



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**

FAYSAL MOHAMAD AWAD
Claimant

and

3AM PROPERTY INVESTMENT COMPANY LLC
First Defendant

ADEL ABDULHAMEED IBRAHIM ABDULLA ALHOSANI
Second Defendant

JUDGMENT OF JUSTICE SIR ANDREW SMITH



Neutral Citation:	[2025] ADGMCFI 0003
Before:	Justice Sir Andrew Smith
Decision Date:	7 March 2025
Decision:	<ol style="list-style-type: none"> 1. The Land Investment Contract (the “LIC”) is a binding and enforceable contract. 2. Upon the true construction of the LIC, the Claimant did not acquire <i>in rem</i> rights. 3. The Claimant is entitled to AED 167,057,638.60 from the First Defendant, but the debt has not accrued due. 4. The First Defendant is in breach of the LIC in respect of the matters explained in the Judgment. 5. The claim against the Second Defendant for monetary relief is dismissed.
Hearing Dates:	20 January 2025, 21 January 2025 and 22 January 2025
Date of Order:	Following further submissions
Catchwords:	<i>Lex fori</i> governing rules of evidence and procedure. Requirements for binding contract. Statutory requirements for registration of disposition of land. Limitation defence. Remedy of specific performance. Power to appoint receiver. Estoppel per <i>rem judicatam</i> . Liability of manager under Article 84 of Federal Law 33/2021. Piercing of corporate veil.
Legislation and Other Authorities Cited:	<p>Cabinet Resolution No. (41) of 2023 Regarding the Amendment of Cabinet Resolution No. (4) of 2013 Concerning the Determination of the Location and Area of the Abu Dhabi Global Market</p> <p>Abu Dhabi Law 4/2013 Concerning Abu Dhabi Global Market</p> <p>Federal Decree Law 32/2021 on Commercial Companies</p> <p>ADGM Court Procedure Rules 2016</p> <p>Federal Decree Law 35/2022 Promulgating the Law of Evidence in Civil and Commercial Transactions</p> <p>Abu Dhabi Executive Council Resolution 23/2005</p> <p>Federal Decree Law 19/2005 on Real Estate Ownership</p> <p>Federal Decree Law 5/1985 on the Civil Transactions Law of the United Arab Emirates</p> <p>Federal Decree Law 8/1984 on Commercial Companies</p> <p>Federal Decree Law 3/2015 Concerning the Regulation of Real Estate Sector in Abu Dhabi</p> <p>ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015</p> <p>Abu Dhabi Presidential Decree of 5 May 2010</p>



	<p>Abu Dhabi Law 3/2005 Regulating the Real Estate Register in the Emirate of Abu Dhabi</p> <p>ADGM Real Property Regulations 2024</p> <p>ADGM Application of English Law Regulations 2015</p> <p>Foreign Limitation Periods Act 1984</p> <p>Federal Decree Law 18/1993 on the Commercial Transactions Law</p> <p>Federal Decree Law 13/2019 Amending Certain Provisions of Federal Decree Law 19/2005 Concerning Real Estate Property Ownership</p> <p>Federal Decree Law 50/2022 Promulgating the Commercial Transactions Law</p> <p><i>Dicey, Morris & Collins on the Conflict of Laws</i> (16th Ed, 2022)</p> <p><i>Chitty on Contracts</i> (35th Ed, 2023)</p> <p><i>Megarry & Wade: The Law of Real Property</i> (9th Ed, 2019)</p> <p><i>Halsbury's Laws of England</i>, Vol 14 (5th Ed, 2023)</p> <p><i>Gower Principles of Modern Company Law</i> (11th Ed, 2021)</p>
Cases Cited:	<p><i>NMC Healthcare LTD (in administration) and associated companies v Dubai Islamic Bank PJSC & Others</i> [2023] ADGMCFI 0017</p> <p><i>Cox v Ergo Versicherung AG</i> [2014] UKSC 22</p> <p><i>Carl Zeiss Stiftung v Rayner & Keeler Ltd (No 2)</i> [1967] 1 AC 853</p> <p><i>Jetivia SA v Bilta (UK) Ltd</i> [2015] UKSC 23</p> <p><i>Capewell v Revenue and Customs Comrs and another</i> [2007] UKHL 2</p> <p>Abu Dhabi Court of Cassation, Case 171/2017 (24 October 2017)</p> <p>Abu Dhabi Court of Cassation, Case 210/2021 (15 March 2022)</p> <p>Abu Dhabi Court of Cassation, Case 11/2013 (24 April 2013)</p> <p>Abu Dhabi Court of Cassation, Case 73/2014 (20 July 2014)</p> <p>Abu Dhabi Court of Cassation, Case 1122/2021 (22 March 2022)</p> <p>Abu Dhabi Court of Cassation, Case 1237/2021 (22 March 2022)</p> <p><i>Good Challenger Navegante SA v Metalexportimport SA</i> [2003] EWCA Civ 1668</p> <p><i>Jafari-Fini v Skillglass Ltd</i> [2007] EWCA Civ 261</p> <p><i>Patel v Mirza</i> [2016] UKSC 42</p> <p><i>Stoffel and Co v Grondona</i> [2020] UKSC 42</p> <p><i>Southern Foundries (1926) Ltd v Shirlaw</i> [1940] AC 701</p> <p><i>Portland Stone Firms Ltd v Barclays Bank Plc</i> [2018] EWHC 2341 (QB)</p> <p><i>Prest v Petrodel Resources Limited</i> [2013] UKSC 34</p> <p>Abu Dhabi Court of Cassation, Case 335/2019 (19 November 2019)</p> <p>Abu Dhabi Court of Cassation, Case 863/2019 (19 November 2019)</p> <p>Abu Dhabi Court of Cassation, Case 871/2019 (19 November 2019)</p>
Case Number:	ADGMCFI-2024-045



Parties and Representation:	<p>Dr Mohammed Haitham Salman and Mr Saad Bin Sabir of Middle East Alliance Legal Consultancy LLC for the Claimant.</p> <p>Ms Fatima Salem Al-Ameri and Mr Muhanned Adel of Fatima Salem Al-Ameri Advocates and Legal Consultants for the Defendants.</p>
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JUDGMENT

Introduction

1. In these proceedings, the Claimant, Mr Faysal Mohamad Awad, seeks relief in respect of a Land Investment Contract (the “**LIC**”) dated 23 October 2008, which he entered into with the First Defendant, 3AM Property Investment Company LLC (“**3AM**”). In his claim, Mr Awad describes the LIC as “*pertain[ing] to a partnership concerning land ... located on Al Reem Island, Abu Dhabi, spanning an area of 20,028 square meters, including the Leaf Tower erected thereon*”. I shall refer to the site of Leaf Tower as the “**Land**”.
2. The preamble to the LIC recited that 3AM wished to invest in a construction project (the “**Project**”) on the Land according to plans approved by the competent authorities, and that Mr Awad also wished to participate in the Project. The Leaf Tower mostly comprises residential property and offices, and has sixty stories, including basements, five car parking floors, a “*roof floor*” and “*mechanical floors*” that provide services such as air conditioning.

The Parties

3. Mr Awad, a Lebanese citizen, is an architect, and he invests in real estate. He is a partner in a business called Etan Engineering Consultants (“**Etan**”), which provides engineering consultancy services in the United Arab Emirates (“**UAE**”).
4. 3AM is a limited liability company which was incorporated in Abu Dhabi on 22 January 2008. Its shareholders are the Second Defendant, Mr Adel Abdulhameed Ibrahim Abdulla Alhosani, with a one per cent holding, and Maam Property Investment Company LLC (“**Maam**”), an Abu Dhabi company, which has a 99% holding. Mr Alhosani has a 96% holding in Maam, and Mrs Mariam Omar Alarabi, Mr Alhosani’s wife, has a four per cent holding in it. Mr Alhosani is the manager of 3AM, and the Chairman of its Board.

The Proceedings

5. By proceedings brought on 17 October 2022 in the Courts of the Abu Dhabi Judicial Department (“**ADJD**”, and the “**ADJD Proceedings**”), Mr Awad brought claims against 3AM and Mr Alhosani for an order that the Defendants fulfil the LIC and “*obliging them to adhere to all the agreed-upon terms and conditions contractually*” and to register Mr Awad’s “*share with the relevant authorities in [Abu Dhabi]*”, along with the consequences arising from such actions.
6. On 3 January 2023, 3AM brought a counterclaim against Mr Awad, seeking annulment of the LIC on the grounds that Mr Awad had acted in breach of his contractual obligations and claiming monetary



compensation. It was alleged that he had not paid anything towards the price of the Land, and that he had not provided facilities or guarantees for the Project.

7. On 1 February 2023, the ADJD Court appointed a committee comprising accounting, engineering and banking experts (the “**Committee of Experts**”) to carry out investigations. The Committee of Experts produced a report to the Court (the “**Experts’ Report**”), having taken evidence from witnesses, in particular a Mr Hassan Abd Alrahman Hassan Abu Tareef and Mr Mohamed Saad Afifi Ail, both of whom gave evidence for 3AM on 26 April 2023.
8. However, by Cabinet Resolution No. (41) of 2023 Regarding the Amendment of Cabinet Resolution No. (4) of 2013 Concerning the Determination of the Location and Area of the Abu Dhabi Global Market, the Government of the UAE extended the area of the Abu Dhabi Global Market (“**ADGM**”) to include Al Reem Island, and so to include the Land. By a judgment of 31 October 2023, the ADJD Court determined that it therefore had no jurisdiction to adjudicate upon the claims and counterclaims, it said that: “*since the dispute involves [the Land] on Al Reem Island in the Emirate of Abu Dhabi, a condition for the jurisdiction of the Abu Dhabi Global Market courts is met in accordance with Article 13 of [Abu Dhabi Law 4/2013 (the “**Founding Law**”). Consequently, the courts of the [ADGM] have territorial jurisdiction over the dispute, and therefore, the court rules that the Abu Dhabi courts lack territorial jurisdiction to hear the case*”. Mr Awad appealed against this ruling to the Abu Dhabi Court of Cassation, but on 6 February 2024, his appeal was dismissed.
9. Mr Awad then brought these proceedings in the ADGM Court on 7 March 2024. The Defendants served a Defence dated 10 May 2024, and Mr Awad served a Reply dated 31 May 2024. In the Reply, Mr Awad pleaded, in support of his claim against Mr Alhosani, that he relied, *inter alia* on Article 84 of Federal Decree Law 32/2021 (the Law on Commercial Companies) (the “**Commercial Companies Act**”), which provides that: “*Every manager of the Limited Liability Company shall be liable vis-à-vis the Company, the partners and third parties for any fraudulent acts committed by such manager*”. By Order of 26 June 2023, I permitted Mr Awad to amend his case to reformulate the relief that he seeks.
10. At a Case Management Conference on 23 September 2024 (the “**CMC**”), I directed that the witness statements of Mr Awad and three witness statements of witnesses for the Defendants, Mr Tareef, Mr Afifi and Mr Khamis Mohamed Khamis Buharoon Alshamsi, should stand as their evidence in chief at the trial. After the CMC, the Defendants applied for permission to call a further witness, Mr Guiseppe Ugge, and I permitted them to do so.
11. As for the pleadings, my Order at the CMC included a direction that Mr Awad should give particulars of his allegation that Mr Alhosani was liable in respect of the acts which were said to be fraudulent within the meaning of Article 84 of the Commercial Companies Act. In response, Mr Awad served particulars dated 30 September 2024 (the “**Alhosani Liability Particulars**”).

The Trial

12. The case came to trial on 20 January 2025. At the hearing, Mr Awad was represented by Dr Mohammed Haitham Salman and Mr Saad Bin Sabir of Middle East Alliance Legal Consultancy LLC. The Defendants were represented by Ms Fatima Salem Al-Ameri and Mr Muhannad Adel of Fatima Salem Al-Ameri Advocates and Legal Consultants.



13. I sought to apply the conventional procedures adopted in this Court based on English trial practice, but, because, understandably, the representatives appeared unfamiliar with the procedures, I was rather more flexible than usual. For example, I took it upon myself to ask the witnesses whether they confirmed the evidence in their witness statements. Further, I had directed at the CMC that the witness statements should stand as the evidence in chief, but at the trial I was constrained to allow the witnesses to give some further evidence, albeit limited as far as I thought proper.
14. The parties' submissions, in particular the Claimant's closing submissions, included assertions of fact that went significantly beyond what was supported by evidence. My conclusions in this Judgment about the factual matters in dispute are reached on the basis of the evidence, and not the submissions.
15. I had directed at the CMC that, unless otherwise ordered, documents attached to pleadings should be admitted in evidence at the trial but that otherwise no documents should be admitted in evidence except with the Court's permission. Accordingly, much of the evidence was by way of documentation attached to the pleadings.
16. As for oral evidence, Mr Awad gave evidence in support of his claim and was cross-examined. He adduced no other oral evidence. Mr Alhosani did not give evidence, but the Defendants called oral evidence from Mr Tareef, Mr Afifi, Mr Alshamsi and Mr Ugge. Mr Alshamsi gave his evidence by video link. The other witnesses attended the hearing to do so.
17. Mr Afifi and Mr Tareef had both previously been employed by Etan, Mr Afifi as an office manager and a project manager for the Project, and Mr Tareef as an engineer. After he left Etan at some time after the main construction work for the Project had finished in 2017, Mr Afifi started to work for Mr Alhosani in some capacity, and Mr Tareef now works with Mr Alhosani's company, Maam. It was suggested that, therefore, they were not unbiased witnesses: Mr Awad said that they were both "*under the payroll*" of Mr Alhosani. In my judgment, both of them gave honest evidence, and they sought to present their true understanding of how the Project was undertaken and financed. However, their evidence was of limited value because they were not privy to the financial arrangements between Mr Awad on the one hand and Mr Alhosani and 3AM on the other hand. They accepted that this was so, both in their evidence to the Committee of Experts and, as I understand it (although Mr Afifi's evidence was perhaps not entirely clear), they confirmed this at the trial. In particular, it was apparent from their cross-examination that they had no knowledge about the nature or purpose of the Fee Agreement (as defined in para. 72 below), and therefore the evidence in their witness statements that the payments under it were returned to the "*owner*" (*sic* 3AM) and that "[t]hese amounts belong to [3AM] and [Mr Awad] has no right to these amounts" was unreliable.
18. Mr Alshamsi is now a banking consultant, having been a banker for some 37 years and having recently been the Vice-Chairman of Abu Dhabi Islamic Bank ("**ADIB**"). Mr Ugge was a businessman who has had some work with Maam in the past and is now retired. Again, I accept that both gave honest evidence and sought to assist the Court, but their evidence was remote from the important issues in the case.
19. It was clear from his evidence that Mr Awad has great financial ability. I also conclude that his evidence to the Court was honest. On one peripheral point (see para. 36 below), I have been unable to reconcile his pleaded account (which he verified in general terms when he gave evidence) with the evidence of Mr Alshamsi and Mr Ugge that I accept. However, Mr Awad was not cross-examined about this point, and I do not consider that it should affect my general assessment of his evidence.



20. Although the case gives rise to questions of UAE law, neither party applied to adduce expert evidence. Under Rule 117 of the ADGM Court Procedure Rules 2016, the Court may allow questions of foreign law to be dealt with by way of submissions, and I allowed the parties to include arguments of UAE law in their submissions. Neither party objected to this. I add, however, that I would have reached the same conclusions about all the issues which I determine in this Judgment had I decided them in accordance with ADGM law or on the basis of a presumption that UAE law is the same as ADGM law.

Evidence and the Procedural Law

21. In accordance with the general rule of English law and therefore of ADGM law, the procedural law to be applied in these proceedings is that of the ADGM, as is stated in *Dicey, Morris & Collins on the Conflict of Laws (16th Ed, 2022)* at Rule 3: “*All matters of procedure are governed by the domestic law of the country to which the court wherein any legal proceedings are taken belongs (lex fori)*”. I confirmed the position in these proceedings in a direction made at the CMC for the avoidance of doubt that: “*the procedural rules, including rules as to the admissibility of evidence, shall be those of the ADGM*”.
22. The reason that I gave this direction is that the Defendants refer in their Defence to the evidence that was given by Mr Tareef and Mr Afifi to the Committee of Experts. They also attached to it statements by them and a transcript of their evidence to the Committee of Experts, and statements of Mr Alshamsi and Mr Ugge. In his Reply, Mr Awad pleaded that this evidence is inadmissible under Federal Decree Law 35/2022 Promulgating the Law of Evidence in Civil and Commercial Transactions, relying in particular on Article 66: “*(1) Any transaction whose value exceeds fifty thousand dirhams (AED 50,000) or its equivalent or whose value is indefinite shall be established in writing. (2) Testimony evidence may not be established to prove the existence or termination of the transactions set forth in clause (1) of this Article, unless otherwise stipulated in an agreement or a provision*”. This provision, like other rules of evidence of UAE law, does not apply to proceedings in this Court.
23. In my judgment, the evidence that Mr Tareef and Mr Afifi gave to the Committee of Experts should be admitted in these proceedings. Although it is not referred to in their witness statements served in the proceedings, the pleaded Defence made clear that the Defendants intended to rely upon it at trial, and Mr Awad responded to it in detail in his Reply. As I have said, both Mr Tareef and Mr Arifi gave oral evidence at trial, and Mr Awad had the opportunity to cross-examine them about this evidence. (I would also have received in evidence the witness statements attached to the Defence, but in fact the witnesses gave the same evidence at the trial).
24. It is convenient here to refer to another point about the parties’ evidence. In an appropriate case, the ADGM Court may draw an adverse inference from a party’s failure to adduce evidence: see *NMC Healthcare LTD (in administration) and associated companies v Dubai Islamic Bank PJSC & Others [2023] ADGMCFI 0017* esp. at para. 39. As I have said, Mr Alhosani did not give evidence, although allegations of fraud are made against him and he and 3AM make allegations of improper conduct against Mr Awad. In statements dated 31 May 2024 and 3 June 2024 that he made on interlocutory applications, Mr Alhosani gave his address as Abu Dhabi, and no explanation has been given for 3AM’s failure to call him as a witness or for him not giving evidence on his own behalf. It is something which I can properly take into account when making findings of fact, and, in my judgment, I should take it into account.



25. I should introduce other points arising from the principle that procedural matters are governed by ADGM law, to which I shall come later in my judgment. First, the procedural law governs the standard of proof that is required, including in particular the strength of the evidence required to establish allegations of fraud or other discreditable conduct: see paras. 163, 174, and 192 below.
26. Secondly, ADGM law determines what remedies are available: see *Dicey, Morris & Collins on the Conflict of Laws* (16th Ed, 2022) at para. 4-01: “As a matter of English common law, the nature of the remedy is a matter of procedure to be determined by the *lex fori*. Thus, if the Claimant is by the *lex causae* entitled only to damages but is by English law entitled to specific relief, the latter type of remedy is available in England. Conversely, an English court will not grant specific relief where to do so is contrary to the principles of English law”. However, if the Court does award damages in respect of a cause of action governed by a foreign substantive law, that foreign law generally determines what heads of damage are recoverable: see *Cox v Ergo Versicherung AG* [2014] UKSC 22, at para. 17.
27. Thirdly, Mr Awad contends in his Reply that the Defendants advance allegations that are inconsistent with a judgment of the ADJD Court in proceedings between Etan and 3AM, he pleads: “The Defence’s narrative does not align with the adjudicated facts and established rights as determined by the Court”. I must therefore consider whether, under ADGM’s procedural principles, the Defendants are estopped from advancing these arguments, or it is otherwise an abuse of the process of the Court for the Defendants to do so: see paras. 149-151 below. This is a question of procedure determined by the *lex fori*: *Dicey, Morris & Collins on the Conflict of Laws* (16th Ed, 2022), para. 4-058 and *Carl Zeiss Stiftung v Rayner & Keeler Ltd (No 2)* [1967] 1 AC 853, 919.
28. Finally, while generally the Court’s procedure is adversarial and its focus is upon issues between the parties, a judge should consider of his own motion points about illegal conduct that arise in a case, even if they are not raised by the parties: *Chitty on Contracts* (35th Ed, 2023) Vol. 1, para. 19.004; *Jetivia SA v Bilta (UK) Ltd* [2015] UKSC 23, at para. 100 per Lord Sumption JSC and see para. 165 below.

The Land Purchase Agreement

29. By an agreement of 19 June 2008 (the “**Land Purchase Agreement**”), 3AM bought from Tamouh Investments LLC (“**Tamouh**”) the freehold of the Land, which was designated as four plots in Cove Development (Plots Nos RT4-C6, C7, C8 and C9). The price was to be AED 298 million, payable in ten instalments.
30. Mr Awad claims that he played a “*pivotal role in securing an advantageous deal for the acquisition of the land for the Project, demonstrating exceptional negotiation skills to finalize the Land’s purchase price and securing financing for both the Land and the construction*”, and that the Land was bought in 3AM’s name “*for procedural reasons only*”. By that, he meant that, because he was not a UAE citizen, in 2008 he could not own the Land either in his sole name or jointly with 3AM, although he could own “*floors*” of properties in investment areas, such as Al Reem Island. (The whole of Al Reem Island was so designated by the Abu Dhabi Executive Council Resolution 23/2005, Article 1). Article 3 of Federal Decree Law 19/2005 on Real Estate Ownership provided that: “*The right to own real estate property is reserved to: (a) UAE nationals and corporate and natural person of equivalent status; (b) Public joint stock companies in which non-UAE nationals’ shareholding does not exceed 49%; (c) Any person named in a resolution issued by the Crown Prince or Chairman*”



of the Executive Council”. Article 4 of the same law provides that: “[Non-UAE nationals] ... shall have the right to own floors without the land in Investment Zones and may entail any rights thereon”.

31. The Land Purchase Agreement did not itself transfer title to the ownership of the Land. Abu Dhabi Law 3/2005 Regulating the Real Estate Register in the Emirate of Abu Dhabi provides at Article 6: “Neither ownership of real estate nor rights over it or derived from it shall be transferred whether against the contracting parties or third parties except if such transfer is registered”. However, under the Land Purchase Agreement, pending payment of the full purchase price and the registration of the transfer of the Land, 3AM was granted usufruct rights to the Land. A “usufruct right” is defined at Article 1 of Federal Decree Law 19/2005 on Real Estate Ownership as: “A real right that grants its holder the right to use another’s property and exploit the same as long as it is kept as is”, and it is one of the “Rights derived from ownership right”.
32. On 31 May 2016, after the full purchase price for the Land had been paid to Tamouh, ownership of the Land was transferred to 3AM, and the Abu Dhabi Municipal Authority issued an ownership deed accordingly.

The background to the LIC

33. In 2008, a company called Burooj Real Estate Company (“**Burooj**”), which was owned by ADIB, made an offer to enter into a joint venture with 3AM to develop the Land. (I infer that Burooj proposed this after 3AM had concluded the Land Purchase Agreement: the proposal is set out in a letter from Burooj that bears the date of 4 May 2008, but it must be misdated because it says that the proposal was given internal approval by Burooj’s Executive Committee at a meeting on 28 August 2008, and it refers to the terms of the Land Purchase Agreement). Mr Alshamsi, who held senior positions in ADIB between 2002 and 2021, said that the offer “was within the market price, maybe less than the market price at the time”. 3AM rejected the offer. Mr Alshamsi said that his discussions about the proposal were all with Mr Alhosani and that Mr Alhosani rejected the proposal. Mr Alshamsi did not speak with Mr Awad about it, and he was unaware that Mr Awad was involved with the Land or its development.
34. The Defendants plead that Burooj’s proposal shows that the value of the Land had increased since it was purchased by 3AM. Curiously, that is pleaded on the basis that the Land had been purchased by 3AM “in 2006”, and that Burooj made its proposal “in 2007”. There is no evidence that it was purchased in 2006, or at any time before 18 June 2008, and I reject the Defendants’ case about this. Further, neither the evidence of Mr Alshamsi nor any other evidence supports the contention that Burooj made an offer in 2007: even if there had been earlier preliminary discussions with Burooj, no offer was made until 2008. I am not in a position to judge whether the terms proposed in Burooj’s letter would have secured a profit over the price paid to Tamouh, but even if they did, that does not necessarily mean that the value of the Land had increased: 3AM might have paid less than the market price.
35. According to the pleaded Defence, when he expressed interest in participating in the Project, Mr Awad claimed that, within three months, he was due to receive AED 600 million from a former employer, an office associated with HH Sheikh Hamdan bin Zayed, and that he would be able to provide a contribution of half the capital required for the Project. In support of this, the Defendants relied on evidence of Mr Alshamsi and Mr Ugge that Mr Awad had told them that he had a claim of some AED 600 million or 700 million. (In their statements both witnesses spoke of a claim for around AED 700 million, and Mr Alshamsi did so in his oral evidence. In his oral evidence, Mr Ugge said, in



response to a leading question, that the claim was for AED 600 million). When they gave evidence, the witnesses were unsure when these conversations took place: Mr Alshamsi said that his conversation was in the context of discussions of Mr Awad's business plans, including plans concerning land in Lebanon, which he thought might have taken place in 2002 or possibly 2005. Mr Ugge said that his discussions with Mr Awad took place around ten years ago.

36. Although in his pleaded Reply Mr Awad disputed these accounts of Mr Alshamsi and Mr Ugge, I conclude that he must have said something to them about being owed a substantial amount: they cannot both have imagined it. However, this provides no real support for the Defendants' contention that Mr Awad said something similar to them, and did so in the context of discussions about the purchase of the Land or plans for the Project. No evidence supports that allegation, and I reject it.
37. For completeness, I mention that the Defendants also plead that Mr Awad said that he was willing to provide bank guarantees to secure finance for the Project. This allegation too goes nowhere: there is no evidence that Mr Awad said this, and there is no reason to think that he would have declined to provide guarantees had he been asked to do so.
38. The Defendants have another argument: that Mr Awad did not provide any evidence of his financial position (apart from claiming to be owed AED 600 million). It is submitted that, without information of this kind, the Defendants would not have agreed to his participation in the Project. Again, the point goes nowhere. On the one hand, there is no evidence as to whether or not Mr Awad had substantial assets in 2008. On the other hand, there is evidence that Mr Alhosani had had dealings with Etan or Mr Awad in relation to another project, the Al Jawhara Tower Project to which I refer at para. 153 below, and had been impressed by his skills and expertise: this might explain why 3AM accepted him as a partner in the Project. However that might be, the fact remains that, whatever information 3AM had or did not have about Mr Awad and his means, it concluded the LIC with him.

The LIC

39. According to a letter from Mr Alhosani to Mr Awad dated 5 April 2018, the LIC was prepared by Mr Awad's lawyer. Clause 13(1) provides that the LIC is governed by the laws of the UAE. Under Article 246(1) of Federal Decree Law 5/1985 on the Civil Transactions Law of the United Arab Emirates (the "**Civil Code**"), therefore, "[t]he contract must be performed in accordance with its contents, and in a manner consistent with the requirements of good faith". Article 246(2) provides that: "[t]he contract shall not be restricted to an obligation upon the contracting party to do that which is (expressly) contained in it, but shall also embrace that which is appurtenant to it by virtue of the law, custom, and the nature of the transaction".
40. The LIC provided for an association between Mr Awad and 3AM to pursue the Project, and it stipulated their respective rights and obligations and how expenses and profits were to be distributed. As such, as Mr Awad submits and I accept, it was by way of a joint venture within Title 4 of Federal Decree Law 8/1984 on Commercial Companies (which was in force in 2008). Article 56 in Title 4 provides: "*A joint venture is an association between two or more partners to share profits or losses of a commercial business or businesses carried out in the private name of one of the partners. The association shall be restricted to the relationship between the partners but shall not operate in respect of others. Evidence of the association may be substantiated by all means of proof*". Article 57 provides: "*A joint venture agreement shall regulate the rights and obligations of the partners and the manner of distribution of profits and losses*".



41. The LIC is in Arabic. Both Mr Awad and the Defendants exhibited translations to their pleadings. The two translations are not identical, but the differences are not major. Nevertheless, in order to resolve any potential difficulties, I directed at the CMC that the translation attached to the Defence should be treated as authoritative, except to the extent that Mr Awad gave notice by 26 September 2024 that he disputed it and identified specific objections thereto, or the Court otherwise directed. On 26 September 2024, Mr Awad pointed out that the Defendants' Arabic version of the LIC and their translation of it omitted the details and signature of one of the witnesses, but he said that otherwise he had no objection to the Defendants' translation. Therefore, I adopt that translation, but with regard to one term I refer to the translation attached to Mr Awad's pleading to clarify the meaning: see para. 49 below.

42. The first recital to the LIC states that 3AM "owns the usufruct right of [the Land] ... in accordance with the Contract and/or contracts signed with [Tamouh]". The other recitals are as follows:

"Whereas [3AM] is desirous to invest in the [Land] through building and constructing a real estate investment project according to the shop drawings, plans and designs approved by the competent authorities (hereinafter referred to as the 'Investment Project') and the actual cost of the buildings of the investment project";

"Whereas [Mr Awad] is desirous to participate in the investment project through participating in equal basis in providing cash liquidity so requested by the banks to secure the loans or facilities required for the investment project according to what is agreed upon between [3AM] and [Mr Awad]"; and

"Accordingly, the will of the two parties has converged by virtue of mutual offer and acceptance to agree upon the terms and conditions contained in this Contract that shall govern the contractual relationship between both of them".

43. Clause 3 of the LIC is headed "Subject Matter of the Contract" (although I note that Clause 2(d) of the LIC provides that headings are used only for convenience of reference and are not aids to interpretation of the LIC). It provided as follows:

"1. The two parties aim, according to the provisions of this Contract, to cooperate with each other to execute the Investment Project and manage, invest, exploit, lease and/or sell the premises of that project and all the proceeds and benefits resulting from these buildings to generate profits and/or interests and/or proceeds and/or benefits to be able to refund the funds incurred by both of them in constructing those buildings and gain some profits that achieve a rewarding and attractive return from the investment of the Land.

2. Both parties agreed to that [3AM] shall provide the Land on which the Investment Project will be constructed and the two parties shall undertake to provide the funds necessary for that from the banks, banks [sic], and/or financial institutions via finance, loans, and the banking facilities in consideration for mortgaging the Land and the premises constructed thereon, and [Mr Awad] shall undertake to participate equally in the cash capital so requested by the banks for total value of the Land and premises constructed thereon to provide these loans and facilities.



3. Both parties agreed that [Mr Awad] shall assume the financial and technical management, supervising the execution and construction of the buildings of the Investment Project agreed upon between both of them, and the management, investment, utilization and leasing of the building in accordance with the policy agreed upon with [3AM].

4. In consideration for the joint interests of both parties, the two contracting parties agreed to that the funds generated from the Investment Project shall be, after deducting the costs and expenses on what will be clarified thereafter in detail in this Contract, distributed as follows:

- [3AM] 50%

- [Mr Awad] 50%

5. [3AM] agrees to mortgage the Land and the premises constructed thereon to banks and/or financial institutions, and that the Land and premises shall remain to be mortgaged until the full payment of the funds, finances, loans and/or banking facilities obtained in consideration for that mortgage”.

44. Clause 5 is headed “The Premises”. Importantly, Clause 5(4) provides that: “The premises constructed on the land shall be deemed the sole and exclusive property of [3AM] and [Mr Awad] as per the percentages distributed in Clause (8), Paragraph (3) at the expiry of the Contract period, and accordingly, [3AM] and [Mr Awad] shall be entitled to all the compensation disbursed to them, and they shall also have the right to claim for any compensation against the damage caused to them”. The percentages in Clause 8(3) are 50%/ 50%: “Both parties agreed to that the revenues generated from the premises shall be distributed after deducting the expenses prescribed in the previous Paragraph as follows: [3AM] 50%, [Mr Awad] 50%”. Clause 8(4) provides for them to be distributed “at the end of each calendar year”.

45. The “Contract Term” is defined in Clause 2 as meaning “the period of validity of this Contract and shall include all time periods laid down in this Contract and shall be calculated on the basis of the calendar year”. Clause 9 is headed, “Term of the Contract,” and reads as follows:

“1. This Contract shall be in full force and effect from the date of its signing it [sic] by the two parties and shall remain in full force and effect until the expiry of all time periods laid down in this Contract.

2. Both parties agreed to that this Contract shall be valid for a period of one hundred Gregorian years, and shall be automatically renewed for similar period or periods unless otherwise agreed upon by the two parties”.

46. Mr Awad relies upon Clause 6(2), which, he submits, requires 3AM to issue him with a wide power of attorney “to perform extensive financial and technical management duties and to act on behalf of [3AM] in all banking transactions pertinent to the property”; and he contends that this was intended to ensure his “proactive participation in the financial and administrative facets of the project”. It provides that 3AM was bound to “[i]ssue a power of attorney duly authenticated by the competent authorities and re-issue of it when it expires for any reason that includes all the authorities and powers that enable [Mr Awad] to carry out the works and procedures or represent



[3AM] to the banks in everything related to the property – the subject matter of this Contract - which enables [Mr Awad] to financially manage the Project within the limits and details agreed upon by both parties, and [3AM] shall be obliged not to cancel the power of attorney during the term of this Contract”.

47. Clause 12 is headed “Sale of the Investment Project”. Clause 12(1) says that the parties shall be “entitled to agree to sell the Investment Project during the validity period of the provisions of this Contract, including the land on which the project is constructed”. Clause 12(3) provides that: “Both parties agree to pay all financial liabilities resulting from the Investment Project from the value of the sale before the distribution of the proceeds arising therefrom to the two parties”.
48. Clause 8 contains provisions for how the proceeds from the Project were to be managed: Clause 8(1) says that “all funds returned generated from the premises [should be] deposited in a joint account between the two parties that [should be] opened for this purpose and these funds shall be kept until the due date thereof to be distributed to [3AM and Mr Awad]”. Clause 8(2) provides for payment of all expenses “arising from the premises and/or Investment Project from the proceeds gained therefrom”.
49. I should also set out Clause 7(7): it requires Mr Awad to “[m]anage, invest, utilize, lease or sell the premises or parts thereof within the policy agreed upon by the two parties, which was executed in accordance with the provisions of this Contract during the term of the Contract, whether by the Second Party and/or the Third Party”. (The Second Party was Mr Awad, but meaning of the last phrase is perhaps rather obscure in the Defendants’ translation cited above. However, the meaning is tolerably clear with the assistance of the translation attached to the Particulars of Claim: “whether by himself and/or through others”).
50. I observe that, in the Alhosani Liability Particulars, Mr Awad pleads that the notary public refused to ratify the LIC since 3AM had usufruct rights over the Land but not ownership. There was no evidence about this, but the point is not important.

The facilities provided by Abu Dhabi Commercial Bank

51. Abu Dhabi Commercial Bank (“**ADCB**”) provided 3AM with facilities for much of the cost of the Project, including the purchase of the Land. It is not clear from the evidence when it first agreed to do so. According to a letter from ADCB dated 28 November 2022, which is exhibited to the Defence, “[t]he Banking Facilities “Real Estate Loan” were granted according to the Letter of Real Estate Financing Loan Facility dated 08/06/2000 with an amount of 1,350,000,000/- AED and any subsequent amendments occurred thereto to finance the construction of Leaf Project of the borrower [3AM]”; but, if facilities were granted as early as 2000, they were not granted to 3AM, which was incorporated only in January 2008. Another letter from ADCB of 19 April 2023 listed “documents representing the facility agreements and their annexes and amendments related to Leaf Tower, specifically since the beginning of the project”: the first document listed is a term loan agreement of 14 April 2008, and the second is a term loan agreement of 18 June 2009.
52. By the term loan agreement dated 18 June 2009 (the “**2009 Loan Agreement**”), ADCB extended to 3AM a term loan of up to AED 1.028 billion for drawdown between the date of the agreement and 31 August 2012. The purpose of the facility was stated to be this: “[3AM] shall use the proceeds of the Facility exclusively to ... finance purchase of [the Land] up to approx. AED 58 Mlo. and balance



amount to meet 70% of construction cost, Consultant fee and Contingencies/Utilities fee of a Tower building to be constructed on the [Land]”.

53. The facility, together with all other exposure of ADCB to 3AM, Mr Alhosani and his wife, was to be secured (*inter alia*) by a mortgage of the Land to which Tamouh was to be a party and 3AM’s agreement to register the mortgage when the title deeds had been issued to it or local law allowed. Mr Alhosani and his wife also provided personal guarantees.
54. Mr Awad incurred no personal debt to ADCB in respect of the facility, and he provided no guarantee. There is no evidence that he was ever asked to do so, either by ADCB or by Mr Alhosani.
55. The 2009 Loan Agreement was amended by a letter agreement dated 21 September 2010, and the loan limit was reduced to an amount of no more than AED 756 million: this was said to represent AED 700 million, being 70% of the estimated construction costs, which were assessed at AED 1 billion, and AED 56 million which had already been advanced in respect of the purchase of the Land.
56. It is apparent that ADCB understood that 3AM, itself or with others interested in the Project, was to contribute from other sources some AED 300 million towards the construction costs or some 30% of them. In the letter of 28 November 2022, ADCB wrote: “*The contribution of the Borrower/Owner was done with about 300 million AED*”. In the letter of 19 April 2023, ADCB wrote: “*The bank did not finance the project with the percentage of 100% as indicated in the facility agreement from its beginning ... The share of the customer in the finance was between 25% and 30% and it was paid in full according to deposits transferred to his account*”.
57. Subsequently, ADCB extended further facilities in relation to the Project: AED 145.5 million under an agreement dated 5 April 2016, and AED 60 million under an agreement dated 12 December 2017. Thus, by the beginning of 2018, the total facility was AED 961,875,000. According to the Experts’ Report, at this stage the arrangement with ADCB was that the owners of the Project should contribute 26% towards it: on this basis, the facility of AED 961,875,000 would correspond to Project costs of some AED 1.3 billion.

The Construction Contract

58. Before the main construction contract was made, the Al Ittimad Foundation (“**Al Ittimad**”) (whose name is mis-transcribed in some documents, including the Experts’ Report, as the “*Accreditation for Foundations Establishment*”) carried out some early piling work on the Project to a value of some AED 27 million under a special licence for enabling works issued by the Abu Dhabi municipal authorities.
59. By a contract dated 12 February 2011 (the “**Construction Contract**”), 3AM engaged Commodore Contracting Company LLC (“**CCC**”) as the contractor to build Leaf Tower. CCC agreed to complete the works within a period of 36 months from the “*date of issuance the work commencement order to the foundation contractor*”, which was 6 December 2010: that is to say, the works were to be completed by 5 December 2013. The Construction Contract provided that CCC should do the works under the supervision of Etan, and that it should comply with all Etan’s instructions. It was to receive monthly payments corresponding to the work that had been completed.
60. The parties executed two versions of the Construction Contract. They were generally in similar terms. However, in one version it is stated (at Clause 4, in the translation from the original Arabic)



that the “*value of the works*” was to be AED 699,973,575, comprising AED 666,641,500 for the contracting works and AED 33,332,075 (being 5% of AED 666,641,500) in respect of consultant’s fees; and in the other version the “*value of the works*” was said to be AED 999,962,250, being a value for contracting works of AED 952,345,000 and consultant’s fees of AED 47,617,250. Both versions were signed and sealed on behalf of 3AM and CCC, and by Mr Awad on behalf of Etan. Mr Awad gave evidence, and I accept, that they were executed at the same time. For reasons that will become apparent, I shall refer to the former version, where the value of the works is stated to be AED 699,973,575, as the “*contractor’s version*”, and to the other version, with a value of AED 999,962,250, as the “*ADCB version*”.

61. Mr Awad pleads that the price for the construction work of AED 666,641,500 was “*significantly below the market rate at the time*” and he attributes this to his “*exceptional negotiating skills*”. He also pleads that he managed to secure CCC’s agreement to provide ADCB with a “*bank guarantee*” for the Project. According to the evidence, CCC provided a performance bond dated 11 October 2011, which was issued to ADCB by Doha Bank at the request of CCC. It was for up to AED 95,234,500 and said to represent 10% of the “*signed contract with [3AM]*”.
62. The Defendants plead in their Defence that the explanation for the parties executing two versions is this: that the ADCB version was presented to ADCB for financial purposes, and the “*real contract of the project*” was for AED 699,973,575, “*which is the actual value of the construction works*”. In support of this, they rely upon the evidence of Mr Tareef and Mr Afifi, both of whom were employed by Etan at the relevant time. Their witness statements for the Committee of Experts are in similar terms: “*I certify that there are two contracts with different values regarding the [Project], and the smaller value is the actual value of the works. The project contractor ... has received the large value payments from the financing bank/ [ADCB] and has returned the difference between the large value and the small value to the owner in monthly payments according to the amount received from the bank (about 30% of each payment received) by transferring it to the account of Awtad Real Estate Management Company LLC, these amounts belong to the project owner (financing difference in favor of owner) and the project consultant has no right to these amounts*”.

Awtad Property Management LLC

63. Awtad Property Management LLC (“**Awtad**”) was incorporated in Abu Dhabi on 29 June 2005. Its original shareholders were Mr Alhosani and Sheikh Abdullah bin Mohammed bin Butti Al Hamed. As Mr Awad pleads, it was “*established specifically for managing the Project*”: this has not been disputed. It was issued with a Commercial Licence by the Abu Dhabi Department of Economic Development to carry on “*Real Estate Lease and Management Services*”.
64. By a Shares Assignment Agreement of 16 March 2008 (the “**SAA**”), made between the original shareholders and Mr Awad, Sheikh Al Hamed transferred all his shares and Mr Alhosani assigned some of his shares to Mr Awad, so that the paid-up capital of 100 shares, each worth AED 1,500, was held as to 51% by Mr Alhosani and 49% by Mr Awad. (This was the maximum holding that Mr Awad, not being a UAE citizen, was permitted.) The SAA recorded that Mr Alhosani “*would assume the presidency of the board of directors of [Awtad] ... and [Mr Awad] would manage the company from the administrative, financial and commercial aspects, provided that the powers and authorities would be determined in accordance with a decision issued by the company’s the board of directors*”.



65. Awtad's Articles of Association were amended accordingly by an Annex, which was signed by Mr Alhosani and Mr Awad. The Annex included an amendment to provide that: *"The net profits and losses, after deducting all general expenses ... and the legal reserve, are distributed to the two partners as follows: - [Mr Alhosani]: 50%. [Mr Awad]: 50%"*.
66. By a power of attorney dated 1 December 2010, Mr Alhosani gave Awtad wide authority to act on his behalf and on behalf of 3AM. It was authorised, *inter alia*, to receive and disburse *"funds, documents and papers related to [3AM]"*, to open accounts with banks operating in the UAE, to receive and withdraw funds, and to obtain loans.
67. In October 2011, Awtad opened a current account with First Gulf Bank ("**FGB**"), Mr Awad having a sole mandate to operate it. According to Mr Awad, this was done in compliance with Clause 8(1) of the LIC, and it was intended that all proceeds from sales or leases of units in Leaf Tower would be paid into it. He pleads that this was done through a power of attorney addressed to FGB, which was issued by Mr Alhosani and gave him wide power to deal with FGB. He exhibited to his Particulars of Claim a power of attorney which is signed by Mr Awad and Mr Alhosani but is not dated or completed. Despite this oddity, no evidence refutes Mr Awad's case about this, and I accept it.
68. Awtad also opened an account with ADCB. Mr Awad's pleaded case is that this account was *"designated to receive the partners' [sic. Mr Awad's and 3AM's] share of the due payments for their contributions towards the land purchase cost and the construction expenses of the tower. These contributions were transferred via cheques drawn from Awtad's account at FGB to Awtad's account at ADCB, with each cheque bearing the sole signature of [Mr Awad]"* (emphasis in original).

The Project Account

69. ADCB established and operated a *"Project Account"*. It was opened in the name of 3AM, its client for the purpose of providing the facility. The purpose of the Project Account, according to Mr Awad's evidence, which I accept, was *"to collect the partner contributions [sic, the contributions by Mr Awad and 3AM] transferred from Awtad's account at [ADCB], as well as to receive funds from the 'loan bank account' [sic, the facilities advanced by ADCB to 3AM] intended to cover the land acquisition and building construction expenses"*. Mr Awad explained that the funds in the Project Account came from three sources: the facilities advanced by ADCB; monies transferred to it from Awtad's ADCB account; and some funds paid into it directly by 3AM or Mr Awad as *"partners"* in the Project. Mr Awad also said (as indeed is stated in the Experts' Report) that all transfers from Awtad's ADCB account to the Project Account were signed by both him and Mr Alhosani.
70. Having received funds into the Project Account from these sources, ADCB issued payments from it to Tamouh for the purchase of the Land, to CCC under the Construction Contract and to Etan under a consultancy agreement.

Etan's Consultancy Agreement and the "Fee Agreement"

71. 3AM and Etan entered into an Engineering Consultancy Agreement dated 18 October 2018 (the **"Etan Agreement"**), by which Etan agreed to design and supervise the Project. Etan was to be paid 5% of the *"actual value of works"*, then calculated to be AED 1 billion: 3% was in respect of design work and 2% in respect of supervision. It was to receive additional payments for providing a presence on site. In the event, its fees, including charges on-site presence, were some AED 70 million.



72. 3AM also entered into a Fee Agreement (the “**Fee Agreement**”) dated 12 February 2011 with CCC and Mr Awad. Mr Awad’s case is that it was agreed that AED 285,703,500 should be added to the project costs of AED 666,641,500, increasing them to a total of AED 999,962,250 (the value of the works stated in the ADCB version of the Construction Contract); and that CCC should pay Mr Awad 30% of the total of AED 999,962,250, payments being made as CCC received stage payments under the Construction Contract. Thus, on Mr Awad’s case, 3AM and CCC agreed to pay him a total of AED 285,703,500.
73. Mr Awad relied upon these terms of the Fee Agreement, which (according to the translation from the Arabic that was exhibited to the Experts’ Report) was expressly stated to be “*subject to the provisions of the applicable laws in [the] UAE and which shall consider disputes that arise from the interpretation and/or implementation of its provisions*”:

“(A) Whereas, on 12/2/2011, [3AM] and [CCC] entered into a Contracting Agreement according to which [CCC], as a contractor, committed to constructing the agreed-upon building on [the Land] owned by [3AM] (hereinafter referred to as “Contracting Agreement”).

(B) Whereas [Mr Awad] has made a great and significant effort in the negotiations to determine the attractive price at which the [Land], on which the building will be built, was purchased for [3AM] and to persuade the financing bank to agree to finance a portion of the original plot value according to the price specified for it by [Tamouh] and (70%) seventy percent of the value of the building that will be constructed on this plot.

(C) Whereas [Mr Awad] determined [CCC] to [3AM] to carry out construction work and managed the discussions and negotiations that preceded the signing of the Contracting Agreement in order to reach the appropriate price for the contract and provide solutions and opinions and bring viewpoints closer between [3AM] and [CCC] for the purpose of signing the contracting contract.

(D) In consideration for what was stated above, [3AM] and [CCC] agreed to pay [Mr Awad’s] fees, which will be added to the net value of the main contract agreed upon between [3AM] and [CCC], amounting to AED 666,641,500 ... and according to the main contract signed between [3AM] and [CCC] on Saturday, 12/2/2011.

(E) Therefore, [3AM, CCC and Mr Awad] agreed that [Mr Awad’s] fees shall be included in the price of the auxiliary contract signed between [3AM] and [CCC] submitted to the financing bank, amounting to AED 999,962,250 ... paid to [Mr Awad] by [CCC] in proportion on back to back basis of each payment released to [CCC] from the financing bank, which is 30% of each net payment received by [CCC] from the financing bank. Thus, [Mr Awad’s] fees are a total of 30% of the total net value of the contract, which amounts to AED 952,345,000 ... hereinafter referred to as (Fees).

(F) Accordingly, the parties have agreed upon mutual offer and acceptance to the terms and conditions hereinafter stipulated.

(G) Fees: The fees agreed upon to be released to [Mr Awad] from the net payments issued and released to [CCC] by the financing bank shall be a total amount of AED 285,703,500 only This amount shall be settled, more or less, equivalent to 30% of



the final value of the contract after the initial settlement of the project and after [CCC] receives all the payments from the financing bank”.

74. Mr Awad’s evidence was that, under the Fee Agreement, CCC paid AED 31,823,483 by cheques paid into his own account at FGB and AED 242,964,127.10, which was paid into the account of Awtad at FGB. His case is that he directed CCC to make the payments to Awtad by way of contribution by him towards the Project expenses.

The Origins of the Dispute

75. According to Mr Awad’s evidence, which was not disputed and I accept, it had originally been intended that, once 3AM was registered as owner of the Land (as it was on 31 May 2016), the parties would start to market residential and commercial units in Leaf Tower. Thus, it was intended that properties should be sold before the construction work had been completed. In the event, according to Mr Awad, 3AM “backed out on the agreement to sell the Project units as initially planned”, which Mr Awad complains represented “a departure from the agreed upon sales plan that was predicated on the Project’s financing and execution plan”.
76. Mr Awad pleads, and the Defendants did not dispute, that it was planned that 120,000 square metres of Leaf Tower should be sold, although specific units were not designated for sale rather than rental. Nor was it disputed at the trial that in fact no property in Leaf Tower has been sold. Mr Awad pleads that there was also a “failure in renting 60% of the tower area ... for more than 6 years”, which he contends has resulted in substantial losses. In the letter dated 5 April 2018, Mr Alhosani wrote that “[t]here is no demand for offices at all”, and he also referred to low demand on Al Reem for restaurants and residential properties, including rental properties. I do not have detailed information about how much of the property is still vacant, and I understand that some has been rented, but much of Leaf Tower remains unsold and unlet.
77. Mr Awad did not plead a case about whether properties would have been sold had marketing gone ahead in 2016, and he gave no evidence about this in his witness statement or his evidence in chief. Dr Salman sought to introduce evidence about this in re-examination, and Mr Awad said that there had been an opportunity to sell “the whole project” in 2016 after 3AM had paid the full price for the Land. I disallowed evidence about this: the matter had not been raised in cross-examination, and it would have been unfair to the Defendants to allow this new question to be introduced without notice at that late stage. I cannot tell from the evidence whether the difficulties in attracting interest in property in Leaf Tower were due to market forces or, as Mr Awad alleges, because of Mr Alhosani’s inefficiency, inexperience and “gross negligence”. Mr Awad gave evidence that offers (or an offer) had been received for Leaf Tower, but there is no evidence whether the terms were at all attractive.
78. Construction work started on the Project in late December 2010 or at the beginning of 2011. It was not completed by 5 December 2013, and it had not been completed when the ownership deed was issued in May 2016. A Payment Certificate, dated 30 May 2017, giving a revised completion date of 30 June 2017 and signed on behalf of CCC, Etan and 3 AM, recorded that, by 30 April 2017, 99.536% of the work had been completed to a gross value of AED 948,393,116. The Abu Dhabi authorities issued a Project Completion Certificate dated 23 July 2017.
79. Federal Decree Law 3/2015 Concerning the Regulation of Real Estate Sector in Abu Dhabi provides at Article 30 that: “The developer shall, upon completion of the real estate development project and after obtainment of the completion certificate from the Municipality, register the final floor plan and



compound plans, as well as the compound or floor management regulation in the Real Estate Register". Mr Awad complains that the Defendants registered the Project in the sole name of 3AM, although, as I have said, he was entitled under UAE law to own floors in Leaf Tower, notwithstanding he is not a UAE citizen, because Al Reem is an investment zone. He argues that the Defendants should have registered half the floors in his name, but they refused to do so.

80. CCC did not fully complete the final construction works. There is no evidence about the reason for this. ADCB drew upon CCC's performance guarantee for AED 45 million and, while CCC secured a refund of AED 14 million of the funds drawn down, ADCB recovered AED 31 million under it.
81. By December 2017, as Mr Awad told me and I accept, Awtad had no funds. By an email dated 27 December 2017 to Etan, Mr Alhosani wrote that he assumed "*full liability of disbursing process of the remaining works of Leaf project and the management and operation process*". Mr Awad contends that the Defendants thereby "*isolate[d him] from the Project's management*" in breach of the LIC.
82. There is in evidence the draft of a Taking Over Certificate prepared by 3AM and CCC for issue by Etan, stating that the Project was taken over from CCC by 3AM on 1 January 2018. It is dated 12 May 2018 and is signed and stamped by CCC and by Mr Alhosani on behalf of 3AM. It is not signed by Etan: Mr Awad explained that he refused to sign it on behalf of Etan because 3AM had excluded him from management of the Project in breach of the LIC.
83. By April 2018, relations between Mr Awad and Mr Alhosani were clearly very strained. In response to a letter from Mr Awad dated 3 April 2018, which is not in evidence, on 5 April 2018 Mr Alhosani wrote that ADCB refused to allow Mr Awad's share in the Project to be sold to a third party and that he wished to buy Mr Awad's interest in the Project for a price of AED 150 million. Mr Awad rejected the proposal. By about the same time, Mr Alhosani had had Awtad's commercial licence to conduct business in Abu Dhabi revoked, and had cancelled Awtad's power of attorney of 1 December 2010, the cancellation being sealed by the ADJD on 1 May 2018. According to Mr Awad, the cancellation of Awtad's commercial licence resulted in Awtad's operations coming to an end and its account with FGB being closed.
84. On 16 April 2019, Federal Decree Law 13/2019 Amending Certain Provisions of Federal Decree Law 19/2005 Concerning Real Estate Property Ownership amended the law about what real property might be owned by persons who were not UAE citizens, so as to allow them to own land in investment areas, and not only floors in buildings. Article 3.2 provided that "*Non-citizens who are natural or legal persons are entitled to acquire all original and collateral in-kind rights over properties located within investment zones and to dispose of any of these real estates*".
85. By a letter before action dated 25 April 2019, served by the Notary Public of the ADJD, Mr Awad issued a "*legal warning*" (the "**Legal Warning**") to Mr Alhosani in his personal capacity and as a representative of 3AM. It was by way both of a letter before action and of a notice under Article 272 of the Civil Code, which provides as follows:

"(1) In contracts binding on both parties, if one of the parties does not do what he is obliged to do under the contract, the other party may, after giving notice to the obligor, require that the contract be performed or cancelled.



(2) *The judge may order the obligor to perform the contract forthwith or may defer (performance) to a specified time, and he may also order that the contract be cancelled and compensation paid in any case if appropriate*”.

86. I note that the Legal Warning stated that the “*last evaluation of the building*” put a value of AED 1,675,000,000 on it. It required *inter alia* that Mr Awad be issued with a power of attorney in accordance with Clause 6(2) of the LIC, and that a joint account be opened in accordance with Clause 8(1). Mr Awad required that Mr Alhosani and 3AM should not “[apply] to obtain any loans over the premises and the constructed buildings thereupon as a result of the desire to carry out any additional works on the building without obtaining the approval of [Mr Awad]”.
87. By a letter to ADCB dated 29 July 2020, Mr Alhosani, writing on behalf of 3AM, appeared to recognise that Mr Awad shared an interest in the Project. He wrote that: “*Whereas engineer Faisal M Awad is my partner with equal percentage of shares in [the Project], he participated in paying half of the funds due for the plot and construction and made every effort to complete the project, and since I would like to officially register his share in [3AM] at a rate of 49% of the company in order to preserve his rights, with my agreement to maintain all the guarantees provided to the bank in exchange for financing as is*”. He requested ADCB to issue a letter consenting to the amendment of the articles of association of 3AM and its commercial licence.
88. By an agreement dated 2 May 2021, 3AM engaged Angle General Contracting LLC to convert some 45,000 square metres on floors 32 to 56 of the Leaf Tower from office space to residential units. It also had them furnished by Kit & Kaboodle Furniture Trading LLC. ADCB agreed to provide the additional finance of some AED 110 million from ADCB for the purpose by way of an amendment of 8 June 2020 to the term loan agreement. I shall refer to this work as the “**Conversion Work**”. In a letter dated 19 April 2023 in response to a request for information by the Committee of Experts, ADCB said that the Conversion Work was “*still under construction*”. In his Particulars of Claim of 7 March 2024, Mr Awad said that this Conversion Work had not then been completed. He contends, and the Defendants do not dispute, that Mr Alhosani was acting without his agreement in making this change to the planned development and in arranging the additional loan facility, which was secured, *inter alia*, by a mortgage over Leaf Tower. I note that in his evidence to the Committee of Experts, Mr Afifi said that 3AM “*is paying for [the Conversion Work] through a new loan from the bank*”.
89. Against this background, Mr Awad issued proceedings in the ADJD Courts on 17 October 2022.

The Remedies that Mr Awad Seeks

90. I should next describe the remedies that Mr Awad seeks in his amended claim made pursuant to my Order of 26 June 2024. In his final submissions, Dr Salman couched the claims in somewhat different terms. Ms Al-Ameri complained that the claims before the Court are those in the amended pleading, and in this Judgment I focus on the pleaded claims. However, when I have issued this Judgment, I shall allow the parties to address me on what relief I should order to give effect to it.
91. Mr Awad pleaded a primary case and an alternative case. I shall adapt his wording to describe the relief that he seeks in the language conventionally adopted in this Court.



92. By way of his primary claim, Mr Awad seeks declarations, monetary orders and injunctive relief, including:
- a. a declaration about the validity and enforceability of the LIC;
 - b. a declaration that the Defendants have not complied with the LIC's terms;
 - c. a declaration that Mr Alhosani is liable in respect of 3AM's contractual breaches;
 - d. a mandatory injunction requiring the Defendants to comply with the LIC, specifically by way of: (i) issuing and maintaining in force a power of attorney in favour of Mr Awad in accordance with Clause 6(2) of the LIC, and (ii) opening a bank account in the joint names of 3AM and Mr Awad in accordance with Clause 8(1) of the LIC;
 - e. a declaration that Mr Awad has a 50% "ownership stake in the Leaf Tower Project (both land and tower)", and an injunction requiring the Defendants to facilitate the registration of the LIC and his interest, together with an Order for the division of the property into equal shares between 3AM and Mr Awad and injunctions to facilitate the sale by Mr Awad of his interest;
 - f. a declaration as to the amount of Mr Awad's financial contribution the Project, and as to the amount of the total contributions of 3AM and Mr Awad;
 - g. an Order that the Defendants pay to Mr Awad the sum required to compensate him for contributing more than half of the costs of the Project in the amount of AED 167,057,638.60 (or US\$ 45,488,805.61), together with interest;
 - h. a determination that "*the partners in [3AM] are liable for the balance of the balance of the debts, resulting from the difference in contribution*" and the compensation sought "*each in proportion to his share*"; and
 - i. an Order that the Defendants pay for the Conversion Work.

93. As for the claims in paragraphs 92(f) and 92(g) above, Mr Awad contends that, whereas the LIC provided that he and 3AM were to contribute equally to the Project, he contributed much more than his half. He says that the total Project costs amounted to AED 1,418,323,831 as follows:

Finance from ADCB	AED 961,875,000.00
Finance from CCC's performance guarantee	AED 31,000,000.00
Contributions for account of 3AM	AED 45,666,776.90
Contributions for account of Mr Awad	AED 379,782,054.10

94. Further, Mr Awad submitted that 3AM should have reimbursed his greater contribution by (no later than) the date that the Project was handed over, namely 1 January 2018: see para. 92(h) above. In his Particulars of Claim, he claims compensation for "*lost profits*" resulting from him not having the use of the sum of AED 167,057,638.60. This claim is for AED 100,234,58316, calculated on the basis of a loss of 10% per annum of the amount of the overpayment for six years from 1 January 2018 to 1 January 2024.



95. As for the relief described in para 92(h), Mr Awad apparently sought relief against both Mr Alhosani and Maam, being the shareholders in 3AM. Maam is not a party to the proceedings and the Court could not properly make an Order against it.
96. By way of his alternative claim, Mr Awad seeks a monetary award of AED 480,016,637.26 (or US\$ 130,705,687.48), together with interest. The sum of AED 480,016,637.26 represents the total of: (i) the AED 379,782,054.10, the sum that he contributed to the Project, and (ii) AED 100,234,583.16, being his calculation of “*lost profits*”.
97. As I have said, the question of what remedies are available is a matter of procedural law, and in the circumstances of this case, I have considered whether there are other remedies available to do justice to the parties. Under the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015, (the “**Courts Regulations**”), it is provided at Section 41 as follows:
- “(1) The Court of First Instance may by order (whether interim or final) grant an injunction or appoint a receiver in all cases in which it appears to the Court to be just and convenient to do so.*
- (2) Any such order may be made either unconditionally or on such terms and conditions as the Court thinks just ...”.*
98. On the first day of the hearing, I invited the parties to consider whether this was a case in which a receiver should be appointed. The reason that I suggested this is that it appeared that the nature of the dispute was such that the interest of one or both of the parties to the LIC in Leaf Tower should be protected, and that the appointment of a receiver might be the just and convenient way of doing so. The nature of this remedy was described in *Capewell v Revenue and Customs Comrs and another [2007] UKHL 2* by Lord Walker, esp. at paras.19 - 20: “*The court’s power to appoint a receiver, as part of its auxiliary equitable jurisdiction, is of very ancient origin. It was described in Hopkins v Worcester and Birmingham Canal Proprietors (1868) LR 6 Eq 437, 447, as one of the oldest remedies in the Court of Chancery. It was used in a wide variety of situations in which there was a need for the interim protection of property (and the income of property), including disputes about partnerships, sales or mortgages of land, and administration of estates. ... In short, the appointment of a receiver was in many cases the most effective way of “holding the ring” between warring litigants until the disputed issues could be finally determined*”. Lord Walker went on to explain that: “*It has always been a basic principle of receivership that the receiver is entitled to be indemnified in respect of his costs and expenses, and his remuneration if he is entitled to be remunerated, out of the assets in his hands as receiver*” (at para. 21).
99. In his closing submissions, Mr Awad adopted that suggestion and asked that a receiver be appointed by the Court, and that the Court specify a fee to be paid to a receiver and direct that it be paid from the “*Leaf Tower proceeds*” and “*accounted for as general expenses*”. Ms Al-Ameri objected that the Defendants had not had due notice of the different relief that Mr Awad sought. Further, I said that, before appointing a receiver, I would invite ADCB to make submissions about this, since it apparently still has a very considerable interest in the property.



The Issues

100. Against this background, I seek to identify the issues between the parties on the pleadings. The main arguments of the Defendants seem to be these:

- a. they dispute that the LIC constituted a binding contract, that Mr Awad acquired any interest in the Land or the Project under it, and that it is enforceable;
- b. they dispute that Mr Awad made any contribution either to the price of the Land or to the construction costs of the Project;
- c. they dispute that 3AM was in breach of any obligations to Mr Awad;
- d. they allege that Mr Awad was in breach of his obligations and make other allegations against him; and
- e. they dispute that Mr Alhosani has any personal liability under Article 84 of the Commercial Companies Act.

101. The issues between the parties therefore fall into five main groups:

- a. First, there are issues about the validity, enforceability and effect of the LIC and Mr Awad's claims under it: the "LIC Issues". These include issues raised in the Defence about: (i) whether the LIC constitutes a binding contract between Mr Awad and 3AM; and (ii) whether the LIC is vitiated because it has not been documented or registered by the appropriate authorities under Abu Dhabi Presidential Decree of 5 May 2010 or in accordance with Abu Dhabi Law 3/2005 Regulating the Real Estate Register in the Emirate of Abu Dhabi. I also include as LIC Issues: (i) whether, upon the proper interpretation of the LIC, the parties agreed that an interest in the Land should be transferred to Mr Awad, and if so what interest; and (ii) if the parties did so agree, whether the Court should order specific relief to have an interest in the Land transferred to Mr Awad. Finally, the Defendants plead a limitation defence, on the basis that these proceedings were brought more than 15 years after the LIC was concluded, which it will be convenient to consider with the LIC issues.
- b. Next, there are issues about what the parties to the LIC contributed to the Project: the "Contribution Issues". These include an issue whether payments under the Fee Agreement to Awtad are to be regarded as contributions by Mr Awad.
- c. Thirdly, I consider the Defendants' allegations that Mr Awad was guilty of breach of his obligations or other wrongdoing: the "Defendants' Complaints Issues".
- d. Next, I deal with Mr Awad's allegations that 3AM acted in breach of its contractual obligations: the "3AM Breach Issues".
- e. Finally, I consider whether Mr Alhosani personally incurred any liability to Mr Awad: the "**Alhosani Liability issues**".



The LIC Issues

The LIC Issues: Private International Law

102. Before coming to the LIC issues themselves, I should say something about which law or laws govern them. The ADGM Real Property Regulations 2024 apply to real property within the ADGM (Section 184(2)), including, from 1 January 2025, real property on Al Reem Island (Section 178(1)). However, questions about the interpretation or nature of any usufructs created over realty on Al Reem Island created before 1 January 2025 remain governed by the law of Abu Dhabi.
103. I referred to Clause 13(1) of the LIC at para. 39 above. It provides: *“This contract shall be governed by the provisions of the applicable laws within the United Arab Emirates, and its judiciary shall have the jurisdiction to settle the disputes may arise in connection with the interpretation and/or execution of the provisions provided for herein”*. Accordingly, questions about the proper interpretation and effect of the LIC are to be decided by the law of the UAE.
104. The defences based on Abu Dhabi Presidential Decree of 5 May 2010 or in accordance with Abu Dhabi Law 3/2005 Regulating the Real Estate Register in the Emirate of Abu Dhabi turn on the interpretation and effect of UAE statutes, and therefore concern questions of UAE law.
105. The limitation defence is governed by UAE law because, under the ADGM Application of English Law Regulations 2015, Section 2 and their Schedule of Applicable Statutes, the English Foreign Limitation Periods Act 1984 is part of the law of the ADGM. Mr Awad’s claims in relation to these issues being governed by UAE law, the UAE law relating to limitation applies to them.
106. As I have said, questions about remedies are regarded as procedural law. Accordingly, it is for ADGM law to determine whether the Court should make an Order designed to have the ADGM authorities effect the transfer to him of some interest in the Land by way of an order of specific performance.

Is the LIC a binding contract?

107. Mr Awad contends that the LIC is valid and enforceable under the law of the UAE, its governing law, submitting: (i) that it is valid and enforceable under the applicable articles of the Civil Code; and further (ii) that by their conduct the Defendants have precluded themselves from disputing that it is valid and enforceable.
108. Although it is not entirely clear, the Defendants appear to dispute in their Defence that the LIC was concluded as a binding contract, describing it as a *“memorandum of understanding”*. I cannot accept that. On its face, it is called a *“Contract of Land Investment”*, and it is introduced by the words: *“This Contract was made and signed in Abu Dhabi city on Thursday corresponding 23/10/2008”*. It was signed by Mr Awad, by Mr Alhosani on behalf of 3AM, and by witnesses under the words: *“All terms and conditions were agreed upon and signed on the date stated at the beginning of this contract”*. It is couched in the formal language of a legally binding agreement. It satisfies the requirements of the Civil Code, including Article 125: *“A contract is the coming together of an offer made by one of the contracting parties with the acceptance of the other, together with the agreement of them both in such a manner as to determine the effect thereof on the subject matter of the contract, and from which results an obligation upon each of them with regard to that which each is bound to do for the other”*.



109. Apparently, the Defendants suggest that it is implausible that, without evidence of his means, 3AM would have accepted Mr Awad as a partner in a project of the scale of the Leaf Tower without doing so. If that is their argument, I am not persuaded by it: the fact is that 3AM executed the LIC.
110. I would also reject any argument, if the Defendants intend so to contend, that the LIC is in some way vitiated by misrepresentation or breach of a collateral agreement. Although, as I have said, the Defendants plead that Mr Awad “submitted” the LIC “after he had alleged that he had financial dues of AED 600 million”, and that he would provide a contribution of half of “the capital required for the project”, no evidence supports this allegation. Further, the Defendants do not plead a case, and they have not adduced evidence, that 3AM relied on statements of this kind.
111. As for the pleading of what Mr Awad said about the contribution to the Project that he would provide, I cannot accept (if it be so suggested) that this qualified or glossed the terms of the LIC. Indeed, the LIC expressly provided at Clauses 13(4) and 13(5), which deal respectively with subsequent and previous arrangements between Mr Awad and 3AM about the Land: “(4) Any amendment, modification, addition or deletion to the provisions of this Contract shall not be deemed in full force and effect between its two parties unless being in writing and signed by both of them” and “(5) This Contract shall govern the contractual relationship between the two parties in respect with the Land – the subject matter of this Contract – and shall supersede and/or abolish and/or nullify any previous agreements or understandings, whether oral or written”.
112. Having reached a firm view on these points, I do not need to engage with Mr Awad’s alternative argument that the Defendants are precluded from disputing that the LIC has contractual effect.

Abu Dhabi Presidential Decree of 5 May 2010

113. The Defendants rely on a Decree issued by the President of Abu Dhabi on 5 May 2010 which provided that the Courts should not recognise “any transfer, [of title] whether by sale, purchase or other disposition of property in the Emirate, or any real property right [in the Emirate of Abu Dhabi] ... unless [the same] is conducted before the competent authority [the Department of Municipal Affairs]”. They plead that, because Mr Awad has no title or certified document from the Department of Municipal Affairs, his claims are invalid and cannot be entertained by the Court.
114. I reject this argument. Mr Awad cited two decisions of the Abu Dhabi Court of Cassation which state that the Royal Decree does not apply retrospectively to contracts and transactions that were made before the Decree was issued: Case 171/2017 (24 October 2017) and Case 210/2021 (15 March 2022), in which the Court said: “This Court has consistently held that the formal condition set out in the Royal Decree dated 5 May 2010 does not apply to contracts made before its issuance”. I accept that they evidence UAE law.

Abu Dhabi Law 3/2005 Regulating the Real Estate Register in the Emirate of Abu Dhabi

115. The Defendants also relied upon Article 6 of Abu Dhabi Law 3/2005 Regulating the Real Estate Register in the Emirate of Abu Dhabi, which provides as follows: “All dispositions of the properties governed by Article 10 of this present law and which may establish any in rem or ancillary rights, the transfer or forfeiture thereof ,, shall be registered in the cadastre allocated thereto at the [Department of Municipalities and Agriculture] where the property is located. Such rights shall not be established or transferred or forfeited between the concerned parties or between them and third parties upon failure to register said dispositions. ... Unregistered dispositions shall not be taken into



consideration and the personal obligations between the concerned parties shall constitute the sole effect thereof".

116. Article 10 provides that:

"... nationals may sell and purchase residential, commercial, investment and agricultural plots along with the buildings erected thereon for a certain purpose as allocated to each of them, and may execute all other dispositions provided that they will not change the purpose intended therefrom ...".

117. Article 14 provides: *"Any disposition in breach of the provisions of the present Law, regulations and decisions implementing thereof shall be deemed void"*.

118. Mr Awad argued that this defence is to be rejected for two reasons. Firstly, Abu Dhabi Law 3/2005 Regulating the Real Estate Register in the Emirate of Abu Dhabi does not apply to the LIC because it is not an agreement that purported itself to transfer realty or purported to create *in rem* rights over it. It only required 3AM to mortgage the Land to a third party and placed restrictions upon how it might deal with the Land; and it also included a provision that the premises constructed on the Land should be *"deemed"* to be the property of Mr Awad and 3AM. As I shall explain, I cannot interpret that deeming provision or any other provision of the LIC as amounting to a disposition of title or creation of an *in rem* right.

119. Secondly, Mr Awad submitted that, even if Abu Dhabi Law 3/2005 Regulating the Real Estate Register in the Emirate of Abu Dhabi applied to the LIC, the failure to register it would not make it void, although no disposition of the Land would be effective or no property rights would be effected unless and until it was registered. He cited authority of the Abu Dhabi Court of Cassation in support of this contention. In Case 11/2013 (24 April 2013), the Court said: *"Registering a real estate sale contract is not a condition for the formation or validity of the contract but is a condition for the transfer of ownership, which occurs after registration"*. Similarly, in Case 73/2014 (20 July 2014), the Court said that *"[o]nce a contract is validly concluded, neither party can revoke or amend it without mutual consent, legal action or statutory provision. A sale contract is binding upon the agreement of the parties and takes effect immediately upon completion, except for registration, which is not a condition for its validity"*.

120. I accept Mr Awad's arguments, and I reject the defence based on Abu Dhabi Law 3/2005 Regulating the Real Estate Register in the Emirate of Abu Dhabi.

The Limitation Defence

121. The Defendants contend that they have a limitation defence to Mr Awad's claims under Federal Decree Law 18/1993 on the Commercial Transactions Law. Article 473, which generally applies to contractual claims, provides that rights do *"not expire with the passage of time, but the claim against the denier will not be heard after fifteen years have passed without a legitimate excuse, taking account of the special provisions contained therein"*. They go on to contend that Mr Awad makes his claims on the basis that he acquired rights under the LIC, but he did not bring proceedings for more than 15 years thereafter; and that therefore his claims are barred by the lapse of time.



122. In response to this argument, Mr Awad first observes that he brought his proceedings in the on-shore Abu Dhabi Courts in 2022, within fifteen years from the date of the LIC. This is sufficient to answer the limitation defence: Article 484 of Federal Decree Law 18/1993 on the Commercial Transactions Law provides that: *“The prescription period shall be interrupted upon a judicial claim being made or any judicial proceeding being taken by an obligee to enforce his right”*. Moreover, Mr Awad had a *“legitimate excuse”* for not bringing proceedings in the ADGM, rather than in the ADJD Courts: before the Cabinet Resolution No. (41) of 2023 extended the ADGM to include Al Reem Island, the ADJD Courts were the proper forum for the claims, and the ADGM Courts would have had no jurisdiction to determine them.
123. This in itself answers the limitation defence raised by the Defendants, but Mr Awad has other arguments. I shall refer to only two.
124. First. Mr Awad relies on Article 478 of Federal Decree Law 18/1993 on the Commercial Transactions Law: *“The period laid down for the prescription of claims shall commence as from the day upon which the right falls due for exercise and from the time a condition is satisfied if the right is dependent upon a condition, and from the time the entitlement is proved in claims upon a guarantee of an entitlement”*. Thus, the Defendants’ argument, which is based on the proposition that the limitation period started to run when the LIC was made, is misconceived. In Case 11/2013 (24 April 2013), in which a seller sought similarly to raise a limitation defence on the basis that a transfer of real property had not been registered within fifteen year of a contract for its sale, the Abu Dhabi Court of Cassation said this: *“the seller is barred from raising a statute of limitations defence against the buyer’s claim for the validity and enforcement of the sale contract based on more than fifteen years passing without registration or a request for judgment regarding the validity and enforceability”*.
125. Secondly, Mr Awad relies upon Article 483 of Federal Decree Law 18/1993 on the Commercial Transactions Law: *“An admission by an obligor of a right, whether express or by implication, shall interrupt the time laid down for prescription”*. He contends that the Defendants made such admissions, impliedly if not expressly, in that: (i) the letter of 5 April 2018 to Mr Awad made an offer for Mr Awad’s *“share”* in the Project, thereby acknowledging that he had a *“share”* therein; and (ii) the letter of 29 July 2020 to ADCB, in which Mr Alhosani referred to Mr Awad as his *“partner with equal percentage of shares in side contracts”*, said that he had *“participated in paying half of the funds due for the plot and construction and made every effort to complete the project”*, and referred to Mr Awad’s *“rights”*.
126. I reject the limitation defence. It answers none of Mr Awad’s claims.

Did the parties to the LIC agree that an interest in the Land should be transferred to Mr Awad?

127. Mr Awad pleads that, upon him complying with his obligations about providing capital required for the Land and the Project and undertaking management of the Project, the *“property constructed on the designated plot of land shall be deemed joint exclusive property of both [Mr Awad and 3AM], with ownership divided equally between them”*. This argument is Clause 5(4) of the LIC. I do not accept that Clause 5(4), on its proper interpretation, provides for Mr Awad to own an *in rem* interest in the Land (whether sole or joint).
128. The interpretation of the LIC is, of course, governed by UAE law, but it was not pleaded or submitted that the governing principles of interpretation are materially different from those of English law, and so of ADGM law. The essential task of the Court when deciding issues of interpretation of a written



contract, in UAE law as in ADGM law, is to ascertain the intention of the parties and the starting point for doing is the objective meaning of the words of the contract: see esp. Articles 257, 258 and 266 of Section 4 of Chapter 1 of the Civil Code on “*The Construction of Contracts*”.

129. Clause 5(4) of the LIC (set out at para 44. above) is expressed in terms of a deeming provision. Comparable terminology is not used elsewhere in the LIC when it states the parties’ obligations and undertakings, and in my judgment, the form of words used by the parties in Clause 5(4) is significant. It does not purport to impose a contractual obligation on 3AM to transfer to Mr Awad an interest in the Land, nor to confer on Mr Awad a right to own an interest in the Land. I see no reason to distort the wording to interpret Clause 5(4) as doing so. I am reinforced in this view because:
- a. Clause 5(4) refers to the “*premises constructed on the Land*”, rather than to the Land itself. If it intended to refer to a transfer of an interest in real estate, it would have referred to the Land; and
 - b. Clause 5(4) goes on to state the consequences of the deeming provision: Mr Awad and 3AM were to be “*entitled to all compensations disbursed to them, and they shall also have the right to claim any compensations against the damage caused to them*”.
130. It is readily understandable that the parties should not intend to confer on Mr Awad a joint interest in the Land, but instead provided that he should be “*deemed*” to own the building jointly with 3AM. As a non-citizen, even in an investment area he was entitled to own (whether jointly or in his own name) only “*floors*” in a building “*without the land*”. The evidence before me does not explain quite what is meant by a “*floor*” and it does not matter for present purposes. He was not entitled to own the building itself or the Land on which it was constructed.
131. I therefore reject Mr Awad’s argument that he acquired under the LIC a right to own a share in the Land, or a right to have the Land registered in his name. The purpose of Clause 5(4) was to make clear that 3AM and Mr Awad were to share equally in the financial rights and obligations, including any compensation or claims for damages that accrue to 3AM, as the owner of the usufruct and later owner of the Land, as if they owned the Land jointly.
132. I add for completeness that Federal Decree Law 13/2019 Amending Certain Provisions of Federal Decree Law 19/2005 Concerning Real Estate Property Ownership extended the rights of non-citizens with regard to ownership of realty in investment areas: it provides at Article 3.2 that: “*Non-citizens who are natural or legal persons are entitled to acquire all original and collateral in rem rights over properties located within investment zones, and to dispose of any of these real estates*”. This does not assist Mr Awad. The LIC is to be interpreted in the context of the statutory framework in October 2008.

Should specific relief be granted?

133. In view of this conclusion, it is not necessary for me to decide whether, if Mr Awad were entitled under the LIC to a right to ownership of a share in the Land, it is a right in respect of which the Court should grant specific relief. Such relief would be equitable in nature. As such, although an order for specific performance has been said to be available to a purchaser of land “*as a matter of course*”, it is a discretionary remedy: *Megarry and Wade: The Law of Real Property* (9th Ed, 2019), paras. 14-113 and 14-114. Even if I had accepted Mr Awad’s interpretation of the LIC, I would not have made an order of specific performance to bring it about that he and 3AM should share ownership of the



Land: that would invite continuing disputes and probably further litigation. Damages are an adequate remedy, and, in the circumstances of this case, a more appropriate remedy. I am reinforced in this view that 3AM has embarked on the Conversion Work on the basis that it owned the Land, and Mr Awad did not promptly seek injunctive relief to restrain them.

The Contribution Issues

Introduction

134. Mr Awad's case is that the LIC required each partner to contribute equally to the Project, including the purchase of the Land; that his contributions amounted to AED 379,782,054.10; that the total of the contributions by Mr Awad and 3AM together was AED 425,448,831; and that therefore he (Mr Awad) is entitled to be reimbursed AED 167,057,638.60 (together with interest) by 3AM to compensate him for his greater contribution.

The requirement under the LIC to contribute to the Project

135. I accept Mr Awad's argument that the LIC required 3AM and Mr Awad to contribute equally to the Project: see the third recital and Clause 3(2) at paras 42 and 43 above. I do not understand the Defendants to dispute this: certainly, Mr Alhosani acknowledged that this was the arrangement with Mr Awad in his letter to ADCB of 29 July 2020.

Mr Awad's contributions

136. The Defendants deny that Mr Awad made any contribution either to the price of the Land or to the construction costs. They rely upon these documents that are exhibited to the Defence:

- a. a statement, dated 29 November 2022 and signed by Mr Majed Odeh, the Chief Executive Officer of Tamouh, that Tamouh had received payments in respect of the sale of the Land in the sum of AED 336,285,480, the original contract price being increased by AED 38 million because payment was postponed to 2016; and
- b. the letter from ADCB dated 28 November 2022 to which I have already referred at para. 51 above. It says that the "borrower" under its facility was 3AM and that the security for it was a mortgage over the Land and building on it and other guarantees and mortgages given by 3AM and Mr Alhosani.

137. I observe at the outset that the Defendants' contention in this litigation is inconsistent with 3AM's letter to ADCB of 29 July 2020, in which 3AM wrote that Mr Awad had paid "half of the funds due for the plot and construction": see para. 87 above.

138. The Experts' Report sets out the sums which Mr Awad claims represent his contributions to the Project, and he argues that it provides, by way of attachments to the Experts' Report, documentary evidence that he made the payments and transfers of funds that are set out. They comprise:

- a. Payments by Mr Awad to Al Ittimad: AED 11,467,465;
- b. Payments by Mr Awad to Awtad or Mr Alhosani in respect of first instalment paid to CCC: AED 48,655,112;



- c. Payments by Mr Awad in respect of the Land purchase: AED 48,125,000;
- d. Payment by Etan to Awtad described as being “for the account of the construction of the Leaf Tower Project”: AED 28,750,350; and
- e. Payments made to Awtad by CCC by way of monies payable to Mr Awad under the Fee Agreement: AED 274,787,610.10.
139. First, the payments to Al Ittimad: here, the Experts’ Report identifies four payments by Mr Awad totaling AED 11,467,465, and produces cheques and documentation which evidence them. Mr Awad pleads in his Reply that the cost of piling works done by Al Ittimad was AED 27 million, and he and Mr Alhosani made equal payments towards it. (The balance to make up the full costs of AED 27 million, AED 4,024,301, was contributed by Awtad).
140. The pleading in the Defence about these payments is not clear, but I understand that the Defendants’ case is reflected in evidence given by Mr Afifi to the Committee of Experts: “*The witness stated that Accreditation Company [sic. Al Ittimad] started work before any amounts were paid from the bank, and the payments were made from the owner (3AM Company), and the amounts paid to Accreditation Company were added to the contract concluded with [CCC], and when the latter received the amounts, they were returned to the owner*”. Mr Awad accepts that CCC was required to give credit against the bills of quantities for the work done by Al Ittimad, but that does not answer his case: the fact remains that he contributed AED 11,467,465 for the work. Given Mr Afifi’s acknowledgement in evidence that he was not aware of the financial dealings and arrangements between Mr Awad and 3AM, I can place no weight on his evidence that the payments were made by 3AM. This is not consistent with the documentation exhibited to the Experts’ Report. The Defendants have neither disputed that those documents are genuine, nor have they offered an alternative explanation for Mr Awad making the payments. I am satisfied that Mr Awad paid AED 11,467,465 to Al Ittimad and that this sum is to be brought into account as a contribution by him to the Project.
141. I next consider the payments by Mr Awad in respect of the purchase of the Land: Mr Awad’s case is that he is entitled to credit for two payments recorded in the Experts’ Report, namely a payment of AED 24,312,500 on 27 April 2016 and a payment of AED 23,812,500 on 28 December 2017. The Report exhibits a cheque and other documents evidencing the former payment. I cannot identify any documentary evidence about the latter: it is said to be by way of a “[s]ettlement of account between the parties” but it is not explained whether this refers to a final instalment of the payment to Tamouh or a settlement between Mr Awad and 3AM.
142. It is pleaded in the Defence that Mr Awad made no contribution towards the purchase of the Land: I have already referred to the statement of Mr Odeh on which they rely: see para. 136 above. It does not assist the Defendants: Mr Odeh did not say who made the payment, and in any case presumably he would not be privy to the arrangements between 3AM and Mr Awad.
143. At the trial, it was not disputed by the Defendants that Mr Awad made both payments: Ms Al-Ameri said that the sums are not to be brought into account for Mr Awad’s credit because the monies were reimbursed by CCC. There is no evidence of this, and, on the face of it, it is improbable that CCC would have become involved in payment for the purchase of the Land from Tamouh. I reject that contention, and I conclude that Mr Awad is entitled to credit for these payments, notwithstanding the limited documentary evidence.



144. As for the remaining sums for which Mr Awad claims credit, the Defendants say that all the construction costs were financed by the loan to 3AM by ADCB of AED 999,962,250 granted on the basis of security provided by 3AM and that 3AM would itself contribute 25% of the “*financing value*”. They therefore dispute that Mr Awad made the contributions to construction by way of the payments at sub-paragraphs 138(b), 138(d) and 138(e) above.
145. Mr Awad does not, of course, dispute that payments to CCC and other payments relating to the construction of Leaf Tower were made from the Project Account at ADCB. The question is whether, as he claims, the Project Account was funded not only by the term loan facility made available to 3AM by ADCB, but also by his contributions, which either he made directly himself or he arranged for Etan to make, and which were either paid directly to ADCB or channeled to ADCB through Awtad or Mr Alhosani.
146. First, Mr Awad says that he made payments totaling AED 48,655,112 in respect of the first instalment to which CCC became entitled. These comprise five payments made by Mr Awad to Awtad and one made by him to Mr Alhosani in December 2011, January 2012 and February 2012. They are evidenced by cheques and other documentation exhibited to the Experts’ Report. The Defendants provided no answer to Mr Awad’s case about these payments, other than their general denial that Mr Awad contributed to the Project. I am satisfied that these payments are to be brought into account as contributed by Mr Awad to the Project.
147. Next, the payment by Etan to Awtad: the Defendants do not dispute that Etan made a payment of AED 28,750,350 to Awtad by a cheque dated 11 December 2011. However, they dispute that this payment is to be brought into account as a contribution by Mr Awad to the Project. It is pleaded in the Defence that Mr Awad made the payment because the design work for the Project was done by a Chinese company called Shanghai Xian Dai Architectural Design Group (Int’l) Co Ltd (“**Shanghai Design**”) under a contract with Maam dated 15 September 2008: that contract is exhibited to the Defence. As I understand it, the Defendants’ case is that Etan returned to ADCB monies which it had been paid for design work that had in fact been done by Shanghai Design.
148. Mr Awad’s first response to the Defendants’ contention is that it is inconsistent with the decision of the Abu Dhabi Court of Cassation of 22 March 2022 in Case 1122/2021 and Case 1237/2021. A claim was brought by Etan against 3AM under the Etan Agreement for the fees payable under it. A committee of experts produced a report setting out two alternative calculations of how much Etan was due, which (see para. 71 above) depended on the “*actual value of works*”: one (the so-called “**First Opinion**”) was calculated on the basis that the value of the works for the purpose of the Etan Agreement was AED 699,973,575, as stated in the contractor’s version of the Construction Contract); the other (the “**Second Opinion**”) was calculated on the basis that the value of the works was AED 999,962,250. In the Second Opinion, Etan’s claim in respect of design work was for AED 28,570,350. The Court of Cassation upheld the judgment that the calculation in the Second Opinion was correct.
149. I am not persuaded that this decision provides support for Mr Awad’s argument in these proceedings. The principles that govern when a party is bound by a decision in foreign proceedings were examined by Clarke LJ in *Good Challenger Navegante SA v Metalexportimport SA* [2003] EWCA Civ 1668, esp. at para. 49ff: they include (i) that there must be “*identity of parties*”, and (ii) that there must be “*identity of subject matter, which means that the issue decided by the foreign court must be the same as that arising in the English proceedings*” (at para. 50). The parties before the Court of Cassation were not the same parties to these proceedings: Etan acted through Mr Awad in relation



to the Project, but that is not sufficient. Nor was there identity of subject matter: this requires that there be "*a full contestation and a clear decision*" on the issue in question before the foreign Court: the *Good Challenger* case, at para. 54. The question whether the involvement of Shanghai Design affected Etan's claim against 3AM was not before the Court of Cassation.

150. However, in my judgment, Mr Awad does not need to rely upon the decision of the Court of Cassation. He has shown that Etan made the payment to Awtad, and he verified his pleaded case in his evidence. The Defendants have produced no evidence that persuades me that the payment was associated with any work that was done by Shanghai Design or the contract between Maam and Shanghai Design, or that otherwise refutes this part of Mr Awad's claim.
151. Lastly, I come to payments by CCC of monies payable to Mr Awad under the Fee Agreement. Mr Awad's case is that CCC paid a total of AED 274,787,610.10 under the Fee Agreement by instalments between 24 January 2012 and 29 July 2017, which corresponded to 55 instalments under the Construction Contract. Between 24 January 2012 and 15 April 2012, AED 31,823,483 was paid into his personal account at FGB. Between 25 March 2012 and 29 July 2017, the remaining AED 242,964,127.10 was paid by CCC into Awtad's account at FGB in accordance with instructions given by Mr Awad to CCC in letters dated 18 March 2012 (which was in respect of AED 18 million already due to Mr Awad) and 19 May 2012 (which gave instructions in respect of "*all of my payments as of payment number 2*"). Mr Awad contends that these payments are to be brought into account by way of his personal contribution to the Project. Mr Awad pleads that his "*decision to cover [3AM's] share of the contribution required by [ADCB] stemmed from an oral commitment to finance [3AM's] contribution until the commencement of Project's unit sales*", and that this "*arrangement was in alignment with the strategy outlined in [the LIC]*".
152. The Defendants deny this. They dispute that the parties to the Fee Agreement really intended to pay Mr Awad AED 285,703,500 as a reward for his efforts in negotiating contracts for the Project. Their pleaded case is that CCC "*transferred 30% of the payments due and payable to it out of the loan (AED 999,962,555)*" from ADCB to 3AM, and that accordingly "*an amount of AED 340,41,282, which had been received by [CCC], was transferred to the loan account at [ADCB] as the contribution of the owner/3AM*". Thus, they say that Awtad was "*accounting broker for the project*" and "*acted as a broker receiving the amount and returning it to [ADCB]*".
153. This contention is supported by the evidence given by Mr Tareef and Mr Afifi to the Committee of Experts. Mr Afifi said this: "*the Project started its implementation in the year 2011, and its value is (699,000,000) dirhams, including consultancy fees, and the value of the contract submitted to the bank was (999,000,000) dirhams, meaning that 30% was added to the value of the contract signed with the contractor and the work was implemented, and the contractor was receiving his dues, and he was returning the remaining and difference with each instalment according to the percentage of completion to the owner, (3AM Company), through Awtad Company by agreement and approval of 3AM*". He also said that ADCB "*requested from the owner 30% of the project value, so the project value was increased to be financed (100%) from the bank*". According to Mr Afifi's evidence to the Committee of Experts, "*the same as what was done in other projects*", including the Al Jawhara Tower project, a project of Maam. Mr Awad had no financial interest in the Al Jawhara Tower project, but Etan acted as a consultant to it.
154. I do not accept this evidence. As I have said, Mr Tareef and Mr Afifi acknowledge that they were not fully informed about the financial arrangements between Mr Awad and 3AM.



155. The Defendants also rely upon a letter dated 29 November 2011 from 3AM to CCC, which is headed “*Transfer of Payments*” and reads: “*In reference with the above subject and project, kindly transfer all payments of [3AM] of the project works to the account of [Awtad at FGB]*”. This letter, they say, instructed CCC what to do with the sums received from ADCB in excess of what was to be paid under the contractor’s version of the Construction Contract.
156. Mr Awad refutes this, contending that the Defendants misrepresent the purpose of the letter of 29 November 2011: he says that it refers only to payments which had been paid to CCC for the piling works which had been done by Al Ittimad, and which CCC was to reimburse. This contention seems to me wholly consistent with what is written in the letter, and it is supported by the timing. Mr Awad did not give his instructions to CCC to pay to Awtad what was due under the Fee Agreement until March 2012 and May 2012. The Defendants did not explain why 3AM should be giving CCC instructions about this in November 2011. I reject the Defendants’ argument that the letter of 29 November 2011 supports their case.
157. Nevertheless, I have found this part of the case troubling. The Defendants plead that “*no consultant anywhere worldwide can get additional fees of 30% of the bank financing of the project in addition to the fees of AED 70 million paid under the consultancy services contract*” between 3AM and Etan. Certainly, a payment of more than AED 285 million is on the face of it an extraordinarily large reward for Mr Awad’s “*great and significant effort in the negotiations to determine the attractive price at which the [Land] ... was purchased for [3AM] and to persuade*” ADCB to finance 70% of the Project costs.
158. When I put this point to Mr Awad at trial, he responded that he had saved the Project more than AED 700 million, explaining that, in discussions with a Chinese company, Maam had “*accepted the project at around AED 1.4 billion*”, and that the lower costs were the result of “*many months of negotiations with subcontractors and with the main contractors*”. He also pointed out that, under the arrangements in the LIC, he would meet half of the payments under the Fee Agreement. The Defendants did not challenge his evidence about discussions with a Chinese company or the negotiations that Mr Awad had conducted, and I accept Mr Awad’s point that he would indirectly finance half of the payments. Nevertheless, the sum that he was to receive under the Fee Agreement is very large. Is it so large that his account beggars belief?
159. There is no dispute that CCC was to be paid AED 666,641,500, as is stated in the contractor’s version of the Construction Contract. ADCB had agreed to provide facilities on the basis that they would cover only some 70% of the costs for the Project. Mr Awad accepts that the facilities were advanced by ADCB on the basis of the ADCB version and ADCB was not shown the contractor’s version.
160. The Defendants did not expressly develop a case about what lay behind these arrangements, but I take the implication of their case to be this: that ADCB had agreed to finance the Project on the basis that 3AM (alone or 3AM with its partners in the Project) was to provide some 30% of the costs. The purpose of presenting the ADCB version of the Construction Contract to ADCB was that ADCB should advance finance for some 70% of artificially inflated construction costs. Thus, ADCB was being tricked into financing pretty much the full amount of the actual construction costs. On this hypothesis, the Fee Agreement was simply part of and parcel of this scheme: it was not intended to provide a reward to Mr Awad for his contribution to negotiations for the Project, but it was part of an arrangement whereby CCC was to return 30% of the sums that it received from ADCB to Awtad via Mr Awad. Thus, the payments to Mr Awad under the Fee Agreement represented finance that was provided by ADCB under the facility provided to 3AM: they were therefore by way of a contribution



by 3AM to the Project, and they are to be so treated for the purpose of determining the contributions of the parties to the LIC.

161. The Defendants' case, therefore, appears to involve Mr Awad being party to defrauding ADCB, that the ADCB version of the Construction Contract and the Fee Agreement were instruments of the fraud, and that ADCB would not have advanced the facilities if it had known what CCC was actually be paid. What other explanation is there, it might be asked, for the fact that the parties entered into two versions of the Construction Contract; the fact that ADCB was shown the ADCB version; and the arrangement that Mr Awad was purportedly to be rewarded by 3AM for his skillful and successful negotiations through an arrangement involving CCC?
162. The two versions of the Construction Contract, though at first sight suspicious, seem to me explicable, as is the fact that only the ADCB version was presented to ADCB. The two versions served different purposes: the contractor's version recorded what was being paid to CCC for the construction work, whereas the ADCB version showed ADCB what would be spent on the Project (in addition to the price paid for the Land) that it was financing. ADCB would have wanted to see the contractor's version only if it would not have accepted that payments under the Fee Agreement should be included in the costs that it was to finance as to 70%. What I find more puzzling is why the parties involved CCC in an arrangement to reward Mr Awad for his negotiating skills and their success, if not as part of a plan to mislead ADCB.
163. However, the Defendants never developed their case in this way (either in these proceedings or in the on-shore proceedings). Mr Alhosani did not give evidence in support of the Defendants' case, and there is no oral evidence about discussions with ADCB about the facility. No case of this kind was put to Mr Awad when he was cross-examined. It is well established that in English law "*cogent evidence is required to justify a finding of fraud or other discreditable conduct*": *Jafari-Fini v Skillglass Ltd [2007] EWCA Civ 261*, at para. 73 per Moore-Bick LJ; and that principle is to be adopted in this Court.
164. Unless the Defendants' pleaded case is developed as I have contemplated, I would reject it: to my mind, it would otherwise provide no compelling reason not to take the Fee Agreement at its face value and not to accept that Mr Awad is entitled to credit for the payments under it that he channeled to Awad and so to meet Project expenditure. I have found it more difficult to decide whether I should depart so far from the adversarial process as to entertain the case which I see as implicit in the Defendants' contentions. As I have said, it is sometimes the duty of the Court, where the facts before it appear to raise a question of illegality, to examine of its own motion how it impacts upon the claims before it. However, I have decided that in this case it would be wrong to do so, despite my disquiet. Firstly, there are no sufficient grounds for supposing that ADCB would not have accepted that the payments to Mr Awad under the Fee Agreement should be included in the Project costs of which it was to finance some 70%. The Court should not entertain mere suspicions of illegality: it should become concerned about illegality of its own motion only where there is a sound factual basis for doing so. Secondly, more generally, in the end the hypothesis that has troubled me goes beyond the proper limits of inference and is a matter of speculation. Thirdly, it would be unfair to draw inferences of this kind against Mr Awad without him having had a full opportunity at the trial to answer them in cross-examination on behalf of the Defendants.
165. I add that, in any event, it is not clear that, even if ADCB was deceived, it would provide the Defendants with an answer to this part of Mr Awad's case. Despite the guidance of the United Kingdom Supreme Court in *Patel v Mirza [2016] UKSC 42*, the law about when illegality affects



contractual claims is not straightforward and remains difficult to apply; and the guidance is not to be applied in what was called a “*mechanistic process*” by Lord Lloyd-Jones JSC in *Stoffel and Co v Grondona [2020] UKSC 42*, at para. 26. The Defendants would have faced real difficulties in advancing an argument (had they sought to do so) that effect should not be given to the terms of the Fee Agreement because it is part of an improper scheme to which the Defendants themselves were parties, and, indeed, might be said to have been the principal parties in so far as Mr Alhosani and 3AM dealt with ADCB in respect of securing the facility for the Project.

166. I therefore decide the Contribution Issues in Mr Awad’s favour, and I accept that his contributions to the Project were AED 379, 782,054.10 in total, whereas those to be accredited to 3AM were only AED 45,666,776.90; and that therefore, 3AM would need to pay Mr Awad AED 167,057,638.60 in order for their contributions to be equal.

The Defendants’ Complaints Issues

167. In these proceedings, unlike in the ADJD proceedings, 3AM has not brought a counterclaim against Mr Awad. Neither has Mr Alhosani. They allege that he has made no contribution to the Project, either by way of contribution to the purchase of the Land or to the costs of construction, but that complaint is not presented as a breach of the LIC, and in any case, I have rejected it.
168. The Defendants plead other complaints against Mr Awad, presumably on the basis that they in some way provide a defence to Mr Awad’s claims. Although I do not understand quite how they might do so, I shall deal with them briefly.
169. First, it is said that Mr Awad, in his capacity as a partner in Etan, failed to notify 3AM that CCC was in default in carrying the construction work and that its work did not justify the payments made to it. No evidence supports this allegation or the contention that Mr Awad was at fault in this regard. On the contrary, the Defendants’ witnesses, Mr Afifi and Mr Tareef, both gave evidence that Mr Afifi “*was following up*” every phase of the Project, and “*follow[ed] up carefully all stages of the Project implementation from the design stage to the completion of the construction project*”. Further, it is difficult to reconcile this complaint with Mr Alhosani’s letter to ADCB of 29 July 2020, in which he wrote that Mr Awad “*made every effort to complete the project*”: see para. 87 above.
170. I add for completeness that Mr Awad pleaded in his Reply that this complaint against him is inconsistent with a ruling whereby 3AM was ordered to refund to CCC AED 14 million under a liquidated guarantee that it provided. I have no information about the ruling, but it is referred to in ADCB’s letter of 19 April 2023, and it is said to have “*confirm[ed] the accuracy of the payments issued [to CCC]*” and to refute the Defendants’ complaint. The Defendants did not engage with this response, but I am not persuaded by it: it is not clear on what basis CCC’s liability under the guarantee was determined. But for other reasons, I reject this complaint against Mr Awad.
171. Next, the Defendants have pleaded that Mr Awad “*transgressed by paying bribery ... by an amount of 500,000 AED*” to a Mr Adnan Al Saadi of ADCB’s engineering department “*for the purpose of facilitating payments provided by [ADCB]*”. They allege that, when Mr Alhosani reported this to ADCB, the bank has “*separated [Mr Al Saadi] from his service*”.
172. Rather strangely, in support of this complaint, the Defendants rely on a schedule headed “*Payments to Mr Adnan Al Saadi*” which refers to payments totaling AED 650,000.00 relating to three projects: a single payment of AED 150,000 on 13 June 2012 that is said to relate to the Meera Tower project;



six payments between 13 June 2012 and 21 December 2016 to a total of AED 350,000 that are said to relate to the Al Jawhara Tower project; and five payments between 13 June 2012 and 27 April 2016 to a total of AED 150,000 that are said to relate to the Leaf Tower project. All the payments were made from Awtad's account with FGB. The pleaded complaint apparently relates to the payments in respect of the Al Jawhara Tower project and the Leaf Tower project, but not to the Meera Tower project. When I invited Ms Al-Ameri to explain this apparent curiosity, I was simply told that in fact the complaint was only about the payments relating to the Leaf Tower project (and not apparently about the Al Jawhara Tower project). This was an unsatisfactory presentation of a serious allegation of this kind.

173. However that might be, responding to the pleaded case, Mr Awad did not dispute that, between 2012 and 2016, Awtad made payments to Mr Al Saadi in the total amount of AED 500,000, being for AED 150,000 in respect of the Leaf Tower project and AED 350,000 in respect of the Al Jawhara Tower project. He pleaded that the payments were made *“for legitimate consultancy services, ensuring the feasibility studies met the bank’s requirements for financing approval”*. He disputes that the payments were made by way of bribes, and that Mr Al Saadi was dismissed by ADCB. Further, he says that the Defendants were aware of the payments by Awtad and that they did not object to them.
174. The principle that cogent evidence is required to justify a finding of discreditable conduct (see para. 163 above) applies to the allegation of bribery. No evidence supports the allegation made by the Defendants, still less cogent evidence. I reject the complaint.

The 3AM Breach Issues

175. Next, Mr Awad's case about 3AM's breaches of the LIC: he contends that, whereas he fulfilled his responsibilities in compliance with the LIC, 3AM did not do so. The pleaded allegations are inter-related, and the pleading is somewhat repetitive, but it is convenient to examine the allegations under four broad heads:
- a. First, Mr Awad alleges that 3AM did not comply with the LIC in that it failed to contribute funds on an equal basis, and it has refused to reimburse Mr Awad for the greater contribution that he had made;
 - b. Secondly, Mr Awad alleges that 3AM acted in breach of the LIC by *“taking control of the Project through a unilateral decision”*, and that he was excluded from management of the Project;
 - c. Thirdly, Mr Awad complains that 3AM improperly prevented sales of properties at the Leaf Tower; and
 - d. Finally, and related to the third complaint, Mr Awad complains that 3AM prevented him from selling *“his 50% share in the Leaf Tower”*.
176. Mr Awad makes other complaints that might not fall within these categories, but they do not add anything significant to his case. Further, when he opened Mr Awad's case, Dr Salman alleged that 3AM was in breach of the LIC in that it did not register Mr Awad's *“ownership share in the Project”*. This is not pleaded as a distinct breach on 3AM's part, but in any case, I have concluded that the LIC did not confer on Mr Awad any ownership rights in Leaf Tower.



177. Coming to the pleaded breaches, I have concluded that 3AM has not contributed the costs of the Project equally with Mr Awad. Mr Awad pleads that 3AM was in breach of the LIC “*by not adhering to their financial obligations under*” Clause 3(2), and he claims compensation from 1 January 2018 on the basis that 3AM should have reimbursed him accordingly by then. In support of this claim, Dr Salman cited Article 86 and Article 87 of the Federal Decree Law 50/2022 Promulgating the Commercial Transactions Law: “*Interests on delay of repayment of commercial debts shall accrue from the maturity date of such debts, unless otherwise provided by the Law or agreement*”; and “*A creditor may claim complementary compensation to be added to the delay interest if he proves that the damages in excess of said interest is caused by the debtor’s deception or serious error*”.
178. However, Mr Awad pleads that his “*decision to cover [3AM’s] share of the contributions required by the financing bank stemmed from an oral commitment to finance [3AM’s] contribution until the commencement of the Project’s unit sales*”. Mr Awad’s evidence was that it had been expected that sales would begin once that ownership of the Land had been registered (as it was on 31 May 2016), but, in fact, no units have been sold. Accordingly, 3AM’s obligation to reimburse him has not yet accrued due. Mr Awad’s submissions did not engage with this difficulty in his case.
179. In English law, and so ADGM law, 3AM could not have relied on the fact that there have not been sales to answer Mr Awad’s claim if it had wrongly prevented them. Mr Awad did not advance an argument of this kind, I was not addressed on relevant UAE law, and I would consider it unfair to the Defendants in these circumstances to uphold Mr Awad’s case on the basis of a presumption that UAE law is the same as ADGM law. In any case, as I shall explain, I am not persuaded that 3AM wrongly prevented sales from taking place: see para. 184 below.
180. I come to Mr Awad’s second complaint of breach. Under Clause 3(3) the LIC, Mr Awad was to be responsible for “*the financial and technical management*” of the Project, for “*supervising the execution and construction of the buildings of the ... Project agreed upon between*” Mr Awad and 3AM, and for the “*management, investment, utilization and leasing of the buildings in accordance with the policy agreed upon with [3AM]*”. Mr Awad pleads that Mr Alhosani and 3AM asserted control over the Project in the email of 27 December 2017. Taken in isolation, the email does not make out his complaint: it is headed “*letter for ADCB to review*”, and it refers to a letter to ADCB that he was inviting Mr Awad to review: the draft letter is not in evidence. The remainder of the letter might, perhaps generously to Mr Alhosani, be read as simply a proposal that he assumes responsibility for completing the Project and assuming financial liability for the remaining work.
181. However that might be, I accept Mr Awad’s evidence that, by the first quarter of 2018, 3AM was entirely excluding him from both financial and technical decisions about the future of the Project. It closed down the operations of Awtad: its bank account with FGB was closed, 3AM refused to renew its licence to conduct business, and by 1 May 2018. Its power of attorney to act for 3AM had been cancelled. Mr Awad’s request that he be given a power of attorney in compliance with Clause 6(2) of the LIC so as to enable him to manage the Project was ignored or refused. Further, without Mr Awad’s involvement or consent, 3AM undertook the Conversion Work in 2021, having arranged further finance with ADCB.
182. I accept that 3AM acted in breach of the LIC by taking over the management of the Project in this way and by preventing Mr Awad from fulfilling his managerial responsibilities. It is a “*positive rule of [English] law of contract that conduct of either promiser or the promisee which can be said to amount to himself “of his own motion” bringing about the impossibility of performance is in itself*



a breach”: *Southern Foundries (1926) Ltd v Shirlaw [1940] AC 701*, 717 per Lord Atkin. I cannot believe that UAE law is different from English and ADGM law in this regard, and the principle seems to accord with Article 246 of the Civil Code. Here, I can properly presume that UAE law is materially the same as ADGM law, and no party suggested otherwise.

183. Thirdly, Mr Awad contends that, by refusing to issue him with a power of attorney, 3AM “obstructed [his] ability to sell the building or its parts”; and he gave evidence that 3AM “refused to make any sale”. He explained (in answer to leading questions in re-examination) that 3AM had “an opportunity to sell the whole project in 2016 once the land payments completed”. It is pleaded in general terms that, because the Defendants prevented “the sale of the Project”, they “deprived [Mr Awad] of benefiting from the rise in real estate prices, as the prices fell to more than 50%” to 7 March 2024, the date of the Particulars of Claim. It is also pleaded that, because Mr Alhosani seized control of the Project, there was a “failure in renting 60% of the tower area ... for more than 6 years, resulting [in] huge losses in the tower returns”. In the Alhosani Liability Particulars, Mr Awad pleads that the “[d]amages due to prevention to sell the project” amounted to AED 350,000,000 (or US\$ 95,302,927), but it is not explained how that sum is calculated, and there is no quantification of the claim in the pleading against 3AM.
184. The LIC provided that 3AM and Mr Awad should “be entitled to agree to sell the Investment Project during the validity period of the provisions of this Contract, including the land on which the project is constructed”: Clause 12(1). It also provided that Mr Awad should “lease or sell the premises or parts thereof within the policy agreed upon by [3AM and Mr Awad]”: Clause 7(7). Clause 3(3) provided that Mr Awad should “assume ... the ... utilization and leasing of the building in accordance with the policy agreed upon with [3AM]”. Mr Awad pleaded that 3AM’s refusal to sell units “as initially planned” was a departure from “the agreed-upon sales plan”; but there was no evidence, and I was given no other information, about what the plan was. I am not in a position to find that the Defendants failed to effect sales or lease property in breach of an agreed plan, and therefore I am unable to uphold the complaint that 3AM was in breach of the LIC in that regard.
185. Mr Awad relies on Mr Alhosani’s letter of 5 April 2018 as evidence that the Defendants prevented him from selling his interest in Leaf Tower. This is because Mr Alhosani wrote that ADCB had “rejected the principle of selling half of Leaf Tower project, so your share cannot be sold to third party unless I sell my share as well”. There is no evidence that Mr Awad had any dealings with ADCB, and he had no evidence that the letter misrepresented ADCB’s position. Mr Awad was not entitled to assign his rights under the LIC: Clause 13(3) provided that “[t]his Contract is related to the personality of its two parties, and neither party shall be entitled to assign its obligations and/or its duties and/or rights arising under this Contract, except after the consent of the other party”.
186. I therefore uphold Mr Awad’s contention that 3AM acted in breach of the LIC in that it took control of the Project, and excluded Mr Awad from his responsibilities, not least by closing down Awtad’s operations. Otherwise, I reject the complaints of breach of the LIC.
187. This leads to the questions as to what remedy, if any, I should order in respect of the breach of the LIC that I have found. Among the remedies that Mr Awad seeks are these: an Order that the Defendants “[i]ssue and, upon expiration, renew a power of attorney to [Mr Awad], granting all authorities as detailed in the [LIC] in line with [Clause 6(2)]”; and an Order that the Defendants “[e]stablish a joint bank account between [Mr Awad] and [3AM], managed by [Mr Awad]” in accordance with Clause 8(1) of the LIC. He also seeks an Order that the Defendants should bear the costs of the Conversion Work. His claim for compensation appears to be made on the basis



that he contributed more than half of the Project expenditure, and there is not a claim for compensation for loss resulting from being excluded from the Project.

188. I shall hear submission about what relief I should order when I have issued this Judgment. I shall need persuading that I should order relief about a power of attorney and a bank account. Such orders of specific performance do not seem appropriate, especially if a receiver were to be appointed.

The Alhosani Liability Issues

189. Mr Alhosani is not, *prima facie*, liable in respect of 3AM’s breaches of contract. However, in some circumstances, UAE Law imposes liability on the manager of a limited liability company (such as 3AM). Article 84 of the Commercial Companies Act provides as follows: “*Every manager of the Limited Liability Company shall be held liable vis-à-vis the Company, the partner and third parties for any fraudulent acts committed by such manager. He shall also be liable for any losses or expenses incurred by the company due to improper exercise of the powers or violation of the provisions of any law in force, the MOA of the Company or the appointment contract of the manager or for any gross error committed by the manager. Any provision in the MOA or the appointment contract of the manager in conflict with the provisions of this Clause shall be null and void*”. There is no dispute that Mr Alhosani is, and was at all relevant times, a “*manager*” of 3AM within the meaning of Article 84.
190. The focus of the dispute is whether Mr Alhosani acted fraudulently within the meaning of the first sentence of Article 84, as Mr Awad alleges, although the Reply also referred to liability for “*improper exercise of powers, violation of laws, or gross errors*”. Mr Awad developed the case in the Alhosani Liability Particulars, alleging that Mr Alhosani had acted fraudulently in that:
- a. he entered into the LIC with the intention of defrauding Mr Awad;
 - b. he failed to reimburse, or have 3AM reimburse, Mr Awad for his “*overpayment*” of contribution towards the Project;
 - c. he prevented Mr Awad from “*sell[ing] the Project*”;
 - d. he falsely claimed that ADCB “*opposed the idea of [Mr Awad] selling his share [of the Leaf Tower project]*”;
 - e. he assumed control over the administration and financing of the Project;
 - f. he refused to register with the municipal authorities Mr Awad’s “*share of the Leaf Tower*”; and
 - g. he modified the plans for the Project.
191. Mr Awad pleaded in the Alhosani Liability Particulars that this conduct on the part of Mr Alhosani caused him financial harm, and that 3AM and Mr Alhosani should both be liable to compensate him. His claims against Mr Alhosani are for AED 167,057,638.60 to compensate for paying more than his equal of contribution to the Project, for AED 100,234,583 for “*loss of profit*” and for AED 350,000,000 by way of “[d]amages due to prevention to sell the project”.



192. In order to establish Mr Alhosani’s liability, Mr Awad has to show fraudulent or other improper conduct on the part of Mr Alhosani, and to do so with cogent evidence: see para. 163 above. It is not enough for him to prove that Mr Alhosani caused 3AM to be in breach of the LIC or otherwise to incur liability to Mr Awad, and dishonesty, an ingredient of fraud, is not to be inferred from facts equally consistent with honesty: see, for example, *Portland Stone Firms Ltd v Barclays Bank Plc [2018] EWHC 2341 (QB)*, at para. 26 per Stuart-Smith J. The conclusions that I have already reached when considering the allegations against 3AM dispose of many of the claims against Mr Alhosani, and I can deal with them quite briefly.
193. The first allegation is that, when Mr Alhosani entered into the LIC on behalf of 3AM, his “*hidden intention was to acquire the whole project alone and exclude [Mr Awad] after getting the financial contribution of [Mr Awad] and completing the construction phase*”. The sole pleaded grounds for this allegation are: (i) that, after the completion certificate was issued, Mr Alhosani took over administration of the Project and its finances, and excluded Mr Awad from them; and (ii) that in these proceedings Mr Alhosani has described the LIC as a mere “*memorandum of understanding*” and disputed its enforceability as a contract. These allegations do not support an allegation that Mr Alhosani had dishonest intent when the LIC was made, rather than, for example, that he lost faith in Mr Awad after 2008. I reject this allegation against Mr Alhosani.
194. I also reject Mr Awad’s allegation that Mr Alhosani was dishonest, or acted fraudulently, because Mr Awad has not been reimbursed for contributing more to the Project than 3AM. It is pleaded that, in this way, Mr Alhosani was guilty of “*a clear financial exploitation and an unjust enrichment of [Mr Alhosani] at [Mr Awad’s] expense*”. By the fraud, it is said, Mr Alhosani “*knowingly benefited of [Mr Awad’s] investment while attempting to claim sole ownership of the Project and denying [Mr Awad’s] participation*”. This complaint cannot be sustained in view of my conclusion that the obligation for 3AM to reimburse Mr Awad in respect of his excess contribution has not accrued due. I cannot see any proper basis for concluding that Mr Alhosani was dishonest in not reimbursing Mr Awad earlier, or in not arranging for 3AM to do so.
195. I need say no more about the allegations that Mr Alhosani prevented sales or prevented Mr Awad from selling his interest in the Project. Having rejected Mr Awad’s argument that he had *in rem* rights to the Land or the building on it, I also reject the complaint that Mr Alhosani acted fraudulently by refusing to register with the municipal authorities Mr Awad’s “*share of the Leaf Tower*”.
196. That leaves the complains that Mr Alhosani acted fraudulently in that he and 3AM assumed control over the administration and financing of the Project, and undertook the Conversion Work without Mr Awad’s agreement. I have concluded that, in these respects, 3AM acted in breach of the LIC. However, this does not mean that Mr Alhosani acted fraudulently in the sense of deceit, or that he acted otherwise dishonestly. I cannot accept that Article 84 of the Commercial Companies Act is engaged whenever a manager causes a company, for which he acts, to break a contractual obligation, even if he does so deliberately. An additional element by way of fraud, abuse of powers, violation of a law or gross error of breach of a law is required. In my judgment, Mr Awad has not proved that Mr Alhosani was dishonest. I did not understand him to put the case on any other basis: he pleaded in the Alhosani Liability Particulars that his position is that Mr Alhosani “*having committed these fraudulent acts as both a manager and a partner, should be fully and equally [with 3AM] accountable for the losses incurred*”; and certainly he developed no case on the basis of abuse of powers, violation of a law or gross error.



197. Further, the compensation that it sought by Mr Awad in the Alhosani Liability Particulars is in respect of 3AM not paying half the Project expenses and in respect of the lack of sales. They identify no loss as resulting from Mr Alhosani taking control of the Project or undertaking the Conversion Work.
198. I reject Mr Awad’s submission that Mr Alhosani is liable to him under article 84 of the Commercial Companies Act.
199. Mr Awad had an alternative argument that Mr Alhosani should be held personally liable to him. He relies on Mr Alhosani’s position as “a majority partner” in 3AM and its director, and said that Mr Alhosani has “consistently blurred the lines between his personal and business dealings”: for example, as Dr Salman submitted, he used personal cheques to discharge corporate liabilities and used his personal email address for company matters. He submitted the Court should pierce the corporate veil and hold Mr Alhosani personally liable for his loss and damages.
200. Under the principles of English law, which are adopted in the ADGM, the doctrine of piercing the corporate veil is reserved for quite exceptional cases, and is confined to circumstances where a person is under an existing legal restriction which he deliberately evades or the enforcement of which he deliberately frustrates by interposing a company under his control: see *Halsbury’s Laws of England*, Vol 14 (5th Ed, 2023), at para. 121, citing *Prest v Petrodel Resources Limited* [2013] UKSC 34. *Gower Principles of Modern Company Law* (11th Ed, 2021), at para. 7-018 observes that in that case Lord Neuberger “could not identify a single instance where the doctrine of piercing the corporate veil had been invoked properly and successfully. Perhaps more significantly, it seems that the majority [of the Supreme Court Judges] (and perhaps even the minority), while wishing to retain the power to pierce, could not envisage circumstances that come within the test which would warrant the piercing of the corporate veil under the special company law rule where the desired outcome would not already have been delivered by alternative orthodox analyses under the general law that exposed the company’s controllers to personal liability”.
201. This case is far removed from circumstances in which ADGM law would permit the corporate veil to be pierced, and I am not persuaded that the law of the UAE is significantly more liberal in permitting it. On the face of it, it would be surprising if a manager were held liable on the basis that the corporate veil might be pierced in circumstances which are not within Article 84 of the Commercial Companies Act. Certainly, there are exceptional cases but the general rule is clear. The Abu Dhabi Court of Cassation explained in Cases 335/2019, 863/2019 and 871/2019 (19 November 2019) that:
- “... as a general rule, the liability of partners in a limited liability company is limited to their shares in the company’s capital, without affecting their personal assets and without joint liability among them. Therefore, the creditors of the company cannot pursue the partners personally, as long as the company is ongoing. This liability is absolute and applies to the relationship between the parties themselves and their relationship with the third parties. The limited non-joint liability is a distinguishing feature of such companies, as opposed to partnerships where the partners are personally and jointly liable with one another for the company’s debts and obligations. An exception to this rule exists where creditors may pursue a partner’s personal assets and hold them liable when it is proven that the partner used the principle of the company’s separate legal personality from the partner’s assets as a means or shield to commit fraud or deceit, particularly*



in dealings with creditors or in the misappropriation of the company's assets, thereby depriving the creditors of their rights".

202. Mr Awad has not persuaded me that this case falls within the exception described by the Abu Dhabi Court of Cassation or that it is a proper case to pierce the corporate veil.
203. I reject this alternative basis on which Mr Awad put his claims against Mr Alhosani.

Conclusions

204. I summarise my main conclusions as follows:
- a. the LIC is a binding and enforceable contract;
 - b. upon the true construction of the LIC, Mr Awad did not acquire *in rem* rights to the Land or Leaf Tower;
 - c. Mr Awad has contributed towards the Project more than 3AM, and under the terms of the LIC he is therefore entitled to be reimbursed AED 167,057,638.60. However, his entitlement to be reimbursed has not yet accrued due;
 - d. 3AM has breached its contractual obligations by assuming control of the Project and excluding Mr Awad from its management, in the way that I have described;
 - e. I reject the claims against Mr Alhosani; and
 - f. I reject the limitation defence.
205. I shall invite further submissions at a future hearing about what relief I should order to give effect to this Judgment, including whether I should appoint a receiver of the Project and if so on what terms. I shall invite the observations of ADCB about whether a receiver should be appointed.
206. I shall deal with costs and any other consequential matter at a further hearing.



Issued by:

Linda Fitz-Alan
Registrar, ADGM Courts
7 March 2025