

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

ABU DHABI COMMERCIAL BANK PJSC
Claimant

and

PRASANTH MANGHAT
Defendant

AND

**COURT OF FIRST INSTANCE
COMMERCIAL AND CIVIL DIVISION**

BETWEEN

(1) NMC HEALTHCARE LIMITED

(in administration) (subject to a deed of company arrangement)

(2) NMC HOLDING LIMITED

(in administration)

(3) RICHARD DIXON FLEMING

(in his capacity as Joint Administrator of the First and Second Claimants)

(4) BENJAMIN THOM CAIRNS

(in his capacity as Joint Administrator of the First and Second Claimants)

Claimants

and

(1) BAVAGUTHU RAGHURAM SHETTY

(2) PRASANTH MANGHAT

(3) BANK OF BARODA

Defendants



AND

**COURT OF FIRST INSTANCE
COMMERCIAL AND CIVIL DIVISION**

IN THE MATTER OF NMC HEALTHCARE LTD (in administration) (subject to deed of company arrangement) AND THE COMPANIES LISTED IN SCHEDULE 1 TO THE ADMINISTRATION APPLICATION

AND IN THE MATTER OF THE INSOLVENCY REGULATIONS 2015

BETWEEN

(1) NMC HEALTHCARE LIMITED

(in administration) (subject to a deed of company arrangement)

(2) NMC HOLDING LIMITED

(in administration)

(3) RICHARD DIXON FLEMING

(in his capacity as Joint Administrator of the First and Second Applicants)

(4) BENJAMIN THOM CAIRNS

(in his capacity as Joint Administrator of the First and Second Applicants)

Applicants

and

(1) BAVAGUTHU RAGHURAM SHETTY

(2) PRASANTH MANGHAT

(3) BANK OF BARODA

Respondents

JUDGMENT OF JUSTICE SIR NICHOLAS PATTEN



Neutral Citation:	[2024] ADGMCFI 0016
Before:	Justice Sir Nicholas Patten
Decision Date:	8 November 2024
Decision:	<ol style="list-style-type: none"> 1. The Bank of Baroda is legally authorised to disclose and make available for inspection in the JA Claim and ADCB Claim the Article 120 Documents. 2. Without further order of the Court, the parties to the JA Claim and the parties to the ADCB Claim, respectively, may only use the Article 120 Documents and the information which they contain for the purpose of the JA Claim and/or the ADCB Claim to which they are party and subject to the restrictions in paragraph 3 below. 3. Without further order of the Court, the other parties to the JA Claim and the parties to the ADCB Claim will not make public or disclose any Article 120 Document, or any of the information which it contains, to any person who is not a party to the ADCB Claim and/ or the JA Claim. 4. Without further order of the Court, the parties shall not refer to any of the confidential information contained in the Article 120 Documents in open court. 5. Costs in the case.
Hearing Date(s):	8 November 2024
Date of Order:	14 November 2024
Catchwords:	Disclosure and inspection. Bank's duty of confidentiality. Whether Court's inspection of documents is required. Conditions on disclosure and inspection for protection of customers.
Cases Cited	NMC Healthcare LTD (in administration) and associated companies v. Dubai Islamic Bank PJSC & Others [2023] ADGMCFI 0006
Legislation Cited:	<p>UAE Federal Decree Law No. 14 of 2018 Concerning the Central Bank and the Regulation of Financial Institutions and Activities</p> <p>UAE Federal Decree Law No. 31 of 2021 Promulgating the Crimes and Penalties Law</p> <p>UAE Federal Decree Law No. 34 of 2021 on Countering Rumours and Cybercrimes</p> <p>ADGM Court Procedure Rules 2016</p>
Case Numbers:	ADGMCFI-2022-111; ADGMCFI-2022-299; and ADGMCFI-2020-020
Parties and representation:	<p>Case No.: ADGMCFI-2022-111</p> <p>Claimant</p> <p>Mr Scott Ralston</p>



	<p>(Instructed by Holman Fenwick Willan MEA LLP)</p> <p>Defendant</p> <p>Ms Sophia Hurst</p> <p>(Instructed by Kobre & Kim (GCC) LLP)</p> <p>Case Nos.: ADGMCFI-2022-299 and ADGMCFI-2020-020</p> <p>Claimants / Applicants</p> <p>Mr Henry King KC and Mr Damien Bruneau</p> <p>(Instructed by Quinn Emanuel Urquhart & Sullivan UK LLP)</p> <p>First Defendant / Respondent</p> <p>Ms Ruth den Besten KC</p> <p>(Instructed by Farrer & Co)</p> <p>Second Defendant / Respondent</p> <p>Ms Sophia Hurst</p> <p>(Instructed by Kobre & Kim (GCC) LLP)</p> <p>Third Defendant / Respondent</p> <p>Mr Harish Salve KC, Ms Sarah Tresman and Ms Maria Kennedy</p> <p>(Instructed by Baker & McKenzie LLP)</p>
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JUDGMENT

1. The background to these proceedings (the “**JA Claim**”) is set out in some detail in the judgment which I gave recently on two applications by the Bank of Baroda (the “**Bank**”) and Dr Shetty for extensions of time to give extended standard disclosure. It is not necessary to add to the detail of that for the purposes of this application.
2. The Bank applies for an order which it says it needs to be able to produce, as part of its disclosure in the JA Claim, documents which contain information about the accounts of its customers (the “**Application**”). Information about a customer’s bank account is deemed to be confidential in nature under the provisions of Article 120(1) of the *UAE Federal Decree Law No. 14 of 2018 Concerning the Central Bank and the Regulation of Financial Institutions and Activities* (the “**Federal Banking Law**”), and can only be disclosed with the permission of the owner of the account “*and in legally authorised cases*”. Under Article 120(2) of the *Federal Banking Law*, the prohibition on disclosure remains valid even after the termination of the business relationship between the customer and the bank.
3. Article 120 of the Federal Banking Law is not part of the law of the Abu Dhabi Global Market (“**ADGM**”), but the Bank’s concern is that it will breach the prohibition when it comes to disclose a substantial amount of material derived from data sources in other parts of the UAE. My attention has also been drawn to Article 432 of the UAE Criminal Law (the *UAE Federal Decree Law No. 31 of 2021 Promulgating the Crimes and Penalties Law*) and Article 45 of the UAE Cybercrime Law (the *UAE Federal Decree Law No. 34 of 2021 on Countering Rumours and Cybercrimes*) which the Bank is concerned that it may breach if unauthorised disclosure is given.



4. The relief sought on the Application is an order in one of two possible forms. That is to say an order:
 - (a) that the Bank's disclosure of documents containing data and information relating to its customers' accounts and related transactions falls within the exception in Article 120(6)(e) of the *Federal Banking Law*, such that authorisation to disclose the said documents under Article 120(1) of the *Federal Banking Law* is not required; or
 - (b) that the Bank is authorised by paragraph 27 of the Order dated 14 February 2024 (the "**First CMC Order**") and paragraph 1 of the Order dated 6 June 2024 (the "**Second CMC Order**") under Article 120(1) of the *Federal Banking Law* to disclose and make available for inspection in the JA Claim and the "**ADCB Claim**" (*Abu Dhabi Commercial Bank PJSC v. Prasanth Manghat – Case No.: ADGMCFI-2022-111*) documents containing data and information relating to its customers' accounts and related transactions.

5. Article 120(6) of the *Federal Banking Law* sets out a number of exceptions to the general prohibition contained in Article 120(1). Article 120(6)(a) and (e), which the Bank relies upon in the present case, states as follows:

"The provisions of item nos. (1) and (2) of this article shall be without prejudice to the following:

 - (a) *The powers legally vested in security and judicial authorities, the Central Bank and its employees;*
 - ...
 - (e) *The right of the concerned institutions to disclose whole or part of the data relating to the customer's transactions, in order to establish its right in a legal dispute in respect of such transactions, with its customer".*

6. Mr Salve KC for the Bank took me to the evidence of Mr Thomson of Baker & McKenzie LLP (contained in his witness statement of 4 November 2024) that what he describes as the "*Article 120 Documents*", contain data and information relating to at least 30,000 current and former customers of the Bank. Some of these customers are party to the JA Claim (or at least other companies within the NMC group) and include Dr Shetty and Mr Manghat. Others are the various companies and other persons to, or through whom, the various payments complained of in the action were made, such as Neopharma LLC and Nexgen Pharma LLC. But many of them are customers of the Bank who are entirely unconnected with the proceedings and the transactions to which they relate, but whose financial information is contained in the spreadsheets, internal audit reports and other documents (which also contain information disclosable in the proceedings). Mr Thomson estimates that 10,000 of the 35,000 documents which the Bank is ready to disclose fall into this category.

7. In *NMC Healthcare LTD (in administration) and associated companies v. Dubai Islamic Bank PJSC & Others [2023] ADGMCFI 0006* (the "**DIB Case**"), Justice Sir Andrew Smith was faced with a similar application by the defendant bank which had identified documents relating to the accounts of companies other than the claimants in that action. It asked the judge to grant relief on the basis that, if the ADGM Court were to authorise disclosure, then the defendant bank would be legally authorised to make it within the meaning of Article 120(1) of the *Federal Banking Law*. The learned judge said that he was not in a position to determine whether the defendant bank's submissions on the meaning and effect of Article 120(1) were correct but to use his words "*its position appears cogent.*"



8. In that case, as in this, the consent of the non-NMC entities had not been sought nor had they been given notice of the application. Justice Sir Andrew Smith directed that they be given notice of the application. In paragraphs 17 to 19 of his judgement he also gave some general guidance about the approach of the Court to the disclosure of confidential information of this kind in the context of a disclosure exercise. He said:

“17. The principles that govern whether the Court should permit or direct that documents containing information that is confidential to third parties be disclosed in legal proceedings and subject to inspection are well established and not controversial. While the legislation in the United Arab Emirates, and in particular Article 120, firmly establish the customers’ rights, it does not, in my judgment, alter the governing legal principles.

18. The right of a third party to have documents or their contents kept confidential is not a bar to its disclosure or inspection in litigation, but the Courts will take account of such rights when deciding whether to permit or direct disclosure or inspection, both out of respect for the rights of the third party in the particular case and also because there is a public interest in upholding confidence in banking and other confidentiality. Nevertheless, if the Court concludes that the documents should be disclosed and made available for inspection in order for the proceedings to be resolved fairly and justly, that consideration will prevail: disclosure and inspection will be permitted or ordered in the interests of justice. However, before so concluding, the Court will generally itself inspect the documents in order to make an informed decision as to whether in any given case the interests of justice or the customer’s rights prevail. Further, if the Court permits or orders disclosure or inspection, it will consider whether it should impose conditions and give directions so as to minimise the intrusion upon the customer’s rights.

19. It should be observed that, as is reflected in Article 120 of the Federal Banking Law, the customers’ rights are about keeping confidential pieces of information and data about his banking affairs, and not about keeping individual documents confidential. Accordingly:

- a. If the Court concludes that a document is sufficiently important to litigation for it to permit or direct disclosure or inspection in the interests of justice even though confidential information will be revealed, it is unlikely that disclosure and inspection of other documents, perhaps less important, will be refused on the grounds that they too contain the same information.*
- b. If the Court concludes that a document containing confidential information should or may be disclosed and inspected, it will consider whether it can and should be redacted in order to protect the information wholly or in part”.*

9. Having inspected the documents, the judge permitted the defendant bank to disclose the information after making suitable redactions. He also imposed three further conditions, two of which are provided for under Rule 89(1) of the *ADGM Court Procedure Rules 2016*. These are set out in paragraph 23 of his judgment.
10. Although Mr Salve KC made a number of submissions about the construction of Articles 120(1) and (6) of the Federal Banking Law, I do not consider that I am in a position on this Application to express a view or to make any conclusive findings about that. The original language of the Federal Banking Law is Arabic, and I have no means of assessing the accuracy of the translations which are in evidence. Nor have I had the benefit of any expert evidence on UAE law to assist me in construing the relevant provisions. It is evident, even from a cursory examination of the language of the translation of Article 120, that there are a number of questions as to the precise relationship between, for example, the



provisions of Article 120(1) and those of Article 120(6). Similarly, I can see issues arising as to the scope of Article 120 (6)(e), and in particular as to whether it provides an exemption for a bank of a general kind when it becomes involved in litigation with its customer, or whether the exemption is limited to data specific to the transactions that are the subject matter of the dispute. These are matters for resolution in a different forum. My task, as I see it, is to consider whether I should authorise disclosure of the confidential material as part of disclosure in these proceedings. If I make that order, then it will be for the Bank to rely upon it should any issue arise under Article 120 outside the ADGM. It could be said that that position has already been reached in the JA Claim, given that general orders for disclosure have been made at the First and Second CMCs. But it is clear that Justice Sir Andrew Smith was not asked on those occasions to give any consideration to the possible problems created by Article 120 and it is therefore appropriate that I should deal with that matter today.

11. The real issue on this Application is whether I should follow the course taken by Justice Sir Andrew Smith in the *DIB Case* and attempt to review the documents concerned and order redactions as a condition of their disclosure in the proceedings. All counsel concerned with the Application supported my taking a different course; in the case of Mr Salve because of the scale of such a task and in the case of Mr King because of the additional delay it would lead to. I should mention at this stage that consents can be provided through the Administrators for disclosure of the accounts of any of the NMC companies (whether or not a party to the JA Claim) and that Dr Shetty and Mr Manghat will, as I understand it, also consent. One is therefore concerned with the other classes of customer I have identified of which the unrelated parties are the greatest cause for concern.
12. It seems to me that, whilst the duty of confidentiality owed by the Bank to its customers merits protection by the Court when directing disclosure, the precise method of achieving this must necessarily vary from case to case depending on the relevant circumstances. The inspection of the documents by the Court is, as Justice Sir Andrew Smith made clear in his judgment, something which the Court will generally do, but there will be exceptions. The amount of documentation in that case was limited. In this case it is 10,000 documents. The process of considering this volume of material and any possible redactions will be very considerable and will result in even greater delays to the timetable already imposed on the parties for the conduct of the litigation. I am bound to take these matters into account when deciding whether and in what manner to allow disclosure of this material to take place.
13. It seems to me that the interests of justice plainly do favour the disclosure of these documents. This is significant litigation affecting the position of an important group of ADGM companies and their creditors who are alleged to be the victims of a significant fraud. The interests of justice lie in that being properly investigated at the forthcoming trial. So the question for me is how the interests of the customers of the Bank who are not parties and may not be connected in any way to the issues in the litigation can be sufficiently protected in circumstances where their confidential information is likely to be disclosed in the documents which the Court has ordered to be produced.
14. The obvious means of achieving this would be by way of redaction supervised by the Court, but neither that nor inspection of the documents is practical in the present case. In these circumstances I have reached the conclusion that I can achieve a sufficient degree of protection for these customers by imposing conditions similar to those imposed by Justice Sir Andrew Smith in the *DIB Case*. They will be:
 - (a) without further order of the Court, the documents and the information in them shall be used only for the purpose of these proceedings;
 - (b) without further order of the Court, the documents and the information which they contain shall not be disclosed to any person who is not a party to the proceedings; and



(c) without further order of the Court, the parties shall not refer to the confidential information in open court.

15. It will be for the judge managing this case, and ultimately for the trial judge, to decide whether any further restrictions should be imposed in relation to the use of this material.
16. I will invite counsel to provide an agreed form of order. Any queries about the form and scope of the order and these conditions should be referred in the first instance to the Registrar and I will deal with them on paper.



Issued by:

A blue ink signature, likely belonging to Linda Fitz-Alan.

Linda Fitz-Alan
Registrar, ADGM Courts
19 November 2024