



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 0009
Before:	Justice Sir Andrew Smith
Decision Date:	13 May 2025
Decision:	<ol style="list-style-type: none"> 1. The First Defendant shall pay the Claimant's costs, excluding the Success Fee and VAT thereon, assessed on the standard basis in the amount of AED 437,069.06. 2. The Claimant is granted liberty to restore his costs application in respect of the Success Fee and VAT thereon.
Hearing Date:	6 May 2025
Date of Order:	13 May 2025
Catchwords:	Observing procedures for costs applications. Assessment of costs on the standard basis. Whether success fee recoverable.
Legislation and Other Authorities Cited:	ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015, section 49 ADGM Court Procedure Rules, rr 195, 197(1), 198, 200(1)
Cases Cited:	Turcon v Assaf and anor [2025] ADGM CFI 0002 Excelsior Commercial and Industrial Holdings Ltd [2002] EWCA Civ 879
Case Number:	ADGMCFI-2024-045
Parties and Representation:	Dr Mohammed Haitham Salman of Middle East Alliance Legal Consultancy LLC for the Claimant. Ms Fatima Salem Al-Ameri and Mr Muhannad Adel Khudair of Fatima Salem Al-Ameri Advocates and Legal Consultants for the Defendants.

JUDGMENT

1. On 7 March 2025, I issued my judgment in these proceedings (the “**Judgment**”), following the trial of the claims on 20, 21 and 22 January 2025. At a hearing on 6 May 2025, I heard submissions about (i) what relief I should order to give effect to the conclusions in the Judgment, and (ii) costs of the proceedings to date. By an order dated 8 May 2025 (the “**Order**”), I made certain declarations and orders about the claims and adjourned to a further hearing consideration about other relief, specifically about the claims made by the Claimant, Mr Faysal Mohamed Awad for “*injunctive relief, specific performance and/or the appointment of a receiver*”. I said that I would issue a separate judgment about costs.
2. At the hearing on 6 May 2025, Dr Mohammed Haitham Salman of Middle East Alliance Legal Consultancy LLC (“**MEALC**”) made submissions on behalf of Mr Awad, and Ms Fatima Salem Al-Ameri made submissions on behalf of the two Defendants, 3AM Property Investment Company LLC (“**3AM**”) and Mr Adel Abdulhameed Ibrahim, Abdulla Alhosani. I also invited, and received, submissions from Mr Tony Beswetherick KC on behalf of Abu Dhabi Commercial Bank PJSC (“**ADCB**”), which, as will be



apparent from the Judgment, has a substantial financial interest in the property known as Leaf Tower, the development of which gave rise to the disputes between Mr Awad and the Defendants.

3. By the Judgment, I upheld many of the claims and complaints made by Mr Awad against 3AM, and by the Order, I made declarations and orders, including:

“The Land Investment Contract dated 23 October 2008 (the “LIC”) is a valid and enforceable contract between [Mr Awad] and [3AM].”

“[Mr Awad] contributed AED 379,782,054.10 towards the Investment Project (as defined in the LIC), and he will be entitled to recover from [3AM] AED 167,057,638.60 in respect thereof upon the debt for it accruing due”.

“[3AM] has acted in breach of the LIC in that it has prevented [Mr Awad] from assuming financial and technical management and fulfilling his responsibilities in accordance with clause 3(3) of the LIC”.

“The claims made by [Mr Awad] are not barred by limitation”.

4. However, I did not uphold all the complaints made against 3AM by Mr Awad: in particular, I rejected (i) his argument that he has a proprietary interest in Leaf Tower; (ii) his argument that he became entitled to recover in respect of his contributions to the project on 1 January 2018 and that he should be compensated for its late reimbursement; and (iii) his complaint that 3AM improperly prevented sales of properties at Leaf Tower. I also dismissed his claims against Mr Alhosani.
5. Mr Awad contends that the Defendants should be ordered to pay costs that he has incurred in respect of these proceedings in the sum of AED 4,090,990.16. Ms Al-Ameri advanced no submissions in opposition to this contention, and neither Defendant applied for costs. (Since Mr Alhosani had defeated the claims against him, I specifically asked Ms Al-Ameri whether he applied for his costs, and she replied that he made no application.)
6. As Justice Paul Heath KC recently explained in his judgment in *Turcon v Assaf and anor* [2025] ADGM CFI 0002, section 49 of the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 and rule 195 of the ADGM Court Procedure Rules 2016 (the “CPR”) “create a costs regime which involves the exercise of a broad discretion in a manner consistent with the criteria or principles set out in relevant rules or practice directions”, and the discretion is to be exercised judicially (loc cit at paras 11ff). In exercising its discretion, the Court’s starting point is normally the principle that “costs follow the event”: that the unsuccessful party is to pay the costs of the successful party. In my judgment, that is the proper starting point in this case.
7. Mr Awad was unsuccessful in his claims against Mr Alhosani, and he is not entitled to an order for costs against Mr Alhosani or to recover costs incurred in respect of the proceedings against Mr Alhosani.
8. Mr Awad achieved a considerable measure of success on the issues in dispute with 3AM. Not only was he successful in obtaining the relief set out in paragraph 3 above, but he defeated the complaints made against him by the Defendants: see paras 167ff of the Judgment. I regard him as the “successful party” in the proceedings against 3AM, and the starting point, therefore, is that he is entitled to recover costs. However, as I have said, he was not wholly successful, and I consider that this should be reflected in the award of costs that I make against 3AM. I therefore award Mr Awad only 75% of the costs that he incurred in respect of the claims against it.



9. The CPR provide that, when the Court makes an award of costs, the costs will be assessed either on the standard basis or on the indemnity basis (r.197(1)), and the assessment will be either be made summarily or upon a detailed assessment ordered by the Court (r.200(1)). Practice Direction 9 provides for statements of costs for summary assessment to be made on a prescribed form (Form CFI 36), and the procedure for a detailed assessment of costs (PD 9, sections D and E).
10. Mr Awad did not follow the procedure contemplated in the CPR. Instead, he simply stated in his submissions for the hearing on 6 May 2025 (the “**Submissions**”) that he sought an order for reimbursement of “*all legal costs, court fees, and professional expenses incurred in connection with these proceedings, in the total amount of AED 4,090,990.16 ...*”. This sum comprises:
 - a. Court filing fees for filing the Claim: US\$99,000 or AED 363,557.50;
 - b. Court fees for application and trial: US\$2,500 or AED 9,181.25;
 - c. Fees paid to MEALC for legal services and presentation in respect of the proceedings under the terms of an engagement letter dated 29 January 2024 (the “**Engagement Letter**”): AED 200,000; and
 - d. Value Added Tax (“**VAT**”) on the fees: AED10,000.

It also includes a success fee for MEALC to which Mr Awad agreed under the terms of the Engagement Letter (the “**Success Fee**”), calculated, on the basis of 2% of AED 167,057,638.60, to be AED 3,341,172.77 (this appears to be an arithmetical error for AED 3,341.152.77) “*in addition to any compensation amount paid to [Mr Awad]*”, and VAT on the Success Fee.
11. Costs applications should comply with the prescribed procedures, and the Court would be entitled to reject any claim for costs which does not do so. However, in the circumstances of this case and in the absence of any objection by the Defendants to the claim for costs presented by Mr Awad through the Submissions, I consider that it would be disproportionate to refuse Mr Awad costs for this reason, and I am prepared to treat the Submissions as making an application for summarily assessed costs (the “**Costs Application**”).
12. The Submissions state that the costs there identified “*were reasonably and necessarily incurred for the proper conduct of the claim and should be awarded in full*”. If this is intended to contend that costs should be assessed on the indemnity basis, I reject the contention. In this Court, as in England, essentially “*The question [whether to award indemnity costs] will always be: is there something in the conduct of the action or the circumstances of the case which takes the case out of the norm in a way which justifies an order for indemnity costs?*”: see *Excelsior Commercial and Industrial Holdings Ltd [2002] EWCA Civ 879* at para 39 per Waller LJ. Dr Salman identified no such conduct or circumstances in this case, and I consider there to be none.
13. Mr Awad’s costs are therefore to be assessed on the standard basis. Accordingly, I should allow only costs which are proportionate to the matters in issue, are reasonably incurred and are reasonable in amount; and any doubt as to whether costs are reasonably incurred, and reasonable and proportionate in amount are to be resolved in favour of 3AM: see CPR r.198. I note that Practice Direction 9 states at PD9.20 what costs are “*proportionate*” and at PD9.21 other matters to which the Court will have regard in relation to any assessment of costs. I have considered them, but it is not necessary to set out those provisions in this judgment.



14. It is convenient first to consider the application for costs in respect of the Success Fee, including the VAT on it. The Engagement Letter provides for Mr Awad to pay professional fees of AED 200,000 and “2% of any amount recovered from the Defendants in connection with [this case] or agreed-upon amount settled between the parties whichever is applicable” (emphasis added). Although I determined in the Judgment that Mr Awad is entitled to be reimbursed AED 167,057,638.60, I also determined that his entitlement to reimbursement has not accrued due. Mr Awad has not recovered any part of the sum of AED 167,057,638.60 from 3AM or Mr Alhosani. Nor has there been any relevant settlement. It is not for me to say anything here about Mr Awad’s prospects of recovering from 3AM his entitlement (or part of it): what matters for present purposes is that, as things stand, it is uncertain whether Mr Awad will be obliged to pay MEALC the Success Fee, and if so, in what amount.
15. It is therefore premature to determine this part of the Costs Application, and I shall not in this judgment award Mr Awad costs in respect of the Success Fee or the VAT thereon. Instead, I shall give him liberty to restore this part of the Costs Application if and when he has recovered an amount in connection with the proceedings or there is an “agreed-upon amount” by way of settlement. If the Costs Application is so restored, the Court will have to consider whether and in what circumstances costs in respect of Success Fee are recoverable.
16. I can deal shortly with the remainder of the Costs Application. The Court fees are proportionate, were reasonably incurred and are reasonable in amount. I am also in no doubt it was reasonable of Mr Awad to incur the costs of Mr Awad’s professional services and that fees of at least AED 200,000 (and the VAT thereon) are reasonable in amount and proportionate. I include them in the assessment of the costs. Any argument about whether it would be reasonable and proportionate for Mr Awad to recover both the fee of AED 200,000 and the Success Fee can best be considered if and when Mr Awad restores the Costs Application.
17. I therefore conclude that Mr Awad is entitled to be paid by 3AM in respect of his costs, AED 437,069.06, being 75% of AED 582,758.75 (the total of the Court fees, AED 200,000 and VAT thereon), and I give him liberty to restore the Costs Application in respect of the Success Fee and the VAT thereon.



Issued by:

Linda Fitz-Alan
Registrar, ADGM Courts
13 May 2025