



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**

PROJECO CONTRACTING (L.L.C.)
CLAIMANT

and

IDEACRATE EDUTAINMENT COMPANY – L.L.C – O.P.C
DEFENDANT

JUDGMENT OF JUSTICE PAUL HEATH KC



Neutral Citation:	[2025] ADGMCFI 0026
Before:	Justice Paul Heath KC
Decision Date:	30 October 2025
Decision:	1. By no later than 4.00 pm on 6 November 2025, the Defendant shall return the Security Cheques to the Claimant. 2. The Injunction Order shall continue and will remain in force until the Security Cheques have been returned to the Claimant. 3. Judgment is entered in favour of the Claimant for the following amounts: (a) AED 10,500.96 in relation to the principal sum awarded (the “Principal Sum”); and (b) AED 877.48 in relation to pre-judgment interest on the Principal Sum calculated at the rate of 5% per annum from 29 February 2024 to the date of this Order; and (c) post-judgment interest on the Principal Sum to be calculated at the rate of 5% per annum from the date of this Order until payment. 4. There shall be an order nisi that there is to be no order as to costs, such order to become absolute if no request for reconsideration of the order nisi is made by 4.00 pm on 13 November 2025. 5. Liberty to apply.
Hearing Date(s):	16 and 17 June 2025
Date of Orders:	30 October 2025
Catchwords:	Construction delay claim. Delay penalty payment. Liquidated damages. Prolongation Costs. Substantial Completion of Works. Practical Completion of Works. Applicable law and forum (lex fori). Withdrawal of admission under r. 42 of ADGM Court Procedure Rules 2016. Costs of remediation and repairs. Set-off of claims and counterclaims under ss. 181 and 182 of the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015.



Legislation Cited:	UAE Federal Decree Law No. (35) of 2022 Promulgating the Law of Evidence in Civil and Commercial Transactions UAE Federal Law No. (5) of 1985 concerning the Issuance of the Civil Transactions Law Abu Dhabi Law No. (4) of 2013 as amended by Abu Dhabi Law No. (12) of 2020 ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 ADGM Court Procedure Rules 2016 UK Civil Procedure Rules 1998
Cases Cited:	Cassation Court of Abu Dhabi, Session 30/3/2017 (Commercial), Principal No. 815, 818 Cassation Court of Abu Dhabi, Session 26/12/2013, Principal No. 563 Appeal No. 563 of the year 2013, Commercial Cassation No. 7 (26 December 2013). Awad v 3AM Property Investment Co LLC [2025] ADGMCFI 0003 Cavendish Square Holding BV v Wel Makdessi [2016] 2 All ER 519 (UKSC) Mears Ltd v Costplan Services (South East) Ltd [2019] EWCA Civ 502. Moore v Worcestershire NHS Trust [2015] EWHC 1209 (QB). Marsden v Marsden [1972] 2 All ER 1162 (Fam)
Case Number:	ADGMCFI-2024-320
Parties and representation:	Claimant Mr. Muhammed Salah and Mr Fawad Muslim, Jassim Al Suwaidi Advocates & Partners Defendant Mr. Anthony Wilson, Hessa Al Hammadi Advocates & Legal Consultants



JUDGMENT

Introduction

1. On 16 December 2022, Ideacrate Edutainment Company LLC – OPC (“**Ideacrate**”) entered into a contract (the “**Contract**”)¹ with Projeco Contracting (LLC) (“**Projeco**”) to complete a fit-out for the Orange Hub Family Entertainment Centre (“**Orange Hub**”), located at Al Forsan Central Mall (the Mall), in Khalifa City, Abu Dhabi.² The contract price was AED 5,158,987³. Projeco and Ideacrate agree that additional work was undertaken by Projeco that increased the contract price to AED 6,085,211.90 (the “**Adjusted Contract Price**”).
2. There are disputes between Projeco and Ideacrate as to whether further adjustments are required to establish whether one owes any moneys to the other. Ideacrate has already paid to Projeco a sum of AED 5,318,924.75. It has withheld, from the Adjusted Contract Price, a sum of AED 766,287.15.
3. Projeco claims that it is entitled to receive an additional payment of AED 137,000, representing costs and losses it has suffered arising out of alleged delay on the part of Ideacrate in the handover of the project (the “**Prolongation Costs**”). If Projeco were successful in establishing an entitlement to the Prolongation Costs, it claims that Ideacrate is liable to pay a sum of AED 903,287.15 to it. That is the amount for which it seeks judgment⁴, together with interest and costs.
4. Ideacrate has brought a Counterclaim against Projeco which, it contends, extinguishes any amount payable to Projeco and results in a net balance owing by Projeco to it. There are three aspects of the Counterclaim. Ideacrate contends that Projeco:
 - a. was responsible for delays in completing the project which have triggered the liquidated damages provisions of Clause 13 of the Contract.⁵ On the basis of an alleged delay of 189 days, calculated at AED 10,000 per day with a maximum equating to 10% of the Contract value,⁶ a total of AED 608,521⁷ is sought; and
 - b. is liable to pay
 - i. a sum of AED 55,336, in respect of alleged remediation and repair costs;⁸

¹ The relevant terms of the Contract are set out at paragraphs 7–19 below.

² According to a letter from Projeco to Ideacrate dated 20 December 2022, the Contract was signed by Projeco on 16 December 2022 but had not been returned in executed form by Ideacrate as at that date. However, there is no dispute that the Contract provides the terms governing the parties’ relationship.

³ All amounts are inclusive of VAT.

⁴ Additional claims are made in respect of the return of Security Cheques that Projeco has provided to Ideacrate, (the total value of which is AED 1,547,696.37).

⁵ See paragraph 18 below. Although Clause 13.3 refers to “liquidated damages/ delay penalty”, by reference to Clause 13.2, it is accepted that the claim is for liquidated damages. No penalty component is included in the amount claimed, meaning that English law (for example, *Cavendish Square Holding BV v Wel Makdessi* [2016] 2 All ER 519 (UKSC)) on the topic of penalty Clauses does not apply.

⁶ Clause 13.2 of the Contract, set out at paragraph 18 below.

⁷ See paragraph 62.a below.

⁸ See paragraph 62.c below.



- ii. an amount of AED 147,265⁹ which, it submits, was not paid by Projeco under a commercial arrangement into which the parties entered to procure third parties services to complete and install smoke management system work.
5. If Ideacrate were wholly successful in its Counterclaim (totalling AED 811,122) and in defending Projeco's Prolongation Costs claim, it seeks a net judgment in its favour of AED 44,834.85, plus interest and costs.
6. The substantive hearing took place virtually on 16 and 17 June 2025, with closing submissions made in writing on 18 July 2025. I commend both parties for the speed with which they were able to move to a substantive hearing following earlier injunction proceedings in January 2025. I regret the delay in giving judgment.

The Contract

7. On 30 September 2022, Ideacrate issued a "*Notice of Intent to Award Fitout Contract*" for an amount of AED 5,782,523, subject to further negotiation. This allowed Projeco, to which the contract was awarded, (at its own risk) to proceed to obtain initial approval from the relevant authorities. Ideacrate made an advance payment of AED 578,252.30 to Projeco on 20 October 2022.
8. Projeco registered the fit-out project with the Abu Dhabi Municipality ("**ADM**") on 29 October 2022. On 3 November 2022, Ideacrate sent an "*Appointment Letter*" to Projeco. Projeco submitted a programme of works (Rev.03) to Ideacrate on 23 November 2022.
9. Ideacrate and Projeco finalised the scope of work and contract price in a Bill of Quantities ("**BOQ**"). The BOQ fixed the contract price at AED 5,158,987. The BOQ was sent to Ideacrate on 30 November 2022. Three meetings were held to discuss and finalise the BOQ. They took place on 30 November 2022, 7 December 2022 and 15 December 2022.
10. The Preamble to the Contract records that Ideacrate was "*desirous of doing the turnkey interior fit-out of the [Orange Hub], [its] fit-out and interior decoration*" and that Projeco had "*represented that it [had] the requisite skill, experience, resources, and infrastructure to perform the Works*". There is no definition of the term "*turnkey*" in the Contract.
11. The Contract was signed by Projeco on 16 December 2022. Neither a BOQ nor a "*Construction Program*" was set out in its Schedules.¹⁰ Contemporaneously, on 16 December 2022, Projeco provided two undated security cheques (the "**Security Cheques**") to Ideacrate, in accordance with the terms of the Contract.¹¹ The Security Cheques were both signed but undated.¹² Their total value was AED 1,547,696.37.¹³
12. Clause 2.2 defines the term "*Works*" as meaning the "*turnkey interior fit-out of the [Orange Hub project], meaning fit-out and interior decoration ... as per the Scope of Work, Construction Program and [Bills of Quantities]*". As previously indicated, no "*Scope of*"

⁹ See paragraph 62.d below.

¹⁰ See paragraph 12 below.

¹¹ Contract, Clauses 5.4(iv) ("*Contract Price and Payment Terms*") and 12.1. ("*Performance Bond*"), set out at paragraphs 16 and 17 below.

¹² On 10 January 2025, I issued an interim injunction restraining Ideacrate from taking steps to present, encash and/or otherwise deal with the two Security Cheques pending further order of the Court: see paragraph 15 below.

¹³ See also paragraph 15 below.



Work”, “Construction Program” or BOQs were included in the Schedule or Appendices to the Contract, despite Clause 2.2 requiring them “to be set out in schedules attached to the Contract”.¹⁴ Yet, Clause 2.1(III) stated that the “Schedules and Appendices [were] an essential part of” the Contract.

13. Clause 4 of the Contract required the “Works” to be completed and the site handed back to Ideacrate within “5 calendar Months ... from the date of [the Contract] or within such extended period as may be agreed in writing by [Ideacrate]”. By reference to the date of the Contract (16 December 2022) the presumptive completion date was 15 May 2023. Projeco and Ideacrate agree that the completion date was subsequently extended to 15 August 2023. They disagree about whether there was a further extension to 15 November 2023.
14. Clause 5.1 fixed the contract price for the Works at AED 5,158,987, inclusive of costs identified in Clause 5.2. Clause 5.4(1) and (2) provided for a 10% advance payment against Security Cheques for the contract value and performance bond respectively.
15. One Security Cheque was for an amount of AED 1,031,797.58, which was issued upon the Contract being signed.¹⁵ The other was for AED 515,898.79, which was the “performance bond” required for the fit-out works.¹⁶ Ideacrate sought to encash both Security Cheques after Projeco had commenced this proceeding on 28 November 2024. On 10 January 2025, I granted an injunction in favour of Projeco to prevent Ideacrate from taking any steps to encash the Security Cheques pending further order of the Court.¹⁷ The injunction remains in force.
16. Clause 5.4(iv) deals with the topic of Security Cheques. It states:

“Upon project completion, [Projeco] will issue a security cheque equal to 5% of the contract value against the Defect Liability Period and the same shall be returned uncashed upon the completion of the said period.”

17. Clause 12 of the Contract deals with the performance bond:

“12. PERFORMANCE BOND

12.1 *To guarantee the completion of Works as per the terms of this Agreement, [Projeco] agrees to hand over [Ideacrate] upon signing of this Agreement, a security Cheque in the amount of 10% of total Contract Price, which shall remain valid throughout the term of the Agreement till the issuance of Taking Over Certificate. Cheque getting expired shall be replaced with new cheque of same value. [Projeco] hereby authorizes [Ideacrate] to en-cash the aforesaid cheque in case of any failure from [Projeco] to execute the Works and rectify the same as required by [Ideacrate] in accordance with the Agreement within the notice period.*

¹⁴ See paragraph 11 above.

¹⁵ Under Clause 5.4(vi) of the Contract, set out at paragraph 16 above.

¹⁶ Under Clause 12.1 of the Contract, set out at paragraph 17 above.

¹⁷ See paragraph 28 below.



12.2 *In the event [Projeco] shall for any reason become unable to, or fail in any way to, perform as required by this Agreement, [Ideacrate] may encash the cheque and adjust the amount which is necessary to recompense the losses (Adjusted amount”) whereafter if the Parties continue with the Agreement, a new cheque shall be issued in the amount of Adjusted Amount by [Projeco]. In the event [Projeco] failed to restore the performance bond to its full amount within ten (10) days, the entire amount of original performance bond shall remain forfeited to [Ideacrate]. Failure to restore the performance bond to its full amount shall be a material breach of Agreement.”*

18. Ideacrate claims penalty and/or liquidated damages (liquidated damages) under Clause 13 of the Contract for delays that it attributes to Projeco. Clause 13 states:

“13. ABANDONMENT/DELAY

13.1 *In the event [Projeco] abandons the Works, fails or delays to carry out any part of his obligation under this Agreement or fails or delays to rectify such abandonment, failure or delays within such further time as may be specified in a notice issued in this behalf by [Projeco], without prejudice to any other remedy, [Projeco] shall be at liberty to get the remaining Work done through another Contractor at the cost of [Projeco]. [Projeco] shall be liable for all losses, damages, expenses and costs in relation to the abandonment, delay, failure, error, default and/or negligence of the Works undertaken by [Projeco] and its delegates and shall be liable to fully indemnify [Ideacrate].*

13.2 *If [Projeco] delays the delivery of and fails to complete the Works within the Delivery Time as per Section 4, [Projeco] shall be liable to pay [Ideacrate] a delay penalty in the amount of AED 10,000/- Per Day for each day of delay subject to a maximum of 10% of the Contract Value.*

[Projeco] acknowledges and agrees further that, if there is a delay on the site handover after completion of Works which results in company being penalized by the Mall, such penalties will be recovered from [Projeco] to the extent such delays are caused or contributed by [Projeco].

13.3 *[Projeco] acknowledges that its failure to achieve completion of the Works within the timeframe mentioned in Section 4 will cause [Ideacrate] to incur substantial economic damages and losses of types and in amounts which are impossible to compute and ascertain with certainty as a basis for recovery by [Ideacrate] of actual damages, and that liquidated damages/delay penalty mentioned in Section 13.2 represent a fair, reasonable and appropriate estimate thereof the losses due to delays, which will be applied in the event of delayed completion without [Ideacrate]*



being required to present any evidence of the amount or character of damages sustained by reason thereof.” (Emphasis added)

19. Clause 13.2 of the Contract uses the term “Contract Value” to identify how the maximum amount of liquidated damages should be calculated. There is no definition of “Contract Value” in the Contract. Clause 5.4 of the Contract (dealing with the terms of payment) uses both “Contract Price” and “Contract Value” for that purpose. The “Contract Price” is defined by clause 5.1 of the Contract as AED 5,158,987 but clause 5.4(5) uses the term “Contract Value” for the purpose of determining the remaining 10% payable to the contractor after completion of all work. In this case, the parties agree that the value of the Contract was increased from AED 5,158,987 to AED 6,085,211.90 during its course. The latter is what I have called the “Adjusted Contract Price”. I am satisfied that is the amount against which the maximum amount of liquidated damages should be calculated.

Post-Contract events

20. By letter dated 20 December 2022, Projeco advised Ideacrate’s Project Manager, Mr Steve Ouseph, that it was “currently in delay” with regard to the issued programme of works, Rev.03,¹⁸ due to circumstances beyond its control. The letter stated:

“...

1. *BOQ – The BOQ approval was delayed due to value engineering and finally approved on 14/12/2022.*
2. *Contract – The contract value was agreed on approval of the BOQ and on the wording within the contract, this was signed by [Projeco] on 16/12/2022. Please note that this is yet to be signed by [Ideacrate] and returned to [Projeco].*
3. *Ride Information – Ride information was recently issued however it is still uncomplete for all rides, however [Projeco] now have sufficient information to progress their works.*
4. *[Ideacrate’s] trade license – Alterations where required for [Ideacrate’s] trade license which prevented acquiring the CIDF night working permit. The amended trade license was issued on 14/12/2022 and the CID permit was subsequently acquired by [Projeco] on 15/12/2022.*
5. *Structural information – To date all structural information has not been received in relation to the rides and the soft play area which is delaying the Abu Dhabi Municipality (ADM) submission and approval. As a consequence, the Abu Dhabi Civil Defense (ADCD) cannot be applied for as ADM approval is required before ADCD can*

¹⁸ See paragraph 8 above.



be submitted. The initial submission on 01/11/2022 was combined ADM and ADCD.

6. *MEP – We have put the Abu Dhabi Distribution Company (ADDC) on hold until all MEP details are 100% confirmed to avoid changes and re-applications in the future...”*
21. On 27 December 2022, Mr Muhammad Naseem (of Projeco) sent an email to Mr Ouseph attaching a revised programme of fit-out works (Rev.05). Mr Naseem advised that the plan was attached for Mr Ouseph’s review. He added that Sundays (including Eid holidays) were treated as non-working days in the programme.¹⁹
22. The Works were not completed by 16 May 2023. It is common ground that the parties agreed an extension of time for completion until 13 August 2023. Projeco asserted that an additional extension of time was granted until 15 November 2023. While that assertion was originally admitted in Ideacrate’s Defence and Counterclaim,²⁰ Ideacrate subsequently resiled from that position. By an order made on 7 July 2025, I determined that, for reasons that I would give later, Ideacrate should be held to its admission. My reasons are set out in this judgment.²¹ For the purposes of this judgment, I find as a fact that the parties did agree to extend the time for completion until 15 November 2023.
23. Projeco accepts that the Works (including any variations) were not completed until 29 February 2024, when the facility was handed over to Ideacrate. This date has been characterised by Projeco’s expert witness as the date of “*substantial completion*”, a term not used in the Contract.²² Ideacrate contends that additional work required to remedy incomplete or defective workmanship was not completed until 10 July 2024. For the purposes of its Counterclaim based on liquidated damages for delay, Ideacrate contends that 10 July 2024 is the relevant date for completion of the Works.

Structure of judgment

24. I deal with the issues that require determination in the following order:
 - a. First, I address questions of applicable law and forum.
 - b. Second, I give reasons for my earlier decisions that Ideacrate is bound by an admission made in its earlier pleadings.
 - c. Third, I analyse the issues that I need to determine to decide whether there should be any further change to the Adjusted Contract Price; namely:

¹⁹ This email was admitted in evidence, notwithstanding earlier non-disclosure. My reasons for admitting it are set out in paragraphs 31–33 below.

²⁰ See paragraph 6 of Ideacrate’s Defence of 24 December 2024 and paragraph 10 of its Counterclaim of 2 January 2025.

²¹ See paragraphs 34–61 below.

²² See paragraphs 96–99 below.



- i. Has Ideacrate established that Projeco caused a delay in completing the works which entitles it to receive a payment for liquidated damages, under Clause 13.2 of the Contract?
 - ii. Has Projeco established that it incurred further costs (including additional labour, supervision, administration and logistical costs) due to delays on the part of Ideacrate?
 - iii. Is Projeco liable to pay to Ideacrate the sum of AED 55,336, being the costs of remediation and repairs undertaken after handover on 29 February 2024?
 - iv. Is Projeco liable to pay to Ideacrate the sum of AED 147,265 being a contribution it is said to have agreed to make to the costs of completing and installing a smoke management system?
25. Having analysed those issues, I set out my conclusions on the claims and counterclaims, and make formal orders to determine the proceeding.

Applicable law and forum

26. Articles 23.7 and 23.8 of the Contract require any disputes to be “*finally settled by the Courts in United Arab Emirates*” and determined under the “*laws of Abu Dhabi and the Federal Laws of the United Arab Emirates*” (together, “**UAE law**”). Projeco’s claim was filed in the Court of First Instance of the Abu Dhabi Global Market (“**ADGM**”). The ADGM Courts are “*Courts of the United Arab Emirates*”.²³
27. Projeco is a Dubai legal entity, Ideacrate was established under the laws of ADGM. By application of Article 13(7)(a) of Abu Dhabi Law No. (4) of 2013 as amended by Abu Dhabi Law No. (12) of 2020 (the “**ADGM Founding Law**”),²⁴ the Court of First Instance of the ADGM Courts has “*exclusive jurisdiction*” to determine “*civil or commercial claims and disputes involving ... any of the Global Market Establishments*”. The term “*Global Market Establishment*” is defined by Article 1 of the ADGM Founding Law to include any company licensed to operate or conduct any activity within the ADGM. Ideacrate falls within that definition.
28. After Projeco had filed its claim in this Court, Ideacrate brought proceedings in the Dubai onshore courts (the “**Dubai Courts**”) to seek encashment of the Security Cheques.²⁵ Projeco sought an anti-suit injunction to restrain those proceedings. When granting that application and preventing Ideacrate from continuing those proceedings, I held that Ideacrate had, by filing a Defence on 24 December 2024 in the present proceeding,

²³ Abu Dhabi Law No. (12) of 2020, Amending Some of the Provisions of Law No. (4) of 2013 Concerning the Abu Dhabi Global Market, Article 13(1) which specifically states that the ADGM Courts “*shall be considered as courts of the Emirate*”.

²⁴ Abu Dhabi Law No. (4) of 2013, Article 13, as amended by Article 13 of Abu Dhabi Law No. (12) of 2020.

²⁵ See paragraph 15 above.



“submitted to the jurisdiction of [the ADGM] Courts before its enforcement case was registered in the Dubai Courts”.²⁶

29. Although, initially, Ideacrate challenged the jurisdiction of this Court, it has not pursued that objection. It participated fully in the substantive hearing. I hold that by entering a Defence and Counterclaim and contesting Projeco’s claim in this Court, Ideacrate has submitted to the jurisdiction of this Court.
30. While relevant to some procedural questions that I need to decide, ADGM law has no substantive application in the resolution of this dispute.

Procedural issues

(a) Admission of Projeco’s email of 27 December 2022

31. At the commencement of the hearing, I heard from counsel on whether an email sent by Mr Nassem (of Projeco) to Mr Ouseph (of Ideacrate) on 27 December 2022 should be admitted. Ideacrate seeks to rely on the email. Projeco opposes its admission.
32. The email is relevant to one of the dates from which it is said critical delay should be assessed. Mr Peter Huck, the expert called by Ideacrate, relies on the programme of fit-out works provided by Projeco to Ideacrate on 27 December 2022, Rev.05.²⁷ Mr Denis Rooney, the expert called by Projeco, has assessed critical delay from 23 November 2022, based on an earlier programme, Rev.03,²⁸ bearing that date.
33. I am satisfied that the email is relevant to determination of the baseline programme against which critical delay is to be measured. Projeco has not been taken by surprise. The email of 27 December 2022 is its own document. I rule that the email is admissible as probative of whether the baseline programme is recorded in Rev.03 or Rev.05.

(b) Withdrawal of admission of extension of time date

34. In its Defence and Counterclaim (filed on 24 December 2024 and 2 January 2025 respectively), Ideacrate admitted that the date for completion of the works had been extended to 15 November 2023. Ideacrate (without seeking permission to do so)²⁹ retracted that admission in its Amended Defence and Counterclaim, filed on 24 March 2025.
35. Mr Anthony Wilson, for Ideacrate, contended that the removal of this admission was no more than the correction of a prior error, the reasons for which are explained in subsequent witness statements made by Mr Abdul Muthalif and Mr Ouseph.
36. Mr Wilson submitted that Projeco was barred from relying on the original admission as it did not object to that amendment in the manner contemplated by an order that I had made

²⁶ Paragraph 5 of my Reasons for making the 10 January 2025 Order.

²⁷ See paragraph 21 above.

²⁸ See paragraph 8 above.

²⁹ See Rule 42(4) of the ADGM Court Procedure Rules 2016, set out at paragraph 39 below.



on 18 March 2025 (the “**March Order 2025**”). Relevantly, Orders 1-4 of the March Order 2025 (all dealing with amended pleadings) stated:

- “1. The Court grants the Defendant permission to file an amended Defence (the “Amended Defence”) and an amended Counterclaim (the “Amended Counterclaim”), on a provisional basis as set out in paragraphs 2 to 4 below.
2. By 4.00 pm on 24 March 2025, the Defendant shall file and serve the Amended Defence and Amended Counterclaim.
3. If the Claimant objects to any amendments in the Amended Defence and Amended Counterclaim on the basis that those amendments would prejudice the trial from taking place on the dates set out in paragraph 24 below, by 4.00 pm on 27 March 2025, the Claimant may apply to have those amendments struck out. (Any such application shall be listed for hearing on an expedited basis.)
4. If no application is made by the Claimant in accordance with paragraph 3 above, by 4.00 pm on 7 April 2025, the Claimant shall file and serve any Reply to the Amended Defence and an Amended Defence to the Amended Counterclaim.” (Emphasis added)

37. In paragraph 6 of the Defence filed on 24 December 2024, Ideacrate pleaded:

- “6. The contracting agreement that forms the basis of the present dispute was executed on 16 December 2022, under which the parties agreed that the plaintiff would complete the project within five months. Consequently, the completion date for the project was set for 13 August 2023. However, the plaintiff failed to meet this deadline. In response, the defendant granted an extension of three additional months, extending the completion date to 15 November 2023.” (Original emphasis)

38. Paragraph 12 of the Counterclaim filed on 2 January 2025 stated:

- “12. [Projeco] has caused significant financial loss to [Ideacrate] due to its delay in completing the works. As previously stated, the original completion date was set for 13 August 2023, with an extension to 15 November 2023. However, [Projeco] did not meet either of these deadlines.”

39. Mr Wilson relied on Rule 42 of the ADGM Court Procedure Rules 2016 (the “**Rules**”). He contends (by reference to rule 42(4)) that the March 2025 Order provided permission for the withdrawal of that admission.³⁰ Rule 42 of the Rules states:

³⁰ Although Abu Dhabi Law and the Federal Law of the United Arab Emirates applies to the Contract itself, ADGM Law applies to all procedural matters: see *Awad v 3AM Property Investment Co LLC* [2025] ADGMCFI-0003 at paragraphs 21 and 26. Counsel for Ideacrate relied also, as an alternative, on Article 16(2) of the UAE Federal Law of Evidence in Civil and Commercial Transactions



“42. Admissions

- (1) *Rule 109 deals with the procedure in relation to a notice to admit facts.*
- (2) *Where the only remedy which the claimant is seeking is the payment of money, the defendant may admit, by giving notice in writing in accordance with the relevant practice direction, liability to pay the whole or part of a claim for a specified amount of money or, where the amount is not specified, the whole amount or part only of that claim.*
- (3) *Where the defendant makes an admission as mentioned in paragraph (2), the claimant has the right to enter judgment for the amount of money for which liability has been admitted.*
- (4) *The court may allow a party to amend or withdraw any admission made by him on such terms as it thinks just.*
- (5) *Where the Court has entered judgment in relation to a part of a claim that has been admitted and the defendant has filed a defence in relation to part of the claim that has not been admitted, the Court shall proceed to determine that part of the claim.*
- (6) *Where the Court has entered judgment in relation to a part of a claim that has been admitted and the defendant has not filed a defence in relation to part of the claim that has not been admitted, the claimant may apply for default judgment on that part of the claim...” (Emphasis added)*

40. At the conclusion of the evidential phase of this proceeding, I indicated that I did not accept that the March 2025 Order gave the requisite permission to withdraw the admission. I said that I wished to consider whether, on a specific application made for the purpose, I should grant Ideacrate permission to withdraw its pleaded admission that an extension for the completion of the Works until 15 November 2023 had been given. In post-hearing directions issued on 18 June 2015, I ordered that:

- “1. *By 4.00 pm on 23 June 2025, the Defendant shall file and serve an application (the “Defendant’s Application”) seeking permission to:*
 - a. *withdraw any admission made in the Defence and Counterclaim in relation to the November 2023 Extension; and*

which states that: “*Admission shall not be admissible if it contradicts prima facie fact*”. I do not deal with that submission because I am satisfied that the ADGM Court Procedure Rules governs this issue.



- b. *rely on the August 2023 Extension as pleaded in the Amended Defence and Amended Counterclaim.*
2. *By 4.00 pm on 30 June 2025, the Claimant shall file and serve witness statement evidence in response to the Defendant's Application."*
41. Ideacrate made an application, under Rule 42(4) of the Rules.³¹ That post-hearing application relied on both the oral evidence given at trial by Mr Muthalif, and a further statement from the same witness dated 23 June 2025. Projeco opposed the application. A witness statement was filed by Mr Nicola Siotto in opposition.
42. Broadly, Ideacrate contends that it should be given permission to withdraw the admission because:
- the admissions, contained in both the Defence³² and Counterclaim,³³ were made by its former legal representation in terms contrary to the instructions conveyed to him by Mr Muthalif;
 - Projeco did not immediately object to withdrawal of the admission, which ought to have been apparent to it after it reviewed the Amended Defence and Amended Counterclaim that had been filed on 24 March 2025, following the March 2025 Order.³⁴ Instead, it continued to dispute Ideacrate's contention that the final extension date was 15 August 2023; and
 - serious prejudice would be caused to Ideacrate if the admission were not withdrawn. While the extension to 23 November 2023 is said to have been agreed between Mr Ouseph (on behalf of Ideacrate) and Mr Graham Kamara (on behalf of Projeco), neither Mr Muthalif nor Mr Siotto were privy to the conversation. Mr Kamara was not called by Projeco to give evidence. Mr Ouseph denies any further extension was granted and was not cross examined on the point at trial.
43. In his post-hearing witness statement of 23 June 2025, Mr Muthalif explained his position as follows:
- "3. I have previously provided ... the WhatsApp messages I exchanged with [Ideacrate's] previous legal counsel by which I instructed [Ideacrate's] previous legal counsel that the extension of time for completion agreed by [Ideacrate] was to 15 August 2023.*
 - 4. I confirm that I instructed [Ideacrate's] previous legal counsel that the extension of time agreed by [Ideacrate] was to 15 August 2023 but [Ideacrate's] previous legal counsel nevertheless erroneously stated the*

³¹ Set out at paragraph 37 above.

³² Filed on 24 December 2024.

³³ Filed on 2 January 2025.

³⁴ See paragraphs 34 and 35 above.



extension date to be 15 November 2023 in the original Defence and the original Counterclaim.

5. *I also confirm, to the best of my recollection, that [Ideacrate's] previous legal counsel did not provide me with a draft of the original Defence or the original Counterclaim for review prior to these documents being filed with the Court.*

6. *I specifically repeat herein paragraph 8 of my witness statement dated 21 April 2025 in which I stated that "my belief is that the erroneous reference in the original Defence and Counterclaim to an extension to 15 November 2023 may have arisen because [the lawyer] ... may have misunderstood the fact that there was an agreed extension of three months from 16 May 2023 to 15 August 2023 and thought that there was an extension of three months from 15 August 2023." (Emphasis added)*

44. The quoted parts of Mr Muthalif's witness statement stand to be compared to his answers to a series of questions that I put to him during the trial. While lengthy, I set out the exchange in full:

"HIS HONOUR: When the original defence and counterclaim were prepared, were you the person who gave instructions to your lawyer?"

MR MUTHALIF: I was coordinating with the lawyer, sir.

HIS HONOUR: Did you give instructions to the lawyer about what happened?"

MR MUTHALIF: Yes, sir.

HIS HONOUR: If you look, please, at page 287, which is part of the defence that was filed on 24 December 2024. If I could have that brought up, please. If you go to paragraph six, please, and if you could highlight the whole of the paragraph and zoom it. Now, if you read that to yourself and tell me when you've finished, please.

MR MUTHALIF: Yes, read, Your Honour.

HIS HONOUR: Did you give that information to your lawyer?"

MR MUTHALIF: The previous legal counsel was communicating with me via WhatsApp. In the WhatsApp—

HIS HONOUR: Please just answer my question.

MR MUTHALIF: Yes.

HIS HONOUR: Did you provide that information to the lawyer who prepared this document?"



MR MUTHALIF: No.

HIS HONOUR: Who gave the lawyer that information?

MR MUTHALIF: I was the one coordinating with the lawyer. I gave the lawyer the extended date was 15 August 2023. That's it. The lawyer, I do not know— Can I speak?

HIS HONOUR: Yes, certainly.

MR MUTHALIF: Yes. So, I was coordinating with the previous legal counsel. I was giving all the details, contract date, supposed to be completion date, plus the extended three months, which was supposed to be 15 August 2023. Then after that, it was completed on 29 February 2024. They have wrongly understood and mentioned as 15 November 2023 instead of 15 August 2023.

HIS HONOUR: Well, I take it you read this after the document was prepared and before it was filed.

MR MUTHALIF: Can I ask you to repeat the question, sir?

HIS HONOUR: I assume that you read this document carefully before it was filed. Am I correct?

MR MUTHALIF: That should have been done. But unfortunately, the previous legal counsel did not give it to me [for comment] before filing nor after filing, which came to my notice after we appointed the new legal counsel.

HIS HONOUR: Did you give instructions to the lawyer who prepared the original counterclaim?

MR MUTHALIF: Yes.

HIS HONOUR: Had you read the defence carefully before you gave instructions on the counterclaim?

MR MUTHALIF: We were— management asked us to communicate with the lawyer to claim around 1.6 million. Based on that, I have communicated to the then legal counsel.

HIS HONOUR: Okay. My question was, did you read the defence carefully before you gave instructions to the lawyer to prepare the counterclaim?

MR MUTHALIF: No.

HIS HONOUR: So, if we go to page 337, paragraph 12, again, just read that to yourself and tell me when you're ready.

MR MUTHALIF: Read it, sir.



HIS HONOUR: What I find interesting is that this is not just a cut and paste from the defence because the last two sentences or the last three sentences of the defence read, consequently, the completion date for the project was set for 13 August 2023. However, the plaintiff failed to meet this deadline.

In response, the Defendant granted an extension of three additional months, extending the completion date to 15 November 2023. In this one, it also says, as previously stated, the original completion date was set for 13 August 2023 with an extension to 15 November 2023. However, the counter-Defendant did not meet either of those deadlines. Did you read this document carefully before it was filed?

MR MUTHALIF: No, Your Honour.

HIS HONOUR: Who within your company took the time to read these documents, the defence and the counterclaim, before they were submitted to the court to rely upon?

MR MUTHALIF: None, because the then legal counsel, as I told you earlier, they used to communicate with me through WhatsApp. I informed them the exact dates, and I believe they wrongly understood and mentioned over there. I shared all the WhatsApp messages to the current legal counsel or the witness of it..."

45. Mr Muhammed Salah, for Projeco, submitted that because the Contract is governed by UAE law, the issue should be considered by reference to Article 18 of the UAE Evidence Law (Federal Law No. 35 of 2022) which, I was told, does not permit withdrawal of an admission of this type. With respect to Mr Salah, that submission cannot succeed. Irrespective of the governing law of the contract, all questions of procedure and evidence are controlled by the law of the place in which the dispute is being heard (the *lex fori*), which is the ADGM.³⁵ As a result, Rule 42 is the controlling provision.
46. I am satisfied that I have jurisdiction to consider the application, under Rule 42(4) of the Rules.³⁶ While Rule 42 covers a range of circumstances (including admissions of liability to money claims and parts of claims in respect of which judgment by default might be entered), Rule 42(4) is more expansive in its scope. In my view, it is fit for purpose to deal with a fact pattern of the type that has arisen in this case.
47. The starting point must be the general rule that a legal representative has ostensible authority to bind his or her client in respect of any admission made for the purpose of civil proceedings (including the possibility that the client may be bound to a settlement that it has not expressly authorised), with the consequence that any breach of the warranty of authority on the part of the legal representative is an issue between client and lawyer. The general rule is that the opposing party who has the benefit of the admission will be entitled to rely upon it.³⁷

³⁵ See *Awad v 3AM Property Investment Co LLC* [2025] ADGMCFI 0003 at paragraphs 21 and 26.

³⁶ Set out at paragraph 39 above.

³⁷ See paragraphs 46–55 below.



48. In support of Ideacrate's application to withdraw its admission, Mr Wilson referred me to the (English) Court Procedure Rules (the "**English CPR**"). Rule 14.5 deals with applications for permission to withdraw admissions. Mr Wilson also referred to *Moore v Worcestershire NHS Trust*,³⁸ a decision of the High Court of England and Wales.
49. Although the English CPR provisions do not apply in ADGM, they are persuasive when determining the scope of the jurisdiction conferred by Rule 42(4) of the Rules.³⁹ Helpfully, Rule 14.5 of the English CPR sets out a (non-exhaustive) list of factors relevant to the exercise of the Court's discretion to grant or refuse permission to withdraw an admission. I hold that the listed factors are equally relevant to the exercise of this Court's broad discretion under Rule 42(4) of the Rules.
50. Of the factors identified in Rule 14.5 of the English CPR, I consider that the following are relevant in this case:
- a. the grounds for seeking to withdraw the admission;
 - b. the conduct of the parties;
 - c. any prejudice to any party if the admission were withdrawn or not permitted to be withdrawn;
 - d. the stage at which the proceeding has reached before the application is made;
 - e. the prospects of success of the claim or part of it to which the admission relates; and
 - f. the interests of the administration of justice generally.
51. In the present case, Ideacrate asserts that its original legal representative mistakenly pleaded an admission to Projeco's claim that the date for completing the Works had been extended to 15 November 2023. If that had been done contrary to Ideacrate's express instructions, Projeco had no knowledge of that. The present application must be determined against that background.
52. Although a party will ordinarily be bound by an admission made by its legal representatives, there have been cases in which a party has been allowed to retract them, even those subsequently incorporated in consent orders of a court. But, the circumstances in which that has occurred are few, and carefully circumscribed.
53. The point was discussed in *Marsden v Marsden*,⁴⁰ a case involving an application to set aside a consent order. In that case, counsel for the wife, in a matrimonial cause, undertook to the Court (contrary to her express instructions) to release a charge over the matrimonial home and to abandon her interest in it. The limitation on the authority of the wife's counsel was unknown to the husband's counsel. A consent order was made in consequence of the

³⁸ *Moore v Worcestershire NHS Trust* [2015] EWHC 1209 (QB).

³⁹ Rule 42(4) is set out at paragraph 39 above.

⁴⁰ *Marsden v Marsden* [1972] 2 All ER 1162 (Fam).



agreement, which was subsequently perfected. The wife applied to set aside the consent order.

54. Watkins J took the view that “*grave prejudice*”⁴¹ would be caused to the wife if she were not permitted to withdraw her admission. In doing so, he adopted an exposition of the relevant principle taken from the (then) current edition of *Halsbury’s Laws of England*. The extract from *Halsbury*, stated:⁴²

“... But the true rule seems to be that in such case the court has power to interfere; that it is not prevented by the agreement of counsel from setting aside or refusing to enforce a compromise; that it is a matter of discretion of the Court; and that when, in the particular circumstances of the case, grave injustice would be done by allowing the compromise to stand, the compromise may be set aside, even although the limitation of counsel’s authority was unknown to the other side.”

55. Although not cited by counsel, I mention *Marsden v Marsden* because of the similarities between it and cases in which the Court is asked to withdraw an admission made in the course of (what should have been) a considered pleading. In both, a legal representative of party has been responsible for the admission/consent order without the express instructions of his or her client and in circumstances where the opposing party had no knowledge of that.
56. In my view, permission to withdraw an admission should not be granted lightly. Such an order should be regarded as the exception rather than the rule. It is for the party seeking withdrawal to explain circumstances that justify that course. I would add that that obligation is greater in a case where there is no evidence to put the opposing party on notice that the legal representative lacks relevant authority.
57. Any delay in seeking to withdraw the admission is also relevant. In this case, the change in stance did not become evident until 24 March 2025. The admission had been set out in both Ideacrate’s Defence (filed on 24 December 2024) and in its Counterclaim, filed on 2 January 2025.
58. The discretion reposed in the Court by Rule 42(4) of the Rules must be exercised judicially, not capriciously. The factors set out in English CPR 14.5 are all relevant to the exercise of this Court’s discretion under Rule 42(4). In my view, they reflect the way in which the common law has historically approached the question. Having said that, they are non-exhaustive; other factors may be relevant to facts arising in other cases. I apply the English CPR 14.5 factors in determining the present application.
59. The following is a summary of the factors that led me to decide that the application should be refused:

⁴¹ Ibid, at 1168.

⁴² 3 Halsbury’s Laws (3rd ed) 51 at paragraph 74, set out in *Marsden v Marsden* [1972] 2 All ER 1162 (Fam), at 1167.



- a. the way in which Ideacrate oversaw the preparation of its Defence and Counterclaim indicates that the primary blame for the admission should rest with it. Its approach to the serious business of settling court proceedings was casual in the extreme. No representative of Ideacrate read either the Defence or Counterclaim carefully, with the consequence that Projeco relied on the admissions with no knowledge that they were contrary to the instructions provided by Ideacrate to its legal representative;⁴³
- b. by contrast with cases such as *Marsden v Marsden* and *Moore v Worcestershire NHS Trust*, the application to withdraw was not made on the first occasion that Ideacrate realised what had occurred. Instead, without drawing the point expressly to Projeco's attention, it changed its position in its Amended Defence and Counterclaim of 24 March 2025. No formal application was made to withdraw the admission before or during the trial. Nor was the "withdrawal" expressly signalled to Projeco in advance of the filing of the new pleading. The Rule 42(4) application was made post-trial, after I had indicated that it was necessary for Ideacrate to apply;
- c. in the absence of any pre-hearing application to withdraw the admission, I am satisfied that Projeco justifiably continued to rely on it. I find no merit whatsoever in Ideacrate's late suggestion that Projeco ought to have raised this point as a result of the terms of the March 2025 Order. As part of that order, I stated that if Projeco objected to any amendment "*on the basis that it would prejudice the trial from taking place on the allocated dates*", that issue would be determined expeditiously.⁴⁴ It is clear that the lack of objection on the part of Projeco to withdrawal of the admission was not something that fell within the scope of that exception to the amendment order.
- d. while there would be prejudice to Ideacrate if the admission were not withdrawn, there would be equal (if not greater) prejudice to Projeco if it were. In particular:
 - i. from Ideacrate's perspective, I accept that serious prejudice might result if permission to withdraw were not granted. The trial evidence from Mr Ouseph is primary evidence of fact in which he has deposed that no extension was agreed. His counterparty, Mr Kamara, did not give evidence. Mr Siotto's evidence on that topic was hearsay, based on the information provided to him by Mr Kamara. Further, Mr Ouseph was not cross-examined on the point;
 - ii. Projeco's position has always been that an extension was granted until 15 November 2023. When Ideacrate filed and served its Defence and Counterclaim respectively, it was well aware of the stance that Projeco was taking on this question; and

⁴³ See paragraph 44 above.

⁴⁴ The relevant parts of my Order of 18 March 2025 are set out at paragraph 39 above.



- iii. Ideacrate was aware of the importance of stating the date to which a final extension was granted in its pleading. The fundamental issue before me is one of delay and whether liquidated damages can be claimed by Ideacrate. The alleged extension of three months from 15 August 2023 until 15 November 2023, assumes significance in the context of a dispute about both the contractual scope of work and delay;
 - e. while I accept that WhatsApp messages had been exchanged between Mr Muthalif and the former legal representative, I do not have evidence from the legal representative as to whether there were any further discussions. Nor has Ideacrate waived privilege in those discussions to enable the point to be explored further. In addition, in paragraph 6 of his witness statement of 23 June 2025,⁴⁵ Mr Muthalif referred only to his “*belief*” that the lawyer “*may have misunderstood*” instructions about the date to which an extension had been granted;
 - f. while Ideacrate criticised Projeco for not calling Mr Kamara, whom it was said had the relevant conversation with Mr Ouseph about the extension,⁴⁶ I am not prepared to criticise Projeco for not calling him. When a post-hearing application of this type is made, it is inappropriate for the Court to speculate on how an affected party may have run its case if permission had been given before the hearing for the admission to be withdrawn; and
 - g. from an administration of justice point of view, parties should be discouraged from taking a casual approach to preparation of pleadings and the making of admissions. A party in that position should not assume that a mistaken pleading on a vital issue can readily be withdrawn if the admission proves to be inconvenient to the way in which it wishes to advance its case. Rather, the law should promote the need for care in completing important court documents and, where necessary, decline to provide an indulgence for the benefit of the party seeking to withdraw.
60. Balancing those factors, I reached the view that I should refuse the application. I gave particular weight to the lateness of the application,⁴⁷ the circumstances in which the admission had been made,⁴⁸ Projeco’s continued (and justified) reliance on the admission⁴⁹ and the administration of justice concerns to which I have referred.⁵⁰
61. For those reasons, on 7 July 2025, I made an order dismissing Ideacrate’s application to withdraw the admission.

⁴⁵ Set out at paragraph 43 above.

⁴⁶ See paragraph 42.c above.

⁴⁷ See paragraph 59.b above.

⁴⁸ See paragraph 58 above.

⁴⁹ See paragraph 59.c, d(ii) and f above.

⁵⁰ See paragraph 59.g above.



Analysis

(a) *The issues*

62. The issues for determination are whether Projeco’s Prolongation Costs claim and all or part of Ideacrate’s Counterclaim succeed, with the consequence of altering the presumptive starting position that the amount withheld by Ideacrate should be paid to Projeco to meet the Adjusted Contract Price.⁵¹ I deal with them in the following sequence:

- a. Has Ideacrate established that Projeco was responsible for a delay in completing the Works which entitles it to receive a payment for liquidated damages, under Clause 13.2 of the Contract?⁵² (The “**Liquidated Damages Issue**”);
- b. Has Projeco established that it incurred the claimed Prolongation Costs due to delays on the part of Ideacrate? (The “**Prolongation Costs Issue**”);
- c. Is Projeco liable to pay to Ideacrate the sum of AED 55,336, being the costs of remediation and repairs undertaken after handover on 29 February 2024? (The “**Remediation and Repair Issue**”); and
- d. Is Projeco liable to pay to Ideacrate the sum of AED 147,265 being a contribution it is said to have agreed to make to the costs of completing and installing a smoke management system? (The “**Smoke Management System Contribution Issue**”).

63. For the purposes of the liquidated damages and Prolongation Costs Issues, I proceed (based on Ideacrate’s admissions in its Defence and Counterclaim)⁵³ on the basis that the parties agreed to vary the completion date to 15 November 2023. That means that any delays caused up to that time, including any arising out of alleged failures on the part of Ideacrate to obtain necessary approvals from municipal authorities, must be put to one side. My focus is on whether, after 15 November 2023, delays were caused by one or other party that result in (from Projeco’s perspective) a claim for Prolongation Costs or (on Ideacrate’s part) a liquidated damages claim.

(b) *The Liquidated Damages Issue*

64. Ideacrate relies on Clause 13.2 of the Contract⁵⁴ to support its claim for liquidated damages. In doing so, it asserts that (for the purposes of Clause 13.1) Projeco delayed the completion of the Works that it was to perform under the Contract. Projeco resists the argument that it is liable for delay. It contends that contractual liability for delay on its part could only arise if three elements co-existed: (i) contractual fault (breach), (ii) certain and quantifiable damage, and (iii) a causal link between breach and damage.⁵⁵

⁵¹ See paragraph 2 above.

⁵² Clause 13.2 is set out at paragraph 18 above.

⁵³ See paragraph 60 above.

⁵⁴ Set out at paragraph 18 above.

⁵⁵ *Cassation Court of Abu Dhabi, Session 30/3/2017 (Commercial), Principal No. 815, 818.*



65. Projeco relies on Article 390 of the UAE Civil Transactions Law (Federal Law No. (5) of 1985) which, while acknowledging that liquidated damages might be pre-agreed, provides that a presumptive loss of the type to which Clause 13.2 is directed is rebuttable, thereby requiring Ideacrate to prove causation of loss in any event.⁵⁶ Article 390 provides:

“(390)

1. *The contracting parties may fix the amount of compensation in advance by making a provision therefor in the contract or in a subsequent agreement, subject to the provisions of the law.*
2. *The judge may, in all cases, upon the application of either of the parties, vary such agreement so as to make the compensation equal to the loss, any agreement to the contrary shall be void.”*

66. Article 390 was discussed by the Abu Dhabi Court of Cassation in Appeal No. 563 of the year 2013, Commercial Cassation No. 7.⁵⁷ The Court said:

“While the contracting parties may agree in advance on the amount of compensation by stipulating it in the contract, the judge, pursuant to Article (390) of the Civil Transactions law, may upon the request of one of the parties amend the agreed amount so as to make it equal to the actual damage. The judge is authorized to determine the appropriate compensatory amount, provided that the judgment is based on sound reasoning supported by the evidence and sufficient to justify the ruling.

In the present case, the appellants sought a judgment obliging the appellee to pay them the amount of AED 371,567 as agreed compensation, as set out in paragraphs two and three of Clause Five of the [relevant agreement] executed between the first appellant and the appellee. The clause provides that, in the event the tenant (the appellee) fails to pay any amounts due on their due date in accordance with the terms of the agreement, a late payment penalty shall be incurred at the rate of 2% per month, calculated on a compound basis at the end of every three months, on all unpaid instalments of the unit price from their respective due dates until full settlement. It also states that each payment made by the tenant shall be first applied toward late payment penalties, then to other amounts due under the agreement.” (Emphasis added)

67. On the basis of that contractual provision, the lower court reduced the amount of compensation payable on the grounds that the stipulated late penalty payment was excessive and that compensation must both comply with legal provisions and be proportionate to the damage assessed by the court as sufficient and appropriate compensation. Nevertheless, the Court of Cassation reversed the lower court’s finding because the party ordered to pay neither requested a modification of the agreed compensation nor established that the amount agreed upon exceeded the actual harm

⁵⁶ Cassation Court of Abu Dhabi, Session 26/12/2013, Principal No. 563.

⁵⁷ Appeal No. 563 of the year 2013, Commercial Cassation No. 7 (26 December 2013).



suffered by the landlord. The Court of Cassation concluded: “... *the judge was not entitled to amend the agreement between the parties on his own initiative* ...”.

68. In this case, if Projeco were unsuccessful in establishing that it had completed all of the works within the specified time, it has sought an adjustment to the liquidated damages otherwise payable under Clause 13.2 of the Contract. Based on the decision of the Abu Dhabi Court of Cassation,⁵⁸ the jurisdiction to consider an adjustment to the damages sought is available to the Court.
69. Ideacrate contends that:
 - a. the burden of proving that any amount claimed by way of liquidated damages exceeds the loss actually suffered by the party invoking the benefit of such a clause lies on that party; in this case Projeco; and
 - b. while Article 390(2) gives the Court a discretion to adjust the amount of any liquidated damages clause, it does not require it to be set aside.
70. In my view, the propositions advanced by Ideacrate are correct. If I were to find that Projeco did not complete the works by the date agreed (15 November 2023), I must consider whether Projeco caused the delay and (if so) whether it has proved that the actual loss suffered by Ideacrate is lower than that calculated in accordance with Clause 13.2 of the Contract. If I were to find that Projeco had caused the delay but that the loss suffered by Ideacrate is lower than that sought, I must then determine whether any adjustment should be made to the amount otherwise payable under Clause 13.2.
71. The most significant dispute concerns the Smoke Management System works, which include both the “*Smoke Extract Ducts*” (“**SED**”) and “*Makeup Air Ducts*” (“**MAD**”). Projeco alleges that these were not included in either a project programme or the BOQ. Therefore, it contends that those works fell outside the scope of the Contract.
72. While there is no express provision as to the circumstances in which any variations to the contract work should be documented, both parties accept that it was open to them to agree additional works and for Projeco to be paid for them, subject to any claims for delay.
73. Proof of variations and work done to perform them is contained in the evidence given by Mr Siotto (Projeco), Messrs Muthalif and Ouseph (Ideacrate) and contemporaneous documentary records.
74. The parties acknowledge that there were delays in completing some of the variation works. Projeco puts the blame for those on Ideacrate. Ideacrate contends that all delays were caused by Projeco’s failure to complete the work in a timely fashion. The Counterclaim, in the sum of AED 608,521, is said to arise “*from the delay in handover of the [project] beyond*

⁵⁸ Ibid.



the contractual handover date of 16 May 2023, extended to 15 August 2023, until the actual handover date of 29 February 2024”.⁵⁹

75. The parties each adduced expert evidence on the topic of delay. This evidence was given by Mr Rooney, of Desert Light Contracting Solutions (on behalf of Projeco) and Mr Huck, of Kroll Advisory Ltd (on behalf of Ideacrate). Helpfully, as well as providing individual expert reports,⁶⁰ they filed a joint report dated 30 May 2025 (the “**Joint Expert Report**”) in which they set out areas of agreement and disagreement in relation to the appropriate methodology for determining fault for delay and the baseline programme for the purpose of determining the critical path.
76. Mr Rooney and Mr Huck agree on the appropriate methodology. In their Joint Expert Report⁶¹ they say:

“5. The Experts agree that an As-Planned versus As Built Windows approach, as detailed in the SCL Delay and Disruption Protocol 2nd Edition dated February 2017 (Paragraph 11.6d at page 36), where the critical path is determined contemporaneously and critical delay is determined retrospectively in windows, is the most appropriate delay analysis methodology for this matter.”
77. The experts disagree on the appropriate baseline programme. Mr Rooney takes the view that the “programme of fit-out works” submitted on 23 November 2022 (Rev.03) constitutes the baseline programme, while Mr Huck relies on the programme dated 27 December 2022 (Rev.05).⁶²
78. The reasons for Mr Rooney’s and Mr Huck’s disagreement about the appropriate baseline programme are recorded, in their Joint Expert Report, as follows:

“...

7. Mr Rooney considers the “Programme of fit-out works – Orange Hub – Rev.03” submitted on 23 November 2022 (the final programme submitted before signing the [Contract]) as the baseline programme. Whilst Ideacrate’s legal representative shared “Programme of fit-out works – Orange Hub – Rev.05” with Mr Rooney on 30 April 2025 no evidence was found to show that Projeco actually submitted this programme to Ideacrate in or around 27 December 2022 and for this reason, it was not considered.

8. Mr Huck considers that the “Programme of fit-out works – Orange Hub – Rev.05” programme, dated 27 December 2022, which does not include activities which were in progress or completed, and was representative of the 5-months Delivery Time from the date of the Contract (16 December 2022) to the [original] completion date (16

⁵⁹ See paragraph 6 of the Defendant’s Skeleton Argument.

⁶⁰ Mr Rooney’s is at page 1509 of the Trial Bundle and Mr Huck’s at page 1672.

⁶¹ Commencing at page 2363 of the Trial Bundle.

⁶² See paragraph 78 below.



May 2023), is the appropriate baseline programme to be used as the starting point of his analysis and as the yardstick against which to measure critical delay.”

79. Mr Rooney did not undertake any analysis of delay based on the Rev.05 programme, whereas Mr Huck did so on the basis that the Rev.03 programme might be accepted as the relevant baseline. For that reason, I only have Mr Huck’s analysis of delay in respect of the Rev.05 programme.
80. The email of 27 December 2022⁶³ that Projeco’s representative sent to Mr Ouseph at 1.32 pm that day states:

“Dear Steve,

Please find the project plan [Rev.05] attached for your review. Please be informed that Sunday, including Eid holidays, is considered a non-working day in this programme.

Best Regards,

Muhammad Naseem”

81. Mr Rooney’s only reason for rejecting the proposition that the Rev.05 programme did not represent the appropriate baseline was the lack of evidence that it had been sent to Ideacrate by Projeco. The email of 27 December 2022, which is Projeco’s own document, undermines his approach.
82. Projeco’s argument is that the email of 27 December 2022 post-dates execution of the Contract, on 16 December 2022. For that reason, Rev.05 in the form in which it was sent under that email could not have evidenced the Scope of Works that were supposed to have been incorporated into Schedule B of the Contract.⁶⁴ That is why Mr Salah submits that a programme sent to Ideacrate on 30 November 2022 should be regarded as the appropriate version. As I understand his submission, that programme replicated Rev.03.
83. I am satisfied that Rev.05 does represent the scope of work. The fact that no construction programme was set out in Schedule B to the Contract suggests that one was in the process of being finalised and the parties were content to trust each other to reach agreement on the scope of work. Once Rev.05 was forwarded to Ideacrate and no further revision was made in close proximity to 27 December 2022, it became the baseline programme against which critical path and critical delay are to be assessed in this case.
84. With regard to Rev.05, Mr Salah maintains that the SMDs and the MADs were not included, on the basis that they were *“notably absent from section L.2 where such works would typically be found”*. Ultimately, installation of the SMDs and MADs was undertaken by a contractor, Noor Al Walaa, whom Mr Salah submits was appointed by Ideacrate directly.

⁶³ The circumstances in which this email was admitted into evidence are set out at paragraphs 31–33 above.

⁶⁴ See paragraph 9 above.



This, he contends, confirms that the smoke management system was not within the scope of works to be undertaken by Projeco.

85. On the other hand, Mr Wilson contends that Rev.05 and relevant contract drawings (No. SM-01) entitled “*Smoke Management Layout confirm a contractual requirement for Projeco to install the ducts*”. Mr Wilson reminds me that SM-01 was introduced into evidence by Mr Ouseph at paragraph 27 of his witness statement of 14 April 2025 and that Mr Siotto did not challenge its status as a Contract Drawing in his witness statement of 21 April 2025. Ideacrate identifies items J7, J8, J27 and J28 of Rev.05 to demonstrate that SMD (fire rated by the local authority), MAD work, 16 smoke extract grills and 16 makeup air grills were to be installed as part of the Contract. Mr Huck also produced an extract from SM-01 to reinforce that point in his separate expert report of 23 May 2025.
86. Mr Siotto gave evidence that the Rev.05 items could not relate to the smoke management system because these were HVAC works. In saying that, Mr Siotto acknowledged that he was not a “*technical person*” and had relied on others. For the same reason, he was unable to say unequivocally whether the SM-01 drawing formed part of the Contract.
87. Mr Siotto’s position was that an issue had arisen over completion of the smoke management system which was resolved by emails between himself and Mr Ouseph from 30 January 2024 until 1 February 2024. Under that arrangement, the cost of doing the work was to be shared, with costs of materials being payable by Projeco to Ideacrate in the sum of AED 147,265 and the labour costs being met by Ideacrate, in the sum of AED 132,633. This was to facilitate completion of the work by the contractor, Noor Al Walaa. The work was completed by Noor Al Walaa but Projeco did not pay its share of the agreed cost.
88. Having regard to the conflicting evidence, the question whether the drawings contained in SM-01 are to be regarded as part of the Contract and require installation of the smoke management system as part of the scope of works falls to be considered by reference to the onus and standard of proof. Ideacrate is contending, through its Counterclaim, that Projeco did not complete the relevant works. Ideacrate is required to establish, on a balance of probabilities, that Projeco was responsible for completing the smoke management system works.
89. Given Mr Siotto’s disclaimer of technical expertise and the absence of any other witness on whom Projeco can rely to respond to Ideacrate’s allegation, I find it is more probable than not that drawing SM-01 did record installation of a smoke management system as part of the scope of works, in the form identified by Mr Huck.⁶⁵
90. On the basis of 15 November 2023 being the extended date for completion of the Works and the baseline programme contained in Rev.05, Mr Huck gave evidence that there was a critical delay of 81 days between 16 November 2023 and 5 February 2024. This was caused primarily by the time taken to procure a third party fire consultant in the period up to November 2023, obtaining consent from the municipal authority of FLS drawings in the period up to 30 January 2024, and procurement and installation of the smoke management

⁶⁵ See paragraph 85 above.



system in the period up to 5 February 2024, when that task was completed by Noor Al Walaa.⁶⁶

91. Mr Huck calculated that, during the period between 5 February 2024 and handover on 29 February 2024, there were 16 additional days of critical delay “*due to the extended time taken to complete the remaining Works required to obtain [a municipal authority] Completion Certificate on 29 February 2024*”. That delay, in Mr Huck’s opinion, was due to Projeco completing those works more slowly than had been planned. In the absence of any contradictory evidence from Mr Rooney (who did not undertake any analysis based on Rev.05), I accept Mr Huck’s opinions on that issue.
92. On that basis, the total critical delay is 97 days from 16 November 2023 to 29 February 2024 for which the maximum penalty (for the purpose of liquidated damages) is AED 970,000, which would be capped at 10% of the “Contract Value”, which I have determined is the Adjusted Contract Price of AED 608,521.19.⁶⁷ Projeco has not satisfied me that sum is more than Ideacrate’s actual loss.⁶⁸ For that reason, I make no adjustment in its favour under Article 390 of the UAE Civil Transactions Law.⁶⁹
93. A remaining dispute involved the question whether the period of delay should be extended to 10 July 2024, being the date by which full completion of the “snag list” compiled under Clause 5.4(v) of the Contract had been achieved.
94. Clause 5.4(iv) and (v) of the Contract is not directly relevant to the question of delay, for the purpose of a liquidated damages claim. Rather, it refers to deferment of payment of part of the contract price pending completion of (among other things) the “snag list”. Clause 5.4(iv) and (v) states:

“5.4 Contract Price is payable as follows:

...

- (iv) *Upon project completion, the Contractor will issue a security cheque equal to 5% of the contract value against the Defect Liability Period and the same shall be returned uncashed upon the completion of said period.*
- (v) *The remaining 10% of the contract value shall be released upon issuance of the Taking Over Certificate by [Ideacrate], which will be subject to the successful completion of Works and handover including snag list and all manufacturer’s standard warranty.”*

95. While Clause 5.5 of the Contract contemplates the Taking Over Certificate being issued upon Ideacrate’s satisfaction that the works have been completed and are ready to be

⁶⁶ See paragraph 105 below.

⁶⁷ See paragraph 19 above.

⁶⁸ Clause 13.2 of the Contract is set out at paragraph 18 above.

⁶⁹ See paragraphs 65–70 above.



handed over, the fact of the matter was that Ideacrate took possession of the project on 29 February 2024.

96. Projeco’s position was that there had been “substantial completion” of the project on 29 February 2024. Ideacrate did not accept that contention both because the term “*substantial completion*” is not contained in the Contract and that Orange Hub was not in a state that would enable immediate generation of income, as at 29 February 2024.
97. On my assessment of the evidence, the term “*substantial completion*” can be regarded as synonymous with another label which has long been accepted as having a well-understood industry meaning under English law, “*practical completion*”. That term has been judicially defined on a number of occasions.
98. Relatively recently, the concept of “*practical completion*” was considered by the Court of Appeal of England and Wales in *Mears Ltd v Costplan Services (South East) Ltd*.⁷⁰ Coulson LJ (with whom Lewison and Newey LJ) agreed, summarised the state of the law in 2019 as follows:⁷¹

“74. *I consider that the law on practical completion can therefore be summarised as follows:*

- a) *Practical completion is easier to recognise than define: see Keating on Construction Contracts, 10th Edition, paragraph 20 – 169. There are no hard and fast rules: see Bailey paragraph 5.117, footnote 349.*
- b) *The existence of latent defects cannot prevent practical completion (Jarvis). In many ways that is self-evident: if the defect is latent, nobody knows about it and it cannot therefore prevent the certifier from concluding that practical completion has been achieved.*
- c) *In relation to patent defects, the cases show that there is no difference between an item of work that has yet to be completed (i.e. an outstanding item) and an item of defective work which requires to be remedied. Snagging lists can and will usually identify both types of item without distinction.*
- d) *Although one interpretation of Viscount Dilhorne in Jarvis and Lord Diplock in Kaye suggests that the very existence of patent defect prevents practical completion, that was emphatically not the view of Salmon LJ in Jarvis, and the practical approach developed by Judge Newey in William Press and Emson has been adopted in all the subsequent cases. As noted in Mariner, that can be summarised as a state of affairs in which the works have been*

⁷⁰ *Mears Ltd v Costplan Services (South East) Ltd* [2019] EWCA Civ 502.

⁷¹ *Ibid*, at paragraph 74.



completed free from patent defects, other than ones to be ignored as trifling.

- e) *Whether or not an item is trifling is a matter of fact and degree, to be measured against "the purpose of allowing the employers to take possession of the works and to use them as intended" (see Salmon LJ in Jarvis). However, this should not be elevated into the proposition that if, say, a house is capable of being inhabited, or a hotel opened for business, the works must be regarded as practically complete, regardless of the nature and extent of the items of work which remain to be completed/remedied. Mariner is a good example of why such an approach is wrong. In consequence, I do not consider that paragraph [187] of the judgment in Bovis Lend Lease, with its emphasis on the employer's ability to take possession, should be regarded (without more) as an accurate statement of the law on practical completion.*
- f) *Other than Ruxley, there is no authority which addresses the interplay between the concept of completion and the irremediable nature of any outstanding item of work. And even Ruxley is of limited use because that issue did not go beyond the first instance decision. But on any view, Ruxley does not support the proposition that the mere fact that the defect was irremediable meant that the works were not practically complete."*

99. Those observations, made in the context of the test to be applied when “*practical completion*” is certified for the purpose of a contract of construction, demonstrate the type of situations in which a project might be considered practically (or, in my view, substantially) complete yet require additional remedial work. Clause 5.4(iv) and (v) of the Contract⁷² draws a distinction between “*project completion*” and the issue of a “*taking over certificate*” which occurs after completion of additional works “*including [a] snag list and all manufacturer’s standard warranty*”. In referring to the English law concept of “*practical completion*” I am not departing from application of UAE law. The English authorities illustrate the difficulties involved in drawing a line to delineate when a project has been completed. I have used them for that purpose.

100. In my judgment, 29 February 2024 should be treated as the date on which Orange Hub was ready to be handed over to Ideacrate, and was in fact handed over to it in a state that it assumed the risk. In accordance with Clause 5.4(v) of the Contract, the remaining repair and remedial work was to be completed within the contract price, 10% of which was to have been released when that work was completed.⁷³

⁷² Set out at paragraph 94 above.

⁷³ Clause 5.4(iv) and (v) are set out at paragraph 94 above.



(c) *The Prolongation Costs Issue*

101. I have found that Projeco was responsible for the delay between 15 November 2023 and 29 February 2024 and have assessed liquidated damages on that basis. Necessarily, that finding removes Projeco's ability to claim for work done during that period on the grounds that fault for the delay rested on Ideacrate. For that reason, I reject Projeco's claim for Prolongation Costs.

(d) *The Remediation and Repair Issue*

102. Ideacrate contends that it was obliged to incur costs in relation to certain "snag list" works because Projeco had failed to perform them adequately. Those costs total AED 55,366, made up as follows:

- a. repairs for a theatre display screen damaged by Projeco's staff: AED 959;⁷⁴
- b. replacement of an LED video wall damaged by Projeco's staff: AED 4,216;
- c. airfreight costs relating to the replacement of the LED video wall damage: AED 4,122; and
- d. costs of hiring outside cleaners to deep clean the project site: AED 46,069.

103. Projeco denies liability for those costs. It contends that there is no evidence, whether in the form of inspection reports, photographs or any other form of visual documentation, to confirm the alleged defects. Nor is there any adequate evidence as to the costs claimed.

104. I have reviewed the evidence on this issue. I am not satisfied that Ideacrate has established on a balance of probabilities that the alleged defects were caused by Projeco's staff or that there is some other reason to make Projeco liable to make good that damage. That aspect of the Counterclaim will be dismissed.

(e) *The Smoke Management System Contribution Issue*

105. I am satisfied, on the evidence, that Projeco and Ideacrate entered into a commercial agreement to enable the cost of undertaking work to install the smoke management system. The commercial arrangement arose out of a dispute (probably, more accurately, a misunderstanding) between the parties as to whether Projeco had the responsibility to complete that work as part of the scope of works. I have found that it is more probable than not that Projeco was required to undertake that work.⁷⁵

106. The potential recovery of the amount payable by Projeco under the commercial arrangement raises a problematic issue. In my experience, an arrangement of this type, designed to resolve a misunderstanding as to which party bears the risk of delay in completing a particular aspect of the construction would typically record the effect of the arrangement on delays involved in completing the work. In this case, the nature of the

⁷⁴ The figure set out in paragraph 33 of Ideacrate's Amended Defence is USD 260, with a currency adjustment to AED 959.

⁷⁵ See paragraph 89 above.



commercial arrangement was recorded in emails exchanged between Mr Siotto and Mr Ouseph from 30 January 2024 until 1 February 2024.⁷⁶ I have found that the completion date was 29 February 2024, after Noor Al Walaa was able to undertake the outstanding work. Should Projeco be given any credit in relation to delay if that was due to a mutual misunderstanding?

107. There are three (inter-related) reasons why I consider no credit should be given. First, Projeco failed to pay the costs of materials in the amount agreed, AED 147,265. Second, I have found that, notwithstanding the genuine misunderstanding as to where risk lay, the contractual obligation to do the work rested on Projeco. Third, the commercial arrangement into which Projeco and Ideacrate entered did not make any changes to the contractual provisions concerning liquidated damages. In those circumstances, Projeco remains liable to pay the sum of AED 147,265 to Ideacrate.

Conclusion

108. Sections 181 and 182 of the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 (The Courts Regulations) contemplate the possibility of rules of court being enacted to specify procedures for the set-off of claims and counterclaims. No such rules have been promulgated. Nevertheless, in a case such as this when claim and counterclaim arise out of the same contractual arrangement, amounts to be awarded in favour of one party should be set-off against those in favour of another to determine a net amount payable, to which interest and costs may be added.
109. On the findings I have made, Projeco is liable to pay to Ideacrate the sums of AED 608,521.19 (liquidated damages) and AED 147,265 (contribution to the smoke management system installation). Together, they total AED 755,786.19. After deducting that amount from the sum that Ideacrate has retained (AED 766,287.15) the amount payable by Ideacrate to Projeco is AED 10,500.96. Judgment is entered in favour of Projeco in that sum.
110. Each party sought interest at 5% per annum on the amount which each claimed was payable to it. I fix the date of breach at 29 February 2024, when the project was handed over to Ideacrate. Interest shall run on the net sum payable to Projeco of AED 10,500.96 at the rate of 5% per annum to the date of judgment. Thereafter, interest will continue to accrue on the net sum payable until payment is made in full, as post-judgment interest.⁷⁷
111. I order that the two Security Cheques be returned immediately to Projeco and in any event by no later than 4.00 pm on 6 November 2025. The injunction issued on 10 January 2025 will remain in force pending return to Projeco of the two Security Cheques that are currently in the possession of Ideacrate. Continuation of that injunction will protect Projeco pending delivery of the Security Cheques into its possession from Ideacrate taking any action to

⁷⁶ See paragraphs 87 and 90 above.

⁷⁷ ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015, section 8, ADGM Court Procedure Rules, rule 79 and Practice Direction 2, paragraphs 2.116 and 2.117.



encash or otherwise process those cheques given that it is not entitled to retain any of the moneys payable to Projeco that it had withheld.

112. In my view, costs of the proceeding should be considered in two parts:

- a. The first concerns the initial phase during which I issued an interim injunction to restrain Ideacrate from encashing the Security Cheques at a time when Ideacrate knew that this proceeding had been commenced.⁷⁸ The injunction was issued on 10 January 2025. Ideacrate was given opportunities to apply to set aside the injunction. Rather than progressing an application of that type, it made two changes to its legal representatives, one on 17 January 2025 (when the interim injunction was extended) and another on 2 March 2025. The latter was the date on which Mr Wilson commenced acting for Ideacrate; the day before a scheduled case management conference. Projeco was put to significant and unnecessary costs during this period. The fault for that rests squarely on Ideacrate.
- b. The second involves preparation for and the trial itself. That took place in June 2025. While Projeco has been successful in obtaining a judgment, Ideacrate has been able to reduce the amount claimed significantly, primarily based on its liquidated damages claim. However, Ideacrate's position should be tempered by the costs incurred by Projeco in relation to the question whether Ideacrate's admission that time had been extended to 15 November 2023 could be withdrawn.⁷⁹

113. My initial inclination is that, taking all of those factors into account, there should be no order as to costs. I make an order nisi to that effect. That order will become absolute if no request for reconsideration were made by 4.00 pm on 13 November 2025. If a request for reconsideration were made, it will be referred to me to make further directions on the exchange of submissions on the question of costs.



Issued by:

Linda Fitz-Alan
Registrar, ADGM Courts
30 October 2025

⁷⁸ See paragraph 28 above.

⁷⁹ See paragraphs 34–61 above.