

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
REAL PROPERTY DIVISION
BETWEEN**

AL KHALEEJ INVESTMENT P.S.C.
Claimant

and

OCEAN PEARL REAL ESTATE COMP LLC
Defendant

JUDGMENT OF JUSTICE PAUL HEATH KC



Neutral Citation:	[2026] ADGMCFI 0017
Before:	Justice Paul Heath KC
Decision Date:	5 June 2026
Decision:	<ol style="list-style-type: none"> 1. The agreement for sale and purchase dated 24 December 2024 (the “Agreement”) is a binding and enforceable contract. 2. The Claimant is entitled to specific performance of the Agreement. 3. The Defendant is to do all such things as are necessary to complete the sale on payment of the purchase price by the Claimant. 4. Liberty to the Claimant to apply to the Court for further orders required to give effect to the decree for specific performance or an order discharging the decree, and to seek, in lieu thereof, an award of damages. 5. The Counterclaim is dismissed. 6. The Claimant is awarded its costs on the standard basis, to be fixed summarily by the Court in the absence of agreement.
Hearing Date:	10 February 2026
Date of Order:	Following the agreed draft order, or each party’s proposed draft order if there is no agreement, to be filed by 4.00 pm on 19 June 2026.
Catchwords:	<p>Sale and purchase of land on Al Reem Island. Transition from Abu Dhabi Real Property Register to ADGM Register. Application of <i>lex fori</i> (ADGM law) to remedies, evidence, and procedure. Application of <i>lex situs</i> (law of the place where the immovable property is situated) to land rights and orders. Meaning of “<i>real estate laws of the Emirate of Abu Dhabi</i>” in Article 22(12) of Abu Dhabi Law No. 4 of 2013. Enforceability of sale and purchase agreement. Doctrine of frustration. Ability to settle. Specific performance of land sale agreement. Discretionary nature of equitable remedies. Alternative claim for damages in lieu of specific performance. Estoppel by convention and the necessity of establishing unconscionability.</p>



Legislation Cited:	<p>Cabinet Resolution No. 41 of 2023 ADGM Real Property Regulations 2015 ADGM Real Property Regulations 2024 ADGM Application of English Law Regulations 2015 Abu Dhabi Law No. 4 of 2013 Concerning Abu Dhabi Global Market Abu Dhabi Law No. 12 of 2020 Amending Some Provisions of Law No. 4 of 2013 Concerning the Abu Dhabi Global Market Abu Dhabi Law No. 3 of 2005 Regulating the Real Estate Register in the Emirate of Abu Dhabi Abu Dhabi Law No. 19 of 2005 Concerning Real Estate Ownership UAE Civil Code (Federal Law No. 5 of 1985) ADGM Court Procedure Rules 2016 Dicey, Morris & Collins, The Conflict of Laws (16th ed 2022)</p>
Cases Cited:	<p>Kireeva v Bedzhamov [2025] AC 812 (UKSC) Federal Properties Ltd – Sole Proprietorship LLC (also known as Federal Properties Ltd) v Ibrahim [2025] ADGCFI 0013 Federal Properties Ltd – Sole Proprietorship LLC (also known as Federal Properties Ltd) v Ibrahim [2025] ADGMCA 0002 Awad v 3AM Property Investment Company LLC [2025] ADGMCFI 0003 Federal Properties Ltd – Sole Proprietorship LLC (also known as Federal Properties Ltd) v Ibrahim [2026] ADGCFI 0009 Davis Contractors Ltd v Fareham UDC [1956] 2 All ER 145 (HL) Abu Dhabi Court of Cassation, Case No. 27/2024 (13 March 2024) Abu Dhabi Court of Cassation, Ruling (18 June 2025) Davis v Fareham UDC [1956] 2 All ER 145 (HL) F A Tamplin SS Co Ltd v Anglo-Mexican Petroleum Products Co Ltd [1916] 2 AC 397 (HL) Blindley Heath Investments Ltd v Bass [2017] Ch 389 (CA) Dixon v Blindley Heath Investments Ltd [2017] 1 All ER (Comm) 319 Amalgamated Investment & Property Co Ltd (in liq) v Texas Commerce International Bank Ltd [1982] 1 QB 84 (CA) Farquharson v Pearl Assurance Co Ltd [1937] 3 All ER 124 (KBD) Al Khaleej Investment PSC v Ocean Pearl Real Estate Comp LLC [2025] ADGMCFI 0012 Dijllah Jewellery FZE v AVA Trade Middle East Ltd [2025] ADGMCFI 0001</p>



	Xetech Solutions Ltd v Pulsar Capital Holdings Ltd [2026] ADGMCFI 0006 Johnson v Agnew [1979] 12 All ER 883 (HL)
Case Number:	ADGMCFI-2025-143
Parties and representation:	Illahi Bux Bughio, Hilal & Associates for the Claimant Robert Sliwiniski and Mohamed Kenawy, QAF Legal, for the Defendant

JUDGMENT

Introduction

- On 24 December 2024, the parties to this proceeding entered into an agreement for sale and purchase (the “**Agreement**”) of a plot of land (known as Plot No. RS1-C5 (S1-C11) Shams-Reem Island) (the “**Property**”) on Al Reem Island. At that time, Al Reem Island formed part of the Abu Dhabi Global Market (“**ADGM**”). However, because of transitional provisions concerning land registration systems operated in the Emirate of Abu Dhabi (“**Abu Dhabi**”) and ADGM respectively, the Property was, at the time the Agreement was entered into, registered on the Abu Dhabi Real Property Register. That was because land on Al Reem Island had been brought within ADGM in April 2023 but the application of ADGM real property law had been deferred until 1 January 2025.¹
- The changes to the land registration systems had their genesis in Cabinet Resolution No. 41 of 2023, which was issued and came into force on 24 April 2023. The effect of that resolution was to bring Al Reem Island within the jurisdiction of the ADGM.² Although Al Reem Island became part of the ADGM with immediate effect, a deliberate decision was made to delay the application of ADGM real property laws until 1 January 2025. That was done by way of a transitional provision contained in the ADGM Real Property Regulations 2015 (the “**2015 Regulations**”).
- The transitional period was fixed at just under 20 months. Section 157(2) of the 2015 Regulations disapplied those Regulations to land on Al Reem Island between 24 April 2023 and 31 December 2024. The apparent object of the transitional period was to provide adequate time for those involved in real property transactions on Al Reem Island to familiarise themselves with the new regime, with the intention of enabling an orderly and effective transfer of land registration from that operating in Abu Dhabi to the system used in the ADGM.

¹ See paragraphs 2 and 3 below.

² Cabinet Resolution No (41) of 2023, Article 1.



4. On 1 October 2024, the 2015 Regulations were replaced by the ADGM Real Property Regulations 2024 (the “**2024 Regulations**”).³ From 1 January 2025, land on Al Reem Island became subject to the 2024 Regulations, and other relevant ADGM laws. The transition of titles from the Abu Dhabi Real Property Register to the ADGM Register was implemented by the process set out in section 26(3) of the 2024 Regulations.⁴ Once a person becomes a registered proprietor on the ADGM Register, the fact of registration is conclusive evidence of ownership and the indefeasible title that a registered owner acquires.⁵
5. The Agreement did not settle. The purchaser seeks specific performance. This proceeding raises questions about the enforceability of the Agreement, having regard to the transition of registration of the Property from the Abu Dhabi Real Property Register to the ADGM Register, and the remedies that are available to the purchaser should it obtain an order for specific performance.

The transaction

6. The Agreement records that Ocean Pearl Real Estate Comp LLC (“**Ocean Pearl**”), a Dubai incorporated entity, agreed to sell the Property to Al Khaleej Investment PSC (“**Al Khaleej**”), a company incorporated in Ras Al Khaimah, for a total purchase price of AED 105 million.⁶ The transaction was to be completed not later than 90 days from the date of the Agreement;⁷ namely, by 24 March 2025.⁸ Al Khaleej was to pay a Security Cheque of AED 21 million to Ocean Pearl on execution of the Agreement (which it did) and to pay the purchase price by Manager Cheque on settlement.⁹
7. Al Khaleej alleges that Ocean Pearl is in breach of the Agreement by failing to complete settlement within the period of 90 days. Al Khaleej seeks specific performance of the Agreement or, in the alternative, damages in lieu of specific performance. Ocean Pearl denies that it is in breach. To the contrary, Ocean Pearl alleges that Al Khaleej itself breached the Agreement. By way of Counterclaim, Ocean Pearl seeks declarations that the Agreement is null and void or unenforceable. In addition, it claims that the Security Cheque should be forfeited to it.
8. The Agreement is governed by the laws of the Emirate of Abu Dhabi, including any applicable federal laws (“**UAE Law**”).¹⁰ The parties agree that ADGM law applies to questions of remedy, evidence and procedure. In *Awad v 3AM Property Investment*

³ The ADGM Real Property Regulations 2024, section 184(3). The 2024 Real Property Regulations were published on 1 October 2024.

⁴ Set out at paragraph 15 below.

⁵ ADGM Real Property Regulations 2024, section 22. See also, *Federal Properties Limited – Sole Proprietorship LLC (also known as Federal Properties Limited) v Ibrahim* [2025] ADGMCFI 0013, at paragraphs 44–49.

⁶ Agreement, clause 2(a).

⁷ *Ibid*, clause 4(c).

⁸ *Ibid*, clause 4(c), summarised at paragraph 22 below.

⁹ See paragraph 16.e and f.

¹⁰ Agreement, clause 9(a).



Company LLC,¹¹ Justice Sir Andrew Smith explained why such questions are governed by the *lex fori* (in this case, ADGM). The Judge said:¹²

“21. *In accordance with the general rule of English law and therefore of ADGM law, the procedural law to be applied in these proceedings is that of the ADGM, as is stated in Dicey, Morris & Collins on the Conflict of Laws (16th Ed, 2022) at Rule 3: "All matters of procedure are governed by the domestic law of the country to which the court wherein any legal proceedings are taken belongs (lex fori)". I confirmed the position in these proceedings in a direction made at the CMC for the avoidance of doubt that: "the procedural rules, including rules as to the admissibility of evidence, shall be those of the ADGM".*

...

26. *Secondly, ADGM law determines what remedies are available: see Dicey, Morris & Collins on the Conflict of Laws (16th Ed, 2022) at para. 4-01: "As a matter of English common law, the nature of the remedy is a matter of procedure to be determined by the lex fori. Thus, if the Claimant is by the lex causae entitled only to damages but is by English law entitled to specific relief, the latter type of remedy is available in England. Conversely, an English court will not grant specific relief where to do so is contrary to the principles of English law". However, if the Court does award damages in respect of a cause of action governed by a foreign substantive law, that foreign law generally determines what heads of damage are recoverable: see Cox v Ergo Versicherung AG [2014] UKSC 22, at para. 17.”*

9. By section 3(1) of the ADGM Application of English Law Regulations 2015, this Court is obliged to apply the “*common law of England (including the principles and rules of equity) as it stands from time to time*” as part of the law of the ADGM. Section 1(1)(a) and (b) of the same Regulations make it clear that the principles and rules of equity only apply so far as applicable in the circumstances of the ADGM, and subject to such modifications as those circumstances require. Section 3(1) provides that where a conflict exists between rules of equity and rules of common law, those of equity prevail.
10. One of the common law rules that applies concerns conflicts of law. In *Kireeva v Bedzhamov*,¹³ the Supreme Court of the United Kingdom considered what principles should apply in cases involving land situated within its jurisdiction. The common law of England and Wales permits only the law of the country in which the property is situated to govern orders in respect of land and rights attaching to such land.¹⁴ Put in the opposite way, a court of a country other than the place where the land is situated has no jurisdiction to

¹¹ *Awad v 3AM Property Investment Company LLC* [2025] ADGMCFI 0003.

¹² *Ibid*, at paragraphs 21 and 26.

¹³ *Kireeva v Bedzhamov* [2025] AC 812 (UKSC).

¹⁴ *Ibid*, at paragraphs 2 and 25 (Lord Lloyd-Jones and Lord Richards, with whom Lord Reed, Lord Briggs and Lady Rose agreed).



adjudicate upon the title to or the right to possession of that property.¹⁵ It follows that all rights over, or in relation to, an immovable are governed by the law of the country in which it is situated, subject only to exceptions involving interpretation, capacity to contract and material validity.¹⁶

11. With regard to the practical benefits of such a rule, *Dicey, Morris & Collins* explain, with regard to choice of law, that:¹⁷

“As a general rule, all questions that arise concerning rights over immovables (land) are governed by the law of the place where the immovable is situate (lex situs). The general principle is beyond dispute, and applies to rights of every description. It is based upon obvious considerations of convenience and expediency. Any other rule would be ineffective, because in the last resort land can only be dealt with in a manner which the lex situs allows.”

12. In this case, ADGM law must apply because transfer of ownership and subsequent registration of the land must be achieved through the ADGM land registration system.

The ADGM land registration system

13. The ADGM land registration system differs markedly from that applicable in Abu Dhabi. ADGM law is based on the Torrens system of land registration, which I discussed in some detail in *Federal Properties Ltd – Sole Proprietorship LLC (also known as Federal Properties Ltd) v Ibrahim*¹⁸ (“**Federal Properties 1**”). In refusing permission to appeal in that case, the Court of Appeal, citing Australian authority, referred to the Torrens system as “*not so much a system of registration of title but a system of title by registration*”.¹⁹ Once a person is registered as the proprietor of land, subject to limited exceptions, their title is conclusive and indefeasible.²⁰
14. In *Federal Properties Ltd – Sole Proprietorship LLC (also known as Federal Properties Ltd) v Ibrahim*²¹ (“**Federal Properties 2**”), I considered the way in which title to certain units within an apartment complex should be transferred into the names of persons on whose behalf I had found (in *Federal Properties 1*) were beneficiaries under a constructive trust. In doing so, I contrasted the approach that should properly be taken in such a case with one in which specific performance might be claimed. Relevantly, I said:²²

“13. In this case, I have held that Federal is holding each of the Remaining Units on a constructive trust for the respective Unit Owners. As a

¹⁵ Ibid, at paragraph 26, adopting Rule 139 of *Dicey, Morris & Collins*, The Conflict of Laws (16th ed 2022).

¹⁶ Ibid, at paragraph 28, applying Rule 140 of *Dicey, Morris & Collins*, The Conflict of Laws (16th ed 2022).

¹⁷ Ibid, at paragraph 36, citing *Dicey, Morris & Collins*, The Conflict of Laws (16th ed 2022) at paragraph 24-046.

¹⁸ *Federal Properties Ltd – Sole Proprietorship LLC (also known as Federal Properties Ltd) v Ibrahim* [2025] ADGCFI 0013.

¹⁹ *Federal Properties Ltd – Sole Proprietorship LLC (also known as Federal Properties Ltd) v Ibrahim* [2025] ADGMCA 0002, at paragraph 9, by reference to *Breskvar v Wall* (1971) 126 CLR 376 (HCA) at 385 (Barwick CJ).

²⁰ ADGM Real Property Regulations 2024, sections 22, 23 and 24. See also *Federal Properties Ltd – Sole Proprietorship LLC (also known as Federal Properties Ltd) v Ibrahim* [2025] ADGCFI 0013, at paragraphs 44-57. See also paragraph 4 above.

²¹ *Federal Properties Ltd – Sole Proprietorship LLC (also known as Federal Properties Ltd) v Ibrahim* [2026] ADGMCFI 0009.

²² Ibid, at paragraphs 13 and 14.



consequence, while legal title to each of the Remaining Units is presently registered in Federal's name, it can only deal with a Unit on behalf of the relevant Unit Owner. Acting in its capacity as a (constructive) trustee, Federal would be required to act for the benefit of the relevant Unit Owner, as beneficiary. So, if Federal were to enter into some transaction whereby it purported to transfer one of the Remaining Units to a third party or encumber without the consent of the respective Unit Owners it would be acting in breach of trust and liable for any loss to the Unit Owner concerned. The nature of the relief is to replace the name of the trustee with the name of the beneficiary. That process is one that can properly be characterised as a "correction" of the Register.

14. That state of affairs can be contrasted with cases in which a vendor sells to a purchaser but refuses to complete the settlement. If a purchaser brought a successful claim for specific performance, the Court would be asked to make an order that, on payment of the agreed purchase price, the vendor transfer the property into the name of the purchaser. In that situation, the purchaser is obtaining an order to require the vendor to transfer the property and have it registered in the purchaser's name. That does not involve a "correction" to the Register. The purchaser has, in that situation, no right to be registered as owner before the sale and purchase had been settled. Rather, it is a mechanism by which the promised transaction may be completed with the assistance of the Court, along with all consequential requirements such as registration. (Emphasis added; Footnotes omitted)

15. The Registrar, known as the ADGM Registration Authority ("**ADGM RA**"),²³ is required to maintain a real property register under the 2024 Regulations.²⁴ Section 26(3) of the 2024 Regulations deals with the treatment of "*interests in land*" on Al Reem Island, as part of the transitional arrangements. Section 26(3) provides:

"26. Creation of folio on the Registrar's initiative

...

- (3) *In respect of any land located on Al Reem Island that is already registered on the Abu Dhabi Real Property Register prior to 1 January 2025, the Registrar may create folios pursuant to section 8(3), in reliance of the records and information made available to the Registrar by the Municipality of Abu Dhabi or any successor body, and in doing so, the Registrar may require the person who, from records available to the*

²³ Previously known as the "Global Market's Registration Bureau"; see paragraph 49 below.

²⁴ ADGM Real Property Regulations 2015, section 7. Section 7 of the Real Property Regulations 2024 is to the same effect.



Registrar, appears to be the registered owner of the land, to produce all title documents substantiating ownership of the real property.”

The Agreement

16. The Agreement comprises both Recitals and operative terms. The Recitals are treated as part of the Agreement, and “*shall be read with it*”. Taking both the Recitals and operative clauses together, the Agreement records that:
- a. Ocean Pearl held itself out as “*the legal and beneficial owner*” of the Property, as illustrated in a Plot Affection Plan annexed to the Agreement as Schedule 1;²⁵
 - b. Ocean Pearl wished to sell, and Al Khaleej wished to buy, the Property in accordance with the terms of the Agreement;²⁶
 - c. the parties had “*agreed to enter into [the Agreement] as a legally binding agreement between them to reflect the terms and conditions*” of the transaction;²⁷
 - d. the total purchase price was AED 105 million;²⁸
 - e. contemporaneously with the signing of the Agreement, a “*current dated cheque*” (the “**Security Cheque**”), was to be provided by Al Khaleej to Ocean Pearl in the sum of AED 21 million;²⁹
 - f. the full purchase price (AED 105 million) was to be paid by Manager Cheque, which was to be handed over by Al Khaleej to Ocean Pearl during a “*ADM/Dari Meeting*”, in accordance with clause 4(c) of the Agreement. The reference to “*ADM/Dari*” indicates that the meeting was to be held at the offices of the Abu Dhabi Municipality, which is variously referred to as “*Abu Dhabi Land Registration Department*” and the “*Abu Dhabi Municipality*”³⁰; and
 - g. the “*ADM/Dari Meeting*” was intended to be held at the time at which the transaction was to be settled by provision of the Manager Cheque, not later than 90 days from the Agreement, 24 December 2024.³¹ The period of 90 days expired on 24 March 2025.
17. Although the first Recital a to the Agreement states that “*the Seller [Ocean Pearl] is the legal and beneficial owner*” of the Property,³² it now transpires that the Master Developer, Aldar Properties – PJSC (“**Aldar**”), is shown as the registered proprietor of the Property on

²⁵ Agreement, Recital a.

²⁶ Ibid, Recital b.

²⁷ Ibid, Recital c.

²⁸ Ibid, clause 2a.

²⁹ Ibid, clause 2b.

³⁰ Ibid, clause 2f.

³¹ Ibid, clause 4c.

³² Ibid, Recital a.



the ADGM Register. There is nothing in the Agreement to suggest that Aldar was the owner of the Property.

18. The Property was registered on the Abu Dhabi Real Property Register before 1 January 2025. With effect from 1 January 2025, title to the Property has been registered on the ADGM Register in the name of Aldar. Registration in its name means that Aldar has an indefeasible title to the Property.³³ Only Aldar (which is not a party to this proceeding) can effect a transfer to another entity. Ocean Pearl could only transfer the Property to Al Khaleej with the assistance of Aldar.
19. Ocean Pearl's interest in the Property (required to support its ability to enter into the Agreement as vendor) is said to be derived from a separate Sale and Purchase Agreement/Memorandum of Understanding with Aldar, to which Al Khaleej is not a party. Ocean Pearl acknowledges that those documents are not in evidence before the Court. I find that Al Khaleej had no visibility in respect of those documents until their existence was raised by Ocean Pearl in this litigation. Nor do I know what separate agreements have been reached between Ocean Pearl and Aldar.
20. Nevertheless, some provisions within the Agreement refer to the involvement of the Master Developer in the transaction. In particular:
 - a. Clause 2f of the Agreement states that (among other things) "*Master Developer fees related to the transfer of ownership (if any)*" shall be borne by Al Khaleej, as purchaser. This provision appears in that part of the Agreement that deals with the purchase price and makes clear that Al Khaleej (as purchaser) will pay "*all applicable taxes and charges*";³⁴
 - b. Clause 3d of the Agreement is an acknowledgement, on the part of Al Khaleej, that transfer of title to the property would occur at the Abu Dhabi Land Registration Department and Dari offices "*after getting [a No Objection Certificate] from the office of the Master Developer and signing the Master Developer novation agreement*";
 - c. Clause 4b of the Agreement states that both Ocean Pearl and Al Khaleej "*may be required to enter into and sign a formal ADM/Dari standard binding sale and purchase agreement or novation agreement*". Execution of such an agreement was expressed to be for the sole intention of enabling the transaction to be completed at the ADM/Dari meeting; and
 - d. Clause 4d of the Agreement contains an acknowledgement from both parties that, notwithstanding any other provisions within the Agreement, "*if permitted by the Master Developer, the transfer of [the Property's] title to [Al Khaleej] may be conducted solely at the Master Developer's office, without the need to attend the Abu Dhabi Municipality (ADM) offices*".

³³ See paragraph 4 above.

³⁴ Agreement, clause 2d.



21. Clause 8 of the Agreement preserved (rather than created) Al Khaleej’s right to assign the benefit of the Agreement to a third party, albeit limited in time until 23 January 2025. No specific reference is made to the need to assign to an ADGM entity.³⁵ Clause 8 provides:

“8. Assignment

[Al Khaleej] reserves the right to assign and transfer all of its rights and obligations under this [Agreement] to any of its affiliate companies within thirty (30) days from [24 December 2024], provided that [Al Khaleej] notifies [Ocean Pearl] of such assignment.”

22. Surprisingly, the evidence reveals that nobody involved in the negotiation or execution of the Agreement on 24 December 2024 appears to have appreciated that the Abu Dhabi land registration system was to end, insofar as the Property was concerned, on 31 December 2024, to be replaced by the ADGM regime from 1 January 2025. Nothing was inserted into the Agreement to specify how completion of the transaction after 1 January 2025 would be managed. The fact that the parties did not address the manner in which they would deal with that transitional issue explains why Al Khaleej and Ocean Pearl acted as they did in February and March 2025.

Al Khaleej’s and Ocean Pearl’s post-Agreement communications

23. The Chief Executive Officer of Al Khaleej, Mr Vikram Pradhan Ashok (“**Mr Vikram**”), gave evidence that, on learning of the transition to the ADGM system in January 2025, he engaged in telephone discussions with Mr Jamal Abu Shareef (“**Mr Jamal**”), the Vice President of Ocean Pearl’s parent company. There was no mention, in those discussions, of the fact that Aldar was the true registered proprietor of the Property. Rather, Mr Vikram asserts that Mr Jamal informed him that it would be necessary for Al Khaleej to establish an entity in ADGM in order to facilitate the transfer of ownership in accordance with the ADGM registration framework.
24. Whatever Mr Jamal had intended to convey in his conversation with Mr Vikram, I am satisfied that the Al Khaleej representatives honestly believed that Mr Jamal was giving them a direction to the effect that if an ADGM entity was not formed to take title to the Property, the transaction could not be completed. While Mr Jamal does not put his comments above the level of providing information, his evidence is not inconsistent with the way in which the Al Khaleej representatives interpreted his words. I accept that Mr Vikram believed that Mr Jamal had directed Al Khaleej to assign the Agreement to an ADGM entity.
25. Mr Vikram accepted that relations between Al Khaleej and Ocean Pearl remained cordial until some time in February 2025. Things changed when Mr Jamal stopped answering Mr Vikram’s communications about the transaction. Mr Vikram referred to a series of WhatsApp messages on 11 February 2025, 4 March 2025 and 5 March 2025 to establish

³⁵ See paragraphs 23–26 below.



Ocean Pearl's lack of engagement. By this stage, Al Khaleej had begun to harbour concerns that Ocean Pearl did not intend to complete the transaction.

26. On 13 February 2025, Al Khaleej completed incorporation of a wholly owned subsidiary, Prime Reem 151 SPV Ltd ("**Prime Reem**"), which was registered in the ADGM. Documents proving the incorporation of that company were sent by email to Ocean Pearl on 20 February 2025. However, no assignment of the Agreement was ever executed by Al Khaleej in favour of Prime Reem.
27. Al Khaleej's in-house lawyer, Mr Naji Mohamed Bey Merhavy ("**Mr Naji**"), gave evidence of attending the offices of Ocean Pearl on 13 March 2025, in the company of Al Khaleej's external legal counsel, Mr Ahmed Dehne. Mr Naji's intention (on instructions from Mr Vikram) was to meet Mr Jamal and the Vice President of Legal at Ocean Pearl, Mr Wassim Maghhamoumeh ("**Mr Wassim**"), to ascertain the reasons for Ocean Pearl's lack of engagement in relation to completion of the transaction, and to encourage a change in stance. Mr Naji's evidence was that he was kept waiting for some time and that the two Ocean Pearl representatives did not present themselves to meet him until he had made it clear that he would not leave the waiting room until they met.
28. When the Ocean Pearl representatives emerged, they spoke to Mr Naji. Mr Naji said that, during his meeting with Mr Jamal and Mr Wassim, he explained that:
 - a. the Agreement was binding on both parties;
 - b. Al Khaleej had formed an ADGM entity;
 - c. Mr Vikram and Al Khaleej's Chief Financial and Investment Officer, Mr Aditya Kotibhaskar (Mr Aditya) had repeatedly tried to contact Mr Jamal; and
 - d. no response to Mr Vikram's and Mr Aditya's overtures was forthcoming from Ocean Pearl.
29. At this meeting, Mr Naji attempted to serve a "*Legal Notice*" on Mr Jamal and Mr Wassim requiring Ocean Pearl to fulfil its obligations under the Agreement. Mr Naji's evidence was that both Mr Jamal and Mr Wassim refused to receive the legal notice. Mr Naji's evidence is recorded as follows in the trial transcript:

"[MR NAJI]: This is exactly what happened with me. I went to that office, I spoke with the Secretary. She told me they were too busy, and they would not meet with you. I told her, "We have a contract and I have instruction from my boss that I have to ensure that we are executing all required steps in a proper way. I will sit in the reception. I will not move before meeting with them." Then she told me, "You cannot sit, okay, if you don't have an appointment." I told her, "They are not nowadays answering the phone call, no one is speaking to answers, no one is replying to the emails. I will sit. If you want to call the police, you can call the police



for me.” I sit, and then after half hour, Mr Jamal and Mr Wassim came, and they said, “Please, can we sit in the meeting room?”

I said, we are fine and we sat in the meeting room. And I told them we have a contract, we have an obligation. We have a checks Manager Cheque. This Manager Cheque it is money and it is already out of our company account and we are losing opportunities and there is a project and we are losing benefit. And Mr Wassim Maghmoomeh and Mr Jamal, most of them, they said, go to the Court and sue us. It’s so easy. But I told them we are in corporate transaction, we are high level, there is no need for dispute. They said, it’s not an issue, go to the Court. I said, “Okay, thank you, full respect. Can you take this notice?” He said, “No, I will not take it.” I said, “Okay, I check hand with full respect.” I said, “Thank you for your time.” He said, well – he was so polite, he said, welcome. And I left. Then we sent on the same day, our email and minute it, because we minuted what had happened, then we sent the legal notice.” (Emphasis added)

30. Mr Wassim did not give evidence at trial to contradict what Mr Naji described. Nor did any other witness, including Mr Jamal, undermine what Mr Naji said. Indeed, in post-hearing submissions, Ocean Pearl acknowledged that Mr Wassim’s refusal to accept the Legal Notice on 13 March 2025 was “an error of judgment”. I find that Mr Wassim’s conduct (whether an “error of judgment” or not) evidenced a clear intention on the part of Ocean Pearl not to complete the transaction as at that date. The question whether Al Khaleej was obliged to tender the purchase price in an attempt to settle the transaction must be determined against the background of Ocean Pearl’s expressed intention not to complete.

Attempts to settle

31. Prior to 13 March 2025, Al Khaleej had liquidated various assets in order to realise sufficient funds to procure a Manager’s Cheque for AED 105 million to settle the transaction.³⁶ I am satisfied that, from a date before (but in close proximity to) 17 March 2025, Al Khaleej had sufficient funds available to obtain and tender a Manager Cheque to complete the purchase.
32. Mr Aditya deposed that funds totalling AED 105 million have been retained by Al Khaleej’s bank. They are not accruing interest. In the event that specific performance were refused, Al Khaleej seeks to recover damages and wasted costs relating to the steps that it took in anticipation of settlement.
33. While expecting that Ocean Pearl would not settle, Al Khaleej issued a notice requiring Ocean Pearl to attend either at the “ADM/Dari” office or at “ADGM”, on 17 March 2025, to complete the transaction. Those venues were the places at which the Abu Dhabi and ADGM land registries were located. Both locations were named because of Al Khaleej’s uncertainty as to the place at which the transaction should be completed. Despite having

³⁶ See the evidence of Mr Naji set out at paragraph 29 above.



been given notice, no representative of Ocean Pearl was present at either location at the time at which the meeting had been scheduled.

34. Although Al Khaleej did not have a Manager Cheque available on 17 March 2025 to tender the purchase price to Ocean Pearl, I am satisfied that it held sufficient funds to complete the purchase on that date. The Manager Cheque that has been produced in evidence by Al Khaleej bears the date of 19 March 2025. I have no doubt that, had Ocean Pearl attended on 17 March 2025 to settle, a Manager Cheque could readily have been obtained on that day to pay the purchase price.

The issues

35. A number of issues arise for determination. I summarise them as follows:
- a. is the Agreement:
 - i. Enforceable in its executed form?
 - ii. If so, can it be enforced by specific performance? (the “**Enforcement Issue**”)
 - b. if otherwise enforceable by specific performance, should the court exercise its discretion to refuse such an order because Al Khaleej failed to assign the benefit of the Agreement to Prime Reem? (the “**Assignment Issue**”)
 - c. if Al Khaleej is otherwise entitled to seek specific performance, is it prevented from obtaining an order on the grounds that it was *unable* to settle at the meeting scheduled for 17 March 2025³⁷? (the “**Ability to Settle Issue**”) and
 - d. if Al Khaleej were entitled to seek specific performance, are there any disintitling circumstances (other than any arising out of the Assignment Issue) that would require the Court to decline to make an order? (the “**Discretion Issue**”)
36. If it were necessary to consider the Counterclaim, two specific points arise:
- a. is the Agreement enforceable? This point turns on the same analysis as is required for the Enforcement Issue on Al Khaleej’s claim. I deal with this point under that heading; and
 - b. is Ocean Pearl entitled to damages for breach of contract by Al Khaleej, and, if so, how should they be calculated? (the “**Damages Issue**”)
37. I deal with those issues in the order in which I have set them out.

³⁷ See paragraphs 31–34 above.



The Enforcement Issue

(a) *Introductory comments*

38. There are two aspects of an inquiry into whether the Agreement is enforceable by an order for specific performance.
39. The first involves ascertainment of applicable law in relation to a decision whether Al Khaleej is entitled to obtain an order for specific performance. The question is whether, under laws governing the sale and purchase of the Property or the remedy for breach, the Agreement can be enforced in a manner that requires Ocean Pearl to transfer the Property to Al Khaleej.
40. The second is whether the Court should make an order for specific performance in light of the changes in the land registration system between the time at which the Agreement was entered into (24 December 2024) and the date by which it was to be settled (24 March 2025). Ocean Pearl advances an argument that the transaction has (as a matter of law) been “*frustrated*” as a result of those changes.³⁸

(b) *Applicable law*

41. Mr Robert Sliwiniski, for Ocean Pearl, commenced his analysis by reference to Article 22(12) of *Abu Dhabi Law No. 4 of 2013 Concerning Abu Dhabi Global Market* (the “**Founding Law**”). It states:

“Article (22)

General Provisions

...

- (12) *All transactions relating to the transfer of ownership of land located within the geographical boundaries of the Global Market shall be governed by the real estate laws of the Emirate and all its implementing resolutions.”*

42. The term “*Emirate*” is defined by Article 1 of the Founding Law as “*the Emirate of Abu Dhabi*”. Despite comprehensive changes being made to the Founding Law by *Abu Dhabi Law No. 12 of 2020 Amending Some Provisions of Law No. 4 of 2013 Concerning the Abu Dhabi Global Market* (the “**Founding Law Amendments**”), no changes were made to Article 22(12). Nor have any amendments been made since Al Reem Island was brought within ADGM on 24 April 2023.³⁹
43. Ocean Pearl contends that, if Article 22(12) of the Founding Law has the effect of applying the “*real estate laws of the Emirate*” to land located on Al Reem Island, then *Articles (6)*

³⁸ Ocean Pearl relies on the common law doctrine of “*frustration*”, discussed in authorities such as *Davis Contractors Ltd v Fareham UDC* [1956] 2 All ER 145 (HL).

³⁹ See paragraph 2 above.



and (14) of Abu Dhabi Law 3 of 2005 Regulating the Real Estate Register in the Emirate of Abu Dhabi (the “**Real Estate Register Law**”) apply to render the Agreement void, and unenforceable. Specifically, counsel for Ocean Pearl referred to the “*registration*” requirements for dispositions of real estate, set out in Articles 6 and 14 of the Real Estate Register Law. They provide:

a. Article (6):

“All dispositions of real estate included under the provisions of Article (10) of this law that creates, transfers or extinguishes one of the original or subordinate real rights shall be registered ... in the register designated for this purpose at the competent authority within which jurisdiction the real property lies. Non-registration shall result in the non-establishment, non-transfer, non-extinguishment of all rights herein mentioned either between the concerned parties or others. between them and third parties upon failure to register said dispositions”.

b. Article (14):

“Any disposition in violation of the provisions, regulations and decisions implementing this law shall be deemed void”.

44. To support the proposition that the Agreement is void under Abu Dhabi law, Ocean Pearl refers to two decisions of the Abu Dhabi Court of Cassation (the “**Court of Cassation**”), given on 21 February 2024 and 18 June 2025 respectively. Neither case is directly on point, in the sense that they do not deal with land situated on Al Reem Island or the conflict of laws issues that arise out of the application of the 2024 Regulations within ADGM.

45. In *Case No: 27-2024*, the Court of Cassation referred to Article 6 of the Real Estate Register Law⁴⁰ and Article 6 of *Abu Dhabi Law No. 19 of 2005 Concerning Real Estate Ownership* (the “**Real Estate Ownership Law**”). Article 6 of the Real Estate Ownership Law provided that: “*Neither the ownership right, nor any other real rights entailed therefrom shall be transferred, either between the two contracting parties or a third party, without registration*”. The Court of Cassation held that:

“The legislator’s intent was to not take into account real estate transactions that are not registered in the register designated for that purpose in the competent authority in whose jurisdiction the property is located, whether that is between the contracting parties or in the right of a third party. So as to the right of ownership, any other real rights entailed therefrom, and the subsidiary real rights arising from it do not arise, are not transferred, and are not extinguished between the concerned parties or with respect to others except by this registration alone.”

⁴⁰ Set out at paragraph 43.a.



46. In its decision of 18 June 2025, the Court of Cassation referred to Royal Order No. 3/4/2907, issued on 5 May 2010, to the effect that no transaction transferring ownership of property in Abu Dhabi or any real right thereon should be recognised before the courts unless conducted before the competent authority, the Department of Municipal Affairs, also known as “ADM”. The Court of Cassation upheld the lower Court’s view that a purported transfer of ownership of real property would not be considered valid unless concluded before the competent registration department. It added that if that did not occur and any agreement evidencing such a transaction was not registered, each document purporting to transfer “*is absolutely null and void due to the lack of the formal conditions stipulated in the aforementioned directives and orders*”.
47. The impact (or otherwise) of the Real Estate Register Law was discussed in *Awad v 3AM Property Investment Company LLC*.⁴¹ Justice Sir Andrew Smith considered whether a failure to register under the Real Estate Register Law would render an agreement relating to land void even though no disposition of the land would be effective or no property rights would be effected unless and until it was registered. By reference to two other decisions of the Court of Cassation, Justice Smith took the view that registration of a sale and purchase agreement is not a condition for validity of the contract but is a prerequisite to transfer of ownership, which occurs after registration. The Judge said:⁴²

“In Case 11/2013 (24 April 2013), the Court said: “Registering a real estate sale contract is not a condition for the formation or validity of the contract but is a condition for the transfer of ownership, which occurs after registration”. Similarly, in Case 73/2014 (20 July 2014), the Court said that “[o]nce a contract is validly concluded, neither party can revoke or amend it without mutual consent, legal action or statutory provision. A sale contract is binding upon the agreement of the parties and takes effect immediately upon completion, except for registration, which is not a condition for its validity.””

48. Article 22(12) of the Founding Law⁴³ must be read in the context in which it was promulgated. As at the date of its issue, 19 February 2013, there were no separate regulations governing ADGM. Articles 2 and 3 of the Founding Law dealt with the establishment and objectives of ADGM, referred to in the Founding Law as the “*Global Market*”. Articles 2 and 3 provide:

“Article (2)

Global Market

The Financial Free Zone established in the Emirate shall have an independent legal personality and enjoy full legal capacity and financial and administrative

⁴¹ *Awad v 3AM Property Investment Company LLC* [2025] ADGMCFI 0003, at paragraphs 115-120.

⁴² *Ibid*, at paragraph 119.

⁴³ Set out at paragraph 410 above.



independence. It shall be affiliated with the Government and called "Abu Dhabi Global Market"

Article (3)

The objectives of the Global Market

The objectives of the Global Market are to promote the Emirate as a global financial center, to develop the economy of the Emirate and make it an attractive environment for financial investments and an effective contributor to the international financial services industry."

49. The Founding Law established the ADGM and created a "Board of Directors" (the "Board"), which was to "be the supreme authority in" ADGM. Article 6(1) of the Founding Law gave the Board plenary power to issue "Global Market Regulations" relating to its work and objectives. Three "Global Market Authorities" were established by Article 10. One of those was the "Global Market's Registration Bureau" (the "ADGM RA").⁴⁴ Article 11(2) and (4) of the Founding Law empowered the ADGM RA (among other things) to deal with the registration of real estate and transactions within the geographic area of ADGM and to establish, regulate, update and operate registration records for real properties. In full, Article 11(2) and (4) provided:

"2. *Registration of real estate and transactions which fall on them such as mortgage, division, sale or purchase and other transactions and all other rights in rem and in personam falling on real estates according to the Global Market Regulations within the geographic area assigned to it.*

4. *Establish, regulate, update and operate the registration records, to register, amend, delete and liquidate the Global Market's Establishments and the real properties and commercial transactions and other transactions including a real property register, a securities register, Global Market's Establishments and trade names register pursuant to this law and the Global Market's Regulations,"*

50. The combination of the plenary legislative power of the Board, conferred by Article 6(1), and the functions of establishment and operation of real estate registration infrastructure, for which Articles 11(2) and (4) provide, makes it plain that the Founding Law contemplated that land within the geographic boundaries of ADGM would be dealt with under its own laws. That is what happened. Both the 2015 Regulations and the 2024 Regulations were enacted by the Board in exercise of its powers under Article 6(1). Both sets of Regulations were to govern the law of real property, to establish a system of real property registration and to make provision for matters relating to real property and real property registration.

⁴⁴ See also paragraph 15 above.



51. The “*Global Market Courts*” (“**ADGM Courts**”) were created by Article 13 of the Founding Law. They consist of a First Instance Court and a Court of Appeal.⁴⁵ Article 13(6) of the Founding Law set out those matters on which the Court of First Instance “*shall solely consider and decide*”, in relation to ADGM’s activities. The powers conferred on the ADGM Courts were clarified by changes to Article 13, set out in the Founding Law Amendments. Importantly:
- a. “*Without prejudice to the provisions of this law and the Global Market Regulations, the [ADGM] Courts shall be considered as courts of the Emirate, with jurisdiction over disputes and matters in accordance with the provisions of [the Founding Law] and the Global Market Regulations*”: Article 13(1);
 - b. judgments made by the ADGM Courts are issued in the name of the Ruler of Abu Dhabi: Article 13(2); and
 - c. the Court of First Instance’s jurisdiction was set out with greater specificity. Article 13(7) set out those matters in which the Court of First Instance has “*exclusive jurisdiction*”.
52. The phrase “*courts of the Emirate*” is used in different parts of Article 13 of the Founding Law Amendments, for distinct purposes. The phrase first appears in Article 13(1) of the Founding Law Amendments, by which the ADGM Courts are expressly stated to “*be considered as Courts of the Emirate*” with jurisdiction over disputes conferred either by the Founding Law Amendments or the Global Market Regulations. In the amended form of Article 13 (Articles 13(15) and (16) of the Founding Law Amendments), a series of provisions were introduced to facilitate enforcement of judgments entered by the onshore Abu Dhabi Courts or ADGM Courts, as between themselves.⁴⁶
53. The expression “*courts of the Emirate*” is variously used to emphasise the fact that, while Abu Dhabi and ADGM are separate jurisdictions, ADGM has capacity only to do what is authorised by the Ruler of Abu Dhabi pursuant to the Founding Law and any amendments made to it. The onshore Courts are entitled to exercise jurisdiction in respect of any matter that the Founding Law has not put within the exclusive jurisdiction possessed by the ADGM Court of First Instance under Article 13(7) of the Founding Law Amendments. That jurisdiction must be exercised by the ADGM Courts, subject only to the opt out provision contained in Article 13(9) of the Founding Law Amendments. Conversely, the ADGM Courts cannot exercise powers that go beyond that “*exclusive jurisdiction*”, subject to the opt in provisions contained in Article 13(8) of the Founding Law Amendments. That is the context in which it is necessary to consider what the words “*the real estate laws of the Emirate*” in Article 22(12) of the Founding Law mean.⁴⁷

⁴⁵ Founding Law Article (13)(1).

⁴⁶ These provisions had their genesis in a Memorandum of Understanding between the Judicial Department of the Emirate of Abu Dhabi and the ADGM Courts Concerning the Reciprocal Enforcement of Judgments. The Memorandum of Understanding was executed on 11 February 2018 out of a desire by the Courts to formalise agreed procedures for reciprocal enforcement of their judgments, decisions and orders, and arbitral awards ratified or recognised by them.

⁴⁷ Article 22(12) of the Founding Law is set out at paragraph 41 above.



54. Given the background to the establishment of the ADGM, the ability of the Board to legislate in respect of real property within its geographic area, the fact that decisions of this Court are issued in the name of the Ruler of Abu Dhabi,⁴⁸ and that the ADGM Courts are considered to be “*courts of the Emirate*”,⁴⁹ I hold that Article 22(12) should be interpreted as an acknowledgement that there are two systems of law within the “*Emirate*” to which different land laws apply. The framers of the Founding Law understood that land within ADGM was to be governed by ADGM law, while land within Abu Dhabi was to be governed by Abu Dhabi law. Both are to be characterised as “*laws of the Emirate*” and are to be upheld by the “*court of the Emirate*” that has jurisdiction over the dispute.
55. In my view, when this Court exercises jurisdiction in respect of land situated in ADGM under ADGM law, it is applying the “*laws of the Emirate*”. In such circumstances, by application of the immovables rule, only this Court can make orders in respect of land situated within its geographical boundaries.⁵⁰ Therefore, Article 22(12) can properly be interpreted to allow this Court to apply ADGM law in deciding whether a remedy of specific performance is available to Al Khaleej and, if so, what consequential orders may be required in respect of registration. I find against Ocean Pearl on this point.

(c) “*Frustration*”

56. The doctrine of frustration is one of the rules of common law applicable in the ADGM.⁵¹ The parties argued this issue on the basis that English law principles applied. Although specific performance is an equitable remedy, the two co-exist. Application of the doctrine of frustration results in the termination of a contract for reasons beyond the control of the parties. Because the contract is at an end, there is nothing in respect of which a Court could order specific performance.
57. In *Davis v Fareham UDC*,⁵² the House of Lords considered the scope of the doctrine of frustration. Drawing on observations made by Earl Loreburn in *F A Tamplin SS Co Ltd v Anglo-Mexican Petroleum Products Co Ltd*,⁵³ Lord Reid described the doctrine as an exception to the rule that parties must have made a particular bargain on the footing set out in the contract.⁵⁴ Earl Loreburn’s had said that:⁵⁵

“... a court can and ought to examine the contract and the circumstances in which it was made, not of course to vary, but only to explain it, in order to see whether or not from the nature of it the parties must have made their bargain on the footing that a particular thing or state of things would continue to exist. And if they must have done so, then a term to that effect will be implied, though it be not expressed in the contract ... no court has an absolving power but it can infer from the nature

⁴⁸ Founding Law Amendments, Article (13)(2).

⁴⁹ Ibid, Article (13)(1).

⁵⁰ *Kireeva v Bedzhamov* [2025] AC 812 (UKSC), discussed at paragraphs 10 and 11 above.

⁵¹ See paragraph 9 above.

⁵² *Davis v Fareham UDC* [1956] 2 All ER 145 (HL).

⁵³ *F A Tamplin SS Co Ltd v Anglo-Mexican Petroleum Products Co Ltd* [1916] 2 AC 397 (HL).

⁵⁴ *Davis v Fareham UDC* [1956] 2 All ER 145 (HL), at 159.

⁵⁵ *F A Tamplin SS Co Ltd v Anglo-Mexican Petroleum Products Co Ltd* [1916] 2 AC 397 (HL) at 403-404.



of the contract and the surrounding circumstances that a condition which is not expressed was a foundation on which the parties contracted.”

58. Put another way, the common law doctrine of “*frustration*” applies in circumstances where a contractual obligation has become incapable of being performed because the circumstances of performance brings about a materially different result than what the parties intended. The principle is sparingly applied to ensure that parties do not seek to use it to extract themselves from contracts that have become more onerous or less advantageous as a result of changes in circumstances since the contract was executed.
59. In the present case, Al Khaleej and Ocean Pearl:
- a. intended to enter into a binding contractual arrangement whereby Ocean Pearl would sell the Property to Al Khaleej for an agreed price;
 - b. are taken to have known the date at which the ADGM land registration regime was to replace Abu Dhabi’s land registration system, being 1 January 2025. That time was enshrined in law. The parties are assumed to have known what the law said on this topic;
 - c. intended to settle the transaction at a time after the ADGM regime came into force, even though the Agreement was executed beforehand; and
 - d. understood that it was necessary to have regard to certain obligations involving the Master Developer, even though Al Khaleej did not realise that Aldar was the registered proprietor of the Property.
60. The only differences between those fundamental terms and the way in which ADGM law operates is that the proposed ADM/Dari meeting became redundant. That said, it cannot be seriously arguable that if the parties cannot agree on the place at which settlement is to be effected a contract comes to an end. A provision that identifies a location at which the parties are to meeting is nothing more than a machinery clause, designed to facilitate efficient completion of the sale. That conclusion is reinforced by clause 4(d) of the Agreement, which expressly allows the parties to forego an ADM/Dari meeting by permitting the Master Developer to transfer title at its own office. The contract was not frustrated by the absence of an ADM/Dari meeting.
61. Nor could frustration arise out of the fact that Aldar was the real registered proprietor. Ocean Pearl held itself out to be the registered proprietor, with authority to sell the property.⁵⁶ In my view, it is a question of construction of the Agreement (to be undertaken under UAE Law) as to how the fact that Aldar was the registered proprietor should affect any obligations cast upon Ocean Pearl by the Agreement.
62. I hold that the doctrine of frustration does not apply.

⁵⁶ Agreement, Recital a.



The Assignment Issue

(a) *Could a non-ADGM entity take title to the Property?*

63. Ocean Pearl's initial argument was that Al Khaleej, as an entity incorporated in Ras Al Khaimah, was not entitled to be registered as owner of the Property. Accordingly, without a pre-settlement assignment of the Agreement to an ADGM entity, the Agreement could not be specifically performed.

64. Although Al Khaleej is a company registered in Ras Al Khaimah, there is no specific provision in the 2024 Regulations which operates to prohibit ownership of land by entities not registered in ADGM. Section 14 of the 2024 Regulations is expressed neutrally, as follows:

"14. Registered owner may be an individual or a body corporate

The registered owner of an interest in real property may be an individual or a body corporate."

65. In closing submissions, Ocean Pearl retreated from its initial position that only an ADGM entity could take title to the Property. It now accepts that there is nothing in the 2024 Regulations to prevent a non-ADGM entity from taking title. Nevertheless, Ocean Pearl has continued to contend that it was necessary for an assignment to an ADGM entity to be completed before settlement of the Agreement could be achieved. That submission is based on the principle of estoppel by convention.

(b) *Estoppel by convention*

66. Ocean Pearl contends that, from early January 2025, both parties conducted themselves on the basis of a shared assumption that an ADGM registered entity would be established to take title. This was said to arise out of communications between Aldar and ADGM during the immediate post-transition period⁵⁷. There was no direct evidence of any such communication. However it was submitted that Mr Jamal conveyed that necessity to Al Khaleej, that both tacitly agreed to proceed in that way and took steps to incorporate an ADGM entity to satisfy that requirement.

67. Al Khaleej did incorporate an ADGM entity, Prime Reem, and sent the incorporation documents to Ocean Pearl. However, Al Khaleej did not assign the benefit of the Agreement to Prime Reem, whether in terms of clause 8 of the Agreement⁵⁸ or otherwise. Ocean Pearl asserts that Al Khaleej is estopped from seeking to take title in its own name (through an order for specific performance) because of its course of conduct with Ocean Pearl.

⁵⁷ Generally, see paragraphs 23–25

⁵⁸ Clause 8 of the Agreement is set out at paragraph 21 above.



68. Ocean Pearl relies on two decisions of the Court of Appeal of England and Wales: *Blindley Heath Investments Ltd v Bass*⁵⁹ and *Dixon v Blindley Heath Investments Ltd*.⁶⁰ The two decisions were delivered on the same day by a Bench comprising Longmore and Jackson LJ and Hildyard J. Hildyard J gave the judgment of the Court in each case. The elements of an estoppel by convention were explained in *Dixon*⁶¹ as follows:

“[72] Estoppel by convention is a form of estoppel that was originally developed by the common law courts (see Legione v Hately (1983) 152 CLR 406 at 430) largely in the context of binding parties to agreed recitals in deeds (a paradigm example of 'estoppel in pais'). Traditionally it was conceived as a rule of evidence that precluded the party estopped from leading evidence to rebut the recital or assumption. However, and especially since the decision of this court in Amalgamated Investment and Property Co Ltd (in liq) v Texas Commerce International Bank Ltd [1981] 3 All ER 577, [1982] QB 84, its principles have largely been explained in equitable terms and expanded as another variant of equitable estoppel.

[73] Estoppel by convention is not founded on a unilateral representation, but rather on mutually manifest conduct by the parties based on a common, but mistaken, assumption of law or fact: its basis is consensual. Its effect is to bind the parties to their shared, even though mistaken, understanding or assumption of the law or facts on which their rights are to be determined (as in the case of estoppel by representation) rather than to provide a cause of action (as in the case of promissory estoppel and proprietary estoppel); and see Snell's Equity (33rd edn, 2015) at 12–012. If and when the common assumption is revealed to be mistaken the parties may nevertheless be estopped from departing from it for the purposes of regulating their rights inter se for so long as it would be unconscionable for the party seeking to repudiate the assumption to be permitted to do so (and see, for example, Norwegian American Cruises A/S (formerly Norwegian American Lines A/S) v Paul Mundy Ltd, The Vistafjord [1988] 2 Lloyd's Rep 343 at 353 in the judgment of Bingham LJ, as he then was).”

(Emphasis added)

69. On any view, it cannot be unconscionable to require Ocean Pearl to transfer the Property to Al Khaleej, rather than Prime Reem as the proposed assignee. On either basis, Ocean Pearl would receive the purchase price of AED 105 million. That finding alone is sufficient to defeat any defence that Ocean Pearl might otherwise have had based on estoppel by convention. Ocean Pearl's argument is inconsistent with the need to establish some form of injustice or unfairness. In one of the first appellate authorities in England, the decision of the Court of Appeal in *Amalgamated Investment & Property Co Ltd (in liq) v Texas*

⁵⁹ *Blindley Heath Investments Ltd v Bass* [2017] Ch 389 (CA).

⁶⁰ *Dixon v Blindley Heath Investments Ltd* [2017] 1 All ER (Comm) 319.

⁶¹ *Ibid*, at paragraphs [72] and [73].



Commerce International Bank Ltd,⁶² Lord Denning MR put the principle (notwithstanding that the breadth of his observations have not been accepted in later cases) as follows:⁶³

“... when the parties to a transaction proceed on the basis of an underlying assumption – either of fact or of law – whether due to misrepresentation or mistake makes no difference – on which they have conducted the dealings between them – neither of them will be allowed to go back on that assumption when it would be unfair or unjust to allow him to do so. If one of them does seem to go back on it, the courts will give the other such remedy as the equity of the case demand.”

70. In my view, if Al Khaleej was acting under the false impression that it was necessary for a non-ADGM entity to take title to the Property, it was doing so based on the representations that it received from Ocean Pearl.⁶⁴ In any event, I do not consider that there is any injustice involved in allowing Al Khaleej to depart from what Ocean Pearl represented it to do because Ocean Pearl suffers no prejudice.
71. As Al Khaleej is entitled to be registered as proprietor of the Property in its own right, there is nothing to prevent it from seeking a specific performance order in its own favour. Put another way, there is nothing unconscionable about requiring Ocean Pearl to perform its agreed binding obligations simply because Al Khaleej did not adopt Ocean Pearl’s view that, to be valid, it was necessary for Al Khaleej to assign its interest in the Agreement to a separate ADGM entity.

The Ability to Settle Issue

72. Ocean Pearl asserts that Al Khaleej failed to make any tender of the purchase price prior to expiry of the 90 day period on 24 March 2025. To recapitulate, the scheduled meeting at either ADM/Dari or ADGM was to take place on 17 March 2025. The Manager Cheque produced in evidence is dated 19 March 2025.⁶⁵
73. The general rule is that a purchaser of any form of property is required to tender the purchase price to the vendor to demonstrate its ability to settle prior to completion of the transaction. However, there are exceptions to that general rule. Typically, such a tender will not be necessary in a case in which the vendor has made it clear that it does not intend to settle. In such circumstances, there is no point in requiring a tender to be made when it is clear that it will not be accepted.
74. An illustration of that approach can be found in *Farquharson v Pearl Assurance Co Ltd*.⁶⁶ After reviewing relevant authorities, Singleton J found that a tender of insurance premiums

⁶² *Amalgamated Investment & Property Co Ltd (in liq) v Texas Commerce International Bank Ltd* [1982] 1 QB 84 (CA).

⁶³ *Ibid*, at 122.

⁶⁴ See paragraph 29 above.

⁶⁵ See paragraph 34 above.

⁶⁶ *Farquharson v Pearl Assurance Co Ltd* [1937] 3 All ER 124 (KBD).



was not required if the person to whom the tender was to be made had evidenced an intention not to accept it. His Lordship said:⁶⁷

“Now, it is not said in this case that the claimant had the money in his pocket, in so many words, but the arbitrator finds that the claimant called on [the insurer’s representative] and offered to pay the premiums on both policies. From that I assume that he was ready and willing to pay. I assume, too, as I think I must, that the only reason that payment was not made was that ... the district manager of the [insurer] declined to accept payment. It is true that there was no jingling of money; I do not suppose that insurance premiums are paid, in the ordinary way, in ready cash; but, on these findings of the arbitrator, coupled with, indeed, the word or two in the final award, ... I am satisfied that the claimant was ready and willing to pay on that day, and that he would have paid but for the fact that the district manager ... was not ready and willing to accept the money from him on that day.” (Emphasis added)

75. The question whether a party has acted (by words or conduct) in a manner that has dispensed with the need for the other to tender a purchase price is one of fact. I am satisfied that Ocean Pearl did evidence an intention not to accept payment by the time of the proposed 17 March 2025 meeting at ADM/Dari or ADGM. That intention was evidenced, at the latest, at the meeting at which Mr Najji sought to serve a Legal Notice on Ocean Pearl, on 13 March 2025.⁶⁸ I am also satisfied that Al Khaleej had available to it sufficient funds to obtain a Manager Cheque to complete settlement on 17 March 2025.⁶⁹
76. In my view, Ocean Pearl’s conduct effectively dispensed with the need for tender prior to settlement. My finding that Al Khaleej was in a position to obtain a Manager Cheque for the purchase price is sufficient to determine the ability to settle issue in its favour.

The Discretion Issue

(a) *Is specific performance an available remedy?*

77. In an earlier judgment in this proceeding⁷⁰ I discussed the circumstances in which an order for specific performance may be made.⁷¹ The common law and equitable principles of English law apply, with necessary modifications applicable to the circumstances of the ADGM. Specific performance is an equitable remedy. In cases where the rules of the common law clash with those of equity, the principles of equity prevail.⁷²
78. An order for specific performance is discretionary in nature. The remedy of specific performance emerged because courts of equity regarded common law damages as inadequate for contracts for the sale of land, which was seen as a unique property interest.

⁶⁷ Ibid, at 131.

⁶⁸ See paragraphs 27–30 above.

⁶⁹ See paragraphs 31–34 above.

⁷⁰ *Al Khaleej Investment PSC v Ocean Pearl Real Estate Comp LLC* [2025] ADGMCFI 0012.

⁷¹ Ibid, at paragraphs 22–23.

⁷² See paragraph 9 above.



Equity supplemented the common law by introducing the remedy of specific performance, compelling the defaulting party to carry out obligations under the contract rather than ordering damages against that party for failing to do so.

79. My earlier judgment dealt with an application by Ocean Pearl for an extension of time to file and serve an Acknowledgement of Service and a Defence. Ocean Pearl raised three issues, all of which were pursued at the substantive hearing but have been rejected by me.⁷³ In addition, I raised the possibility that the common law doctrine of “*frustration*” may underlie those proposed defences. That too was raised at the substantive hearing, and I have rejected its application.
80. I am satisfied that, presumptively, Al Khaleej is entitled to seek specific performance of the Agreement. The complicating factor is that the Property is not registered in the name of Ocean Pearl. While Rule 58 of the ADGM Court Procedure Rules 2016 suggests that service of a judgment on Aldar would bind it to the outcome, it is not appropriate at this stage to make an order for specific performance against a non-party. The issue is whether an order can be made against Ocean Pearl in a manner that is likely to result in Aldar transferring the Property to Al Khaleej.

(b) *Interpretation of the Agreement*

81. Clause 9a of the Agreement stipulates that the Agreement “*shall be governed by the laws, rules, and regulations applicable in the Emirate of Abu Dhabi*”. Those laws include the Federal laws of the UAE. Counsel for Al Khaleej referred me to Article 265 of the UAE Civil Code (Federal Law No 5 of 1985) which deals with the construction of contracts. Article 265 provides:

“Article 265

- (1) *If the wording of a contract is clear, it may not be departed from by way of interpretation to ascertain the intention of the parties.*
- (2) *If there is scope for interpretation of the contract, an enquiry shall be made into the mutual intentions of the parties without stopping at the literal meaning of the words and guidance may be sought in doing so from the nature of the transaction, and the trust and confidence which should exist between the parties in accordance with the custom current in dealings.”*

82. Those principles of contractual interpretation are not dissimilar to those applicable in the ADGM.⁷⁴ In each jurisdiction the Court is obliged to determine the objective intentions of the parties to determine what agreement was reached. The subtle difference is that, under UAE Law, enquiries into the broader context in which the parties entered into the contract

⁷³ Ibid, at paragraph 24d, e and f.

⁷⁴ The relevant principles applicable in the ADGM are set out in *Dijllah Jewellery FZE v AVA Trade Middle East Ltd* [2025] ADGMCFI 0001, at paragraph 23-25 and *Xetech Solutions Ltd v Pulsar Capital Holdings Ltd* [2026] ADGMCFI 0006, at paragraphs 20–24.



may only be undertaken if the words used are not, in themselves, clear.⁷⁵ In my view, the words used in the Agreement to specify the parties' mutual obligations are not, of themselves, sufficiently clear as to what Ocean Pearl was required to do to complete settlement with Al Khaleej.⁷⁶ Therefore, it is appropriate to take the broader context into account.

83. I interpret the Agreement on the basis that any interpretation must be consistent with both Ocean Pearl's representation that it was the owner of the Property and the general intent of the parties to create a binding legal relationship by which Ocean Pearl was to sell the Property to Al Khaleej for an agreed price. The Court must consider the contract as a whole, putting itself in the position of the parties with the knowledge each held as at the date of the Agreement, 24 December 2024. A meaning consistent with business common sense should be preferred if more than one interpretation is legitimately open to the Court.
84. My starting point is that Ocean Pearl held itself out as "*the legal and beneficial owner*" of the Property with authority to sell it.⁷⁷ The Property was to be bought and sold at considerable value: AED 105 million, roughly equivalent to USD 30 million. On execution of the Agreement, Al Khaleej immediately provided to Ocean Pearl a Security Cheque for AED 21 million, roughly USD 5.75 million. Ocean Pearl accepted that Security Cheque notwithstanding its knowledge that Aldar was the registered proprietor of the Property.
85. The Agreement did address some issues relating to the Master Developer, Aldar, even though it was not held out to be the owner of the Property.⁷⁸ Al Khaleej agreed to pay Aldar's fees "*related to the transfer of ownership (if any), all service charges due on the [Property] up to the date of transfer of the [Property] title*" to Al Khaleej.⁷⁹ More importantly, however, Al Khaleej acknowledged that transfer to the Property would occur after it had obtained a "*[No Objection Certificate] from the office of the Master Developer and signing the Master Developer novation agreement*".⁸⁰ In that context, by promising each other to complete the transaction on or before 24 March 2024, both parties undertook "*among other things, to sign and execute without delay all documents, forms and agreements required by the Master Developer and ADM/Dari in relation to or reasonably necessary for the successful completion of the Transaction, including the transfer of the ownership of the [Property] to*" Al Khaleej.⁸¹
86. There is nothing in the Agreement to suggest that the transfer of title, on completion of settlement, would be from Aldar to Al Khaleej. The general tenor of the Agreement is that all things necessary would need to be done to ensure that the documents reasonably required by Aldar were executed; and that Ocean Pearl was put into a position whereby it

⁷⁵ Federal Law No 5 of 1985), Article 265, set out at paragraph 81 above.

⁷⁶ See paragraph 81 above.

⁷⁷ Agreement, Recitals a–c and clause 1.

⁷⁸ Generally, see paragraph 17 above.

⁷⁹ Agreement, clause 2f.

⁸⁰ Ibid, clause 3d.

⁸¹ Ibid, clause 4a.



could either transfer the Property itself, or procure Aldar's execution of a transfer on its behalf.

87. For example, there is nothing to indicate that Aldar retained a veto over the sale by refusing, without good reason, to provide a No Objection Certificate. Reading the Agreement as a whole, my interpretation is that it required Ocean Pearl to take such steps as were necessary to procure Aldar's co-operation in completion of the Agreement. In fact, Ocean Pearl has acted contrary to that obligation. In my view, Ocean Pearl expressly held itself out as having an ability to transfer the Property to Al Khaleej and to ensure that Aldar did everything necessary to achieve that goal.
88. One of the grounds on which Ocean Pearl seeks to oppose specific performance is that Aldar is not prepared to enter into relevant documents to complete settlement. No evidence has been adduced by Ocean Pearl to suggest what those reasons are. No evidence has been given from anyone associated with Aldar. There is no reliable evidence to suggest that Aldar may refuse to execute the necessary documents. I think it is likely that Ocean Pearl has persuaded (or at least suggested to) Aldar not to co-operate in order to prevent closure of the sale.
89. In my view, Al Khaleej is entitled to an order for specific performance. There is no disintitling conduct that would prevent an order being made. Expressly, I find that Al Khaleej is not in breach of any provision in the Agreement. However, the order will need to be crafted carefully to ensure that the burden of compliance rests on Ocean Pearl and is not inappropriately cast upon Aldar. My order is set out and explained later.
90. If it were not possible for Al Khaleej to settle the transaction based on the order, I would be prepared to discharge the order for specific performance and allow Al Khaleej to pursue its claim for damages in lieu of specific performance. Such claims may, or may not, take into account Ocean Pearl's representation that it was the owner of the Property. That approach is based on the speech given by Lord Wilberforce, in the House of Lords, in *Johnson v Agnew*.⁸² The House held that a party seeking specific performance merely elects a course of action which may or may not lead to implementation of the contract. In doing so, that party is not electing an eternal or unconditional affirmation of the contract but simply for it to be continued under the Court's control.
91. If an order for specific performance were made but it later became impossible to enforce it, the party (whether vendor or purchaser, depending on which has obtained the benefit of the decree) has the right to return to the Court to discharge the order and terminate the contract. Once the contract has been terminated, damages will flow for breach. Generally speaking, damages at common law for breach of contract will be awarded because the contract is terminated from the date of the Court order, not *ab initio*. The only circumstance

⁸² *Johnson v Agnew* [1979] 12 All ER 883 (HL).



in which a Court is likely to refuse an order discharging the decree of specific performance and terminating the contract is if it would be unjust to the defaulting party to do so.⁸³

The Damages Issue

92. Strictly speaking, the damages issue (which arises on the Counterclaim) is moot because Al Khaleej did not breach any term of the Agreement. Had it done so, I would have found that clause 6a of the Agreement applied. Clause 6a provides a mechanism for the vendor to invoke in the event of a default by the purchaser. On the facts that I have found, Al Khaleej, as purchaser, did not breach the Agreement. Nor did Ocean Pearl seek to invoke clause 6a at any time prior to the issue of this proceeding. It follows that Ocean Pearl has no contractual basis for its claim for damages.

Conclusion

93. In *Federal Properties 1*, I directed that the owner “undertake all steps necessary to effect with the ADGM RA a transfer of the title deed” for the relevant property, and that those to whom the property was to be transferred “provide such documents or information or take such steps as may be required by them in order to effect the transfer of the title deed”.⁸⁴ In *Federal Properties 2*, because of the nature of the remedy required, I subsequently vacated those directions and required the Registrar to correct the ADGM Register.⁸⁵
94. In my view, the remedy initially granted in *Federal Properties 1* is, in the circumstances of this case, more appropriate. If, for any reason, Ocean Pearl cannot complete (whether through Aldar’s refusal to consent to the transfer or otherwise), Al Khaleej will be entitled to return to the Court and ask that the specific performance order be discharged on the basis that it will be permitted to pursue its alternative claim for damages.
95. For the reasons I have given:
- a. I am prepared to make an order for specific performance requiring Ocean Pearl to do all such things as are necessary to complete the sale on payment of the purchase price by Al Khaleej. The precise terms of the order (setting out the steps to be followed for settlement to be completed) will be fixed following submissions from the parties as to form. It is important that, as well as identifying what each of Al Khaleej and Ocean Pearl must do as between themselves, the order also captures the steps that Ocean Pearl must take, *vis a vis* Aldar, in order to ensure the property can be transferred to Al Khaleej and registered in its name.

⁸³ *Ibid*, at 890, 894, 895, 896 and 897 (Lord Wilberforce, with whom Lord Salmon, Lord Fraser of Tullybelton, Lord Keith of Kinkel and Lord Scarman agreed).

⁸⁴ *Federal Properties Ltd – Sole Proprietorship LLC (also known as Federal Properties Ltd) v Ibrahim* [2025] ADGCIF 0013, at Schedules A, B and C, paragraphs 4 and 5.

⁸⁵ *Federal Properties Ltd – Sole Proprietorship LLC (also known as Federal Properties Ltd) v Ibrahim* [2026] ADGCIF 0009, at paragraphs 13, 14 and 17.



- b. Counsel for the parties shall confer and file a draft order for my approval by 4.00 pm on 19 June 2026. If they cannot agree on the terms, each party shall file and serve its own draft, and I shall determine the terms of the order on the papers.
 - c. Leave is reserved for Al Khaleej to apply to the Court for further orders to give effect to the specific performance order or to discharge the decree and, in lieu thereof, seek damages. I anticipate the latter would only be required if Ocean Pearl cannot perform the Agreement for reasons beyond its control.
 - d. The Counterclaim is to be dismissed.
96. Al Khaleej has succeeded in obtaining a specific performance order. It is entitled to costs. They are awarded against Ocean Pearl on the standard basis, to be fixed summarily by the Court in the absence of agreement. In the event that agreement proves impossible, Al Khaleej shall notify the Registry so that I can make directions for the exchange of submissions on the topic, with any decision being given on the papers. The costs will include those incurred on behalf of Al Khaleej in finalising the terms of the specific performance order.



Issued by:

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

Linda Fitz-Alan
Registrar, ADGM Courts
5 June 2026