several reasons: first, Parliament has left at large the discretion given to the court, and it is not for us to cut down that discretion or, as it was put in argument, to confine it within a straightjacket. However much we emphasise that any observations are only guidelines, there is a danger that they may be treated as something more. Secondly, [the English legislation] applies to a very wide range of steps and proceedings, and the circumstances in which leave is sought will vary almost infinitely. Thirdly, it is the judges who sit in Companies Court who have practical experience of the difficulties arising in the working out of this new jurisdiction, not the members of this court” (loc. cit. at p. 541).*



48. Nevertheless, the Court of Appeal did give guidance. First, it stated these starting points on an application of this kind: that it is for the party seeking permission to make out his case that the permission should be granted; and that the moratorium “*is intended to assist the company, under the management of the administrator, to achieve the purpose for which the administration order was made*”. In this case, the primary purpose of the Administration Order was to rescue the NMC Group business as a going concern; and to achieve a better result for the Group's creditors as a whole than would be likely if the Group companies were wound up: see *Noor Capital PSC v NMC Healthcare Limited [2026] ADGMCFI 0004* at paragraphs 3 and 80.
49. The Court of Appeal also gave guidance about applications to pursue a proprietary claim, rather than a monetary claim. Here, Secure Capital seeks permission to pursue both, but in his submissions in reply, Mr Asimakis said that “*a grant of permission to proceed only in respect of the proprietary claim would be acceptable to Secure Capital, even if the monetary claim were not permitted to proceed while the administration remains ongoing*”. Mr Al-Attar did not dispute, and I accept, the Court may grant permission on a ‘claim by claim basis’: see *CargoLogicAir Ltd v WWTAl AirOpCo 1 Bermuda Ltd [2024] EWHC 508 (Comm)*.
50. Accordingly, Mr Asimakis relied on these observations of the Court of Appeal about proprietary claims:
- (i) “*If granting leave to a lessor of land or the hirer of goods (the ‘lessor’) to exercise his proprietary rights and repossess his land or goods is unlikely to impede the achievement of [the purpose for which the administration order was made], leave should normally be given*” (loc. cit. at p.542C/D);
- (ii) “*In other cases when a lessor seeks possession the court has to carry out a balancing exercise, balancing the legitimate interests of the lessor and the legitimate interests of the other creditors of the company ...*”; and “*In carrying out the balancing exercise great importance, or weight, is normally to be given to the proprietary interests of the lessor. ... The underlying principle here is that an administration for the benefit of unsecured creditors should not be conducted at the expense of those who have proprietary rights which they are seeking to exercise, save to the extent that this may be unavoidable and even then this will usually be acceptable only to a strictly limited extent*” (loc. cit. at p.542D/H); and
- (iii) “[I]t will normally be a sufficient ground for the grant of leave if significant loss would be caused to the lessor by a refusal. For this purpose loss comprises any kind of financial loss, direct or indirect, including loss by reason of delay, and may extend to loss which is not financial. But if substantially greater loss will be caused to others by the grant of leave, or loss which is out of all proportion to the benefit which leave would confer on the lessor, that may outweigh the loss of the lessor caused by a refusal” (loc. cit. at pp.542H, 543A).
51. For his part, with regard to proprietary claims, Mr Al-Attar drew my attention to this guidance in



the *Re Atlantic Computer Systems* judgment:

*“In some cases there will be a dispute over the existence, validity or nature of the security which the applicant is seeking to enforce. It is not for the court on the leave application to seek to adjudicate upon that issue, unless ... the issue raises a short point of law which it is convenient to determine without further ado. Otherwise the court needs to be satisfied only that the applicant has a seriously arguable case”* (at p.54B/C).

52. These citations notwithstanding, both Parties agreed that ultimately the Court has a broad discretion to be exercised in light of the particular circumstances of the instant case when deciding whether it should permit proceedings to be pursued.

### **Secure Capital’s Proprietary Claim**

53. In his Skeleton Argument, Mr Asimakis identified five areas for considerations relevant to the exercise of discretion in this case. They seem to me to cover the main matters for consideration.
54. First, Mr Asimakis emphasised that: “[T]he essence of the Proprietary Claim is that Secure Capital is a lessor of specifically identified goods in respect of which it asserts ownership rights and the return of which it has demanded from NMCH”; and he submitted that, as was said in the *Re Atlantic Computer Systems* case, great importance should be attached to that.
55. Mr Al-Attar advanced three arguments that, in the circumstances of this case, the Court should not give weight to the proprietary nature of the claim against NMCH in the Dubai Proceedings for the “return” (or perhaps more accurately, the “delivery up”) of the 002 Equipment. First, he submitted that Secure Capital does not have a seriously arguable case against NMCH for the delivery up of the 002 Equipment because it has not demonstrated a sufficient case that it has any title to it. The basis for this argument is the conclusion of Ms Ali in her first and second reports that Secure Capital had failed to establish its title against Emirates Hospital to recover the Equipment.
56. In response to this, Mr Asimakis observed that Ms Ali's reports do not represent a conclusion of the Dubai Court and said that Secure Capital would argue before the Dubai Court that her conclusion should not be adopted. In these proceedings, Secure Capital has presented documentation which, Mr Asimakis contends, supports its case that it had acquired from Modular Concepts the 002 Equipment, paying Modular Concepts for it and acquiring ownership of it. Moreover, the MLA itself, and Schedule 002, which incorporates its terms, provide that Secure Capital as a lessor should retain ownership of the 002 Equipment. I am satisfied that Secure Capital has presented on this Application sufficient evidence to show a properly arguable case on this point, notwithstanding Ms Ali's conclusions.
57. Mr Asimakis submitted that, in these circumstances, “*permission should ordinarily be granted*;

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and the Proprietary Claim should not be - in effect - finally determined at this hearing by way of a refusal". However, Mr Al-Attar had other arguments. Firstly, he observed that there is no dispute or issue between Secure Capital and NMCH about proprietary rights in the 002 Equipment. NMC does not assert, and has never asserted, that it owns, possesses, has right to possession of, or has any proprietary interest in it.

58. Secondly, NMCH has no control of the 002 Equipment and is unable to deliver it up to Secure Capital. It follows, as Mr Al-Attar contended, that there is no realistic possibility that the Dubai Court would make an order that NMCH deliver up the 002 Equipment.
59. Moreover, in these circumstances, neither would Secure Capital benefit from pursuing the Proprietary Claim in Dubai, nor is there any need for it to do so. It appears clear, and I do not understand it to be in dispute, that the 002 Equipment is located in Jumeirah and is in the physical possession of Emirates Hospital. In the Dubai Proceedings, Secure Capital brings proceedings for the delivery up of the 002 Equipment against Emirates Hospital severally as well as against it jointly with NMCH. Against that, Emirates Hospital, in its Memorandum of 19 May 2025, filed in the Dubai Proceedings, asserts ownership of the 002 Equipment. That is an issue between Secure Capital and Emirates Hospital, and if it can establish its title to the 002 Equipment, Secure Capital's proper claim is against Emirates Hospital.
60. These seem to me powerful points. In response to them, Secure Capital sought to advance an argument that NMCH has some control of the 002 Equipment, but this argument was not fully developed by Mr Asimakis and I am unimpressed by it. It is initially based on an email dated 13 March 2018 from Mr Udayakumar Nair of NMCH to Secure Capital. In it, Mr Nair said that "*Emirates [H]ospital [G]roup is operated [and] managed by [NMCH] [and] both NMC [and] [E]mirates [H]ospital has common ownership*". Secure Capital also referred to an announcement issued by NMC Health PLC on 23 August 2017 that it had entered into an operations and management contract for the management of the Emirates Hospitals assets, including Emirates Hospitals and clinics; and NMC Health PLC's annual reports and accounts for the years ended 31 December 2017 and 31 December 2018, which, it is said, expressly referred to the operations and the management of the Emirates Hospitals.
61. The evidence is not entirely satisfactory about quite what relationship the NMC Group had with Emirates Hospital in 2017 and 2018 with regard to operations and management, and still less about the relationship between NMCH and Emirates Hospital in that regard. However, it does appear that, at that time, the NMC Group had some arrangements of this kind. This is corroborated by the reference in the email of 27 April 2021 to an "*operations and management agreement*" and in Schedule 002 itself to the Equipment being located at a "*NMC Subsidiary*".
62. However, that might be, there is no proper reason to think that NMCH any longer has any relationship with Emirates Hospital, or any control over the 002 Equipment or any other equipment or assets at Emirates Hospital's premises. On the contrary, in her second report, Ms Ali said this: "*There exists a contractual relationship between [Emirates Hospitals Group] and [NMCH] during the period between 2017 and 2019, through the execution of an Operation*

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and Management Agreement ... during the years 2017 and 2018. The execution of this agreement was publicly announced on 23 August 2017 by NMC Health [PLC] ... . The agreement was also referred to in [NMCH's] annual reports ... and its execution was announced in local newspapers ... . This contractual relationship explains, for the purposes of the expert, the official document issued by [NMCH] dated [16 June 2021], in which it expressly acknowledged that the leased medical equipment was in the possession of [Emirates Hospitals Group] and located at its premises, and that it had no objection to [Secure Capital] repossessing such equipment ...". I infer that whatever relationship there was with regard to operations and management in the period 2017 to 2019 it is no longer in place.

63. Accordingly, I accept Mr Al-Attar's submissions that (i) there is no proprietary issue between Secure Capital and NMCH, and (ii) there is no realistic prospect that Secure Capital will be able to obtain possession of the 002 Equipment through pursuing the Proprietary Claim against NMCH in the Dubai Proceedings. This case does not involve an issue with a company in administration about proprietary rights of the kind contemplated by the Court of Appeal when giving guidance in the *Re Atlantic Computer Systems* judgment. To apply the guidance about proprietary claims to this case in the way that Mr Asimakis advocated would be a mechanical application of it such as the Court of Appeal feared.
64. I should add that it was observed that questions about proprietary interests in the 002 Equipment are governed by the *lex situs* of it (notwithstanding that the MLA between Secure Capital and NMCH is governed by the law of the DIFC: see *Hardwick Game Farm v Suffolk Agricultural and Poultry Producers Association Ltd* [1966] 1 WLR 287, 330 and *Glencore International AG v Metro Trading International Inc* [2001] CLC 1732 at paragraphs 14ff). Nothing in the material presented by Secure Capital or otherwise before me suggests that the law of the UAE, which is apparently the *lex situs* of the 002 Equipment, is more favourable to Secure Capital than ADGM law.

### Effect on the Administration

65. Mr Asimakis next argued that it would not impede the purpose of the administration to grant Secure Capital permission to pursue the Dubai Proceedings and took issue with Mr Fleming's evidence that it would create "*unfairness to others*". I observe that this submission reverses the burden and the essential question on application of this kind: see paragraph 48 above. It is for Secure Capital to establish its case for permission and the usual question is whether permission would assist the purpose of the administration.
66. Mr Fleming made this observation in his Witness Statement: "*It would be inequitable for Secure Capital to seek, by way of the Dubai Proceedings, recovery for the full amount of its pre-administration claim and any amount of its purported post-administration claim. 857 creditors other than Secure Capital have complied with the terms of the [NMCH] DOCA. Unilateral exceptions cannot be made for individual creditors without undermining the integrity and finality of the [NMCH] DOCA and creating unfairness to others*".



67. This observation applies particularly to the Monetary Claim, and I see force in it. Mr Asimakis responded by submitting that: *“Secure Capital does not seek any special treatment over and above other unsecured creditors in respect of its Monetary Claim. It neither seeks priority over other unsecured creditors, nor seeks to execute a[s] against general administration assets”*. In support of this submission, he cited the judgment of Coulson J in *South Coast Construction Ltd v Iverson Road Ltd [2017] EWHC 61 (TCC)*: *“Even armed with a judgment in its favour (if that is what it gets) the claimant would still only be an unsecured creditor. Its status as a creditor would not be enhanced by any judgment”* (at paragraph 21). That observation of Coulson J does not seem to me in point here. In this case, Secure Capital has not only made a claim in the administration, but it has also received DOCA Creditor Entitlements as a result of its claim there. By pursuing the Monetary Claim, it seeks additional benefits, which are not available to other creditors who have accepted the DOCA scheme.
68. I add that, as Mr Al-Attar pointed out, if permission were granted to Secure Capital to pursue the Dubai Proceedings (in respect of the Proprietary Claim or the Monetary Claim), other creditors would bear the costs incurred as a result thereof.

#### **The Terms of the NMCH DOCA and the Undertakings in the Confirmation and Release Deed**

69. Secure Capital lodged a proof of debt in the administration, and, as Mr Fleming stated, *“In doing so, Secure Capital voluntarily accepted the administration procedures and the terms of the resulting [NMCH] DOCA”*. It has also executed the Confirmation and Release Deed, and has given the undertakings in it. NMCH contends that the terms of the NMCH DOCA and of the Confirmation and Release Deed prohibit Secure Capital from bringing or continuing proceedings without the consent of Mr Fleming and Mr Cairns, and they have not given consent. It therefore submits that Secure Capital should not be permitted to pursue proceedings in breach of the terms of the NMCH DOCA nor in breach of the undertakings given in the Confirmation and Release Deed.
70. In his Skeleton Argument, Mr Asimakis advanced four points in response to this submission. First, he said that: *“The submission of a proof of debt in the administration did not constitute the abandonment by Secure Capital of its proprietary rights to the Equipment, nor could it convert property belonging to Secure Capital into general property of NMCH in administration”*. I see nothing in this point. NMCH does not argue that Secure Capital has abandoned proprietary rights or that the 002 Equipment should be an asset in the administration. NMCH's argument is that the terms of the NMCH DOCA and Secure Capital's undertakings in the Confirmation and Release Deed prohibit it from enforcing its rights in the Dubai Proceedings.
71. Secondly, Mr Asimakis submitted that: *“The [IR22] expressly provide a mechanism for the Court to grant permission notwithstanding the lack of consent on the part of the Administrators to ensure appropriate relief is available in just such a situation”*. Again, I am not persuaded. Of course, neither the terms of the NMCH DOCA nor the undertakings given by Secure Capital in the Confirmation and Release Deed curtail the Court's power under section 45 of IR22 to permit Secure Capital to pursue the Dubai Proceedings. The question is whether the Court should



exercise that power.

72. Thirdly, Mr Asimakis argued that: *“NMCH’s reliance on the DOCA and the AGLC to argue that Secure Capital has agreed not to litigate against NMCH is in truth an attempt to reventilate before this Court jurisdictional arguments it raised and lost before the Dubai Courts”*. I cannot accept that. There is no question in this Court about the jurisdiction of the Dubai Courts to entertain the Proprietary Claim or the Monetary Claim. The question here is whether Secure Capital is entitled, notwithstanding the terms of the NMCH DOCA and the undertakings given in the Confirmation and Release Deed, to invoke that jurisdiction.
73. Fourthly, Mr Asimakis contended that NMCH does not *“confront the reality that the Dubai Proceedings are now a well-advanced, multi-party dispute involving multiple parties who are outside the universe of NMCH’s administration, and raising complex issues of, inter alia, (i) title to valuable personal property, (ii) liability and quantification of damages for breach of contract, (iii) fraudulent misrepresentation and/or conspiracy”*. It is said that the *“proof of debt process”* cannot resolve the question of fraudulent misrepresentation and conspiracy, and that it would be inequitable for the moratorium to prevent those issues from being resolved in the Dubai Proceedings.
74. This does not seem to me to answer NMCH’s argument that Secure Capital would contravene its obligations in pursuing the Dubai Proceedings. With specific regard to the suggestion that a claim might be made in fraudulent misrepresentation or conspiracy, Secure Capital expressly acknowledged that, in agreeing to the NMCH DOCA, it was settling not only claims of which it was aware, but also claims which it could not foresee or suspect. Even if the potential claims in fraudulent misrepresentation or conspiracy fall into that category, they are nevertheless covered by the terms of the NMCH DOCA and the undertakings given in the Confirmation and Release Deed.
75. In his oral submissions, Mr Asimakis advanced a further argument. He relied upon clause 4.6(b) of the NMCH DOCA. That provision reads as follows: *“Nothing in this Deed will affect a right that a Third Party Owner or Lessor that did not vote in favour of the Section 65 Resolution has in relation to the relevant owned property ...”*. The term *“Lessor”* is defined as *“any person who is the legal or beneficial owner of or who holds a minority interest or superior leasehold interest in Property that is used or occupied by, or on behalf of, or in the possession of [NMCH] or in relation to which [NMCH] is liable on the date of the Administration Order to pay any amount in connection with the occupation of the Property”*.
76. When Mr Asimakis advanced this argument, there was no evidence before the Court that Secure Capital had not voted for the *“Section 65 Resolution”*, that is the resolution of 1 September 2021 that NMCH should enter into the NMCH DOCA. It appears from evidence filed after the hearing that it did not do so.
77. The interpretation of clause 4.6 of the NMCH DOCA seems to me to raise difficult questions. I did not receive full submissions about them, and they might need detailed examination in

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another case. It is not sensible to engage with them in this judgment, and I do not need to do so. Whether or not clause 4.6 materially bears upon the terms of the NMCH DOCA, it does not qualify the undertakings given by Secure Capital in the Confirmation and Release Deed. That is sufficient for NMCH's argument.

### A Balancing Exercise

78. Mr Asimakis' fourth area for consideration is that a balancing exercise should come down in favour of the grant of permission because refusal of permission would be "*substantial and detrimental*" to Secure Capital. He referred in this context to the facts that Secure Capital has incurred substantial court fees, expert fees and other professional fees in the Dubai Proceedings, and that the Dubai Proceedings are "*well advanced*". However, Secure Capital has incurred these expenses because it brought the Dubai Proceedings in October 2022 when, as it was or should have been aware, it was subject to the moratorium under the Administration Order. Further, the Dubai Proceedings have progressed because they have been pursued by Secure Capital in breach of the moratorium. It appears true that, as Mr Asimakis submitted, a refusal of permission would "*stifle the Dubai Proceedings*", but that is the nature, and indeed the purpose, of the moratorium.

### Conduct of the Parties

79. Finally, Mr Asimakis submitted that, insofar as the conduct of the Parties is to be brought into a balancing exercise, it weighs in favour of the grant of permission. Here, he prayed in aid that Secure Capital has reached a settlement with regard to the 001 Equipment. That is a neutral point: NMCH also agreed to the settlement.
80. Mr Asimakis criticised the conduct of NMCH in that, it is said, it has attempted to "*minimise any connection between it and Emirates Hospital*". I am not persuaded of that.
81. On the other hand, Secure Capital's conduct is to be criticised in that for some three years it pursued proceedings in breach of the moratorium.

### Conclusions

82. I refuse the Application. My main reasons for doing so are these:
- a. I do not consider that it would in any way assist the purpose for which the Administration Order was made to grant permission. On the contrary, it would hinder it, without countervailing benefits for Secure Capital.
  - b. Permission would allow Secure Capital to pursue proceedings which it has undertaken not to pursue, and in consideration of which undertaking (*inter alia*) it has been issued with the DOCA Creditor Entitlements.
83. Weighing these considerations together with the other arguments which were presented by the



Parties and which I have examined in this judgment, I conclude that this is not a proper case for permission.

84. Unless otherwise ordered, I shall deal with any consequential applications without an oral hearing. Any consequential applications, other than for permission to appeal, are to be filed and served by **5.00 pm GST on 22 April 2026**.



Issued by:

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

**Linda Fitz-Alan**  
**Registrar, ADGM Courts**  
**15 April 2026**