



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**

**SOWWAH SQUARE INVESTMENT – SOLE PROPRIETORSHIP L.L.C.**  
Claimant

and

**FOREVER ROSE RETAIL LIMITED**  
Defendant

**JUDGMENT OF JUSTICE PAUL HEATH KC**

<b>Neutral Citation:</b>	[2026] ADGMCFI 0013
<b>Before:</b>	Justice Paul Heath KC
<b>Decision Date:</b>	22 April 2026
<b>Decision:</b>	<p>The Summary Judgment Application is: granted insofar as it relates to the Tenant Payments and the Yield Up Costs; and</p> <p>dismissed insofar as it relates to the Late Payment Fee and Liquidated Damages.</p> <p>The Defendant shall pay the Claimant the sum of AED 654,410.79, comprised of the following amounts: AED 608,525.79 in relation to Tenant Payments; and AED 45,885 in relation to Yield Up Costs.</p> <p>Interest on the sums awarded under paragraph 2 above are reserved.</p>
<b>Hearing Date:</b>	5 March 2026
<b>Date of Order:</b>	22 April 2026
<b>Catchwords:</b>	<p>Summary Judgment. No real prospect of successfully defending a claim. Breach of commercial lease. Tenant payments and yield-up costs. Defences of insolvency, surrender negotiations and self-representation dismissed as having no real prospect of success. Unenforceable penalties. Liquidated damages. Late payment fee. Holding over period. Whether a late payment fee is commercially justifiable or out of all proportion to the innocent party's legitimate interests. Proportionality test. Application of the test in Cavendish Square Holding BV v Makdessi.</p>
<b>Legislation Cited:</b>	ADGM Courts Procedure Rules 2016
<b>Cases Cited:</b>	<p>Union Properties PJSC v Trinkler Partners Ltd [2024] ADGMCFI 0014</p> <p>127 Hobson Street Ltd v Honey Bees Preschool Ltd [2020] 1 NZLR 179 (SCNZ)</p> <p>Cavendish Square Holding BV v Makdessi [2016] AC 1172 (UKSC)</p>

	<p>Paciocco v Australia and New Zealand Banking Group Ltd (2016) 258 CLR 525 (HCA)</p> <p>ED &amp; F Mann Liquid Products v Patel [2003] EWCA Civ 472</p> <p>Eng Mee Yong v Letchumanan s/o Velayutham [1980] AC 311 (PC)</p>
<b>Case Number:</b>	ADGMCFI-2025-262
<b>Parties and representation:</b>	<p><b>Claimant</b></p> <p>Mr Roman Khodykin, Bryan Cave Leighton Paisner</p> <p><b>Defendant</b></p> <p>Mr Ebraheem Al-Samadi, Director and sole shareholder of the Defendant</p>

## JUDGMENT

### Introduction

1. Sowwah Square Investment – Sole Proprietorship LLC (“**Sowwah**”) is a real estate company registered in the Abu Dhabi Global Market (“**ADGM**”). It owns “*The Galleria*” mall (the “**Mall**”), situated on Al Maryah Island.
2. By a lease (“**the Lease**”) dated 1 August 2018, Sowwah rented Unit 208B (SU) (the “**Unit**”) to Al Samadi General Trading LLC. That company was operated by Mr Ebraheem Al-Samadi. By agreement dated 24 June 2022, that company entered into a novation of the Lease to Forever Rose Retail Limited (“**Forever Rose**”), which became the lessee from that date. Forever Rose is also controlled by Mr Al-Samadi. The Lease governs the relationship between Sowwah and Forever Rose. The latter assumed (and agreed to perform) all obligations cast on the lessee by the Lease.
3. Sowwah seeks summary judgment (the “**Summary Judgment Application**”) against Forever Rose in respect of moneys that it alleges are due under the Lease. Forever Rose opposes the application. The Claim falls into two parts:
  - a. claims for (what are defined as) “*Tenant Payments*”<sup>1</sup> (the “**Tenant Payments**”), under the Standard Terms of the Lease (the “**Standard Terms**”) and the costs of yielding up (the “**Yield Up Costs**”) the Unit to Sowwah;<sup>2</sup> and

<sup>1</sup> See paragraph 9 below.

<sup>2</sup> See paragraphs 23.a and c below. See also, paragraph 11 below.

- b. claims for liquidated damages (the “**Liquidated Damages**”) and a late payment fee (the “**Late Payment Fee**”).<sup>3</sup>
4. The Summary Judgment Application was heard on 5 March 2026. Mr Roman Khodykin appeared for Sowwah. Forever Rose was represented by its Director, Mr Al-Samadi. At the conclusion of the hearing, I reserved my judgment.

### Summary judgment principles

5. Rule 68 of the ADGM Court Procedure Rules 2016 (the “**Rules**”) sets out the grounds on which summary judgment may be ordered by the Court. It deals both with applications that might be made by claimants or defendants. By reference to a claimant’s application for summary judgment, rule 68(1) provides:

**“68. Grounds for summary judgment**

(1) *The Court may give summary judgment against a claimant or defendant on the whole of a claim or on a particular issue if it considers that –*

...

(b) *the defendant has no real prospect of successfully defending the claim or issue; and*

(c) *there is no other compelling reason why the case or issue should be disposed of at trial.*

...”

6. Sowwah’s position is that Forever Rose has “*no real prospect of successfully defending the claim*”.<sup>4</sup> In *Union Properties PJSC v Trinkler & Partners Ltd*,<sup>5</sup> Justice Sir Andrew Smith held that the essential question for the Court was whether there was a realistic, as opposed to a fanciful, prospect of success. Put another way, the claims (or in this case, the defences) must carry some degree of conviction and not be merely arguable.<sup>6</sup>
7. Justice Sir Andrew Smith also held that it is not the Court’s function to conduct a mini trial on a summary judgment application. Generally speaking, evidence given in opposition to a summary judgment application will be taken as being capable of proof at trial for the purpose of determining whether there is a genuine trial issue which cannot be addressed summarily.

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<sup>3</sup> See paragraphs 23.b and d below.

<sup>4</sup> ADGM Court Procedure Rules 2016, rule 68(1)(b).

<sup>5</sup> *Union Properties PJSC v Trinkler Partners Ltd* [2024] ADGMCFI 0014.

<sup>6</sup> *Ibid*, at paragraph 31, applying *ED & F Mann Liquid Products v Patel* [2003] EWCA Civ 472, at paragraph 8.

8. There are exceptions to that general rule. In *Eng Mee Yong v Letchumanan s/o Velayutham*,<sup>7</sup> the Privy Council considered when it would be appropriate not to assume that evidence in opposition to a summary application was true. *Eng Mee Yong* considered a summary application involving a caveat. The board explained the circumstances in which it would be proper for a Judge considering such an application to decline to assume the truth of such evidence. The same principle applies equally to all forms of summary applications. Delivering the advice of the Privy Council, Lord Diplock said:<sup>8</sup>

*“... Although in the normal way it is not appropriate for a judge to attempt to resolve conflicts of evidence on affidavit, this does not mean that he is bound to accept uncritically, as raising a dispute of fact which calls for further investigation, every statement on an affidavit however equivocal, lacking in precision, inconsistent with undisputed contemporary documents or other statements by the same deponent, or inherently improbable in itself it may be. ... It is [for the judge] to determine in the first instance whether statements contained in affidavits that are relied upon as raising a conflict of evidence upon a relevant fact have sufficient prima facie plausibility to merit further investigation as to their truth.”*

### Context

9. Clause 3.1 of the Standard Terms requires the lessee to “pay to [Sowwah] the Tenant Payments at all times during the Term whether or not demanded, on the dates that they fall due”. The term “Tenant Payments” is defined in clause 1 of the Standard Terms to mean the base rent, turnover rent, service charge, facilities charge, marketing charge, sprinkler charge, and tax charge. The definition includes any other amounts due to Sowwah under the Lease. Included within Sowwah’s claim for Tenant Payments are those incurred by Sowwah in meeting the Yield Up Costs, in order to reinstate the Unit at the end of the Lease. Claims for Yield Up Costs are made under clause 7.14.1 of the Standard Terms.

### The issues

10. The issue in respect of the Tenant Payments (and the Yield Up Costs) is whether there is any real prospect that Forever Rose could dispute the liability or the quantum claimed.
11. The claims for Liquidated Damages and the Late Payment Fee fall into a different category. Together, these charges represent approximately 45% of the total claim brought against Forever Rose.<sup>9</sup> The Liquidated Damages are said to be payable under clause 17.2 of the Standard Terms.<sup>10</sup> The Late Payment Fee is claimed under clause 4 of the Standard Terms.<sup>11</sup>

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<sup>7</sup> *Eng Mee Yong v Letchumanan s/o Velayutham* [1980] AC 311 (PC).

<sup>8</sup> *Ibid*, at 341.

<sup>9</sup> See paragraphs 23 and 36 below.

<sup>10</sup> Clause 17.2 of the Standard Terms is set out at paragraph 19 below.

<sup>11</sup> Clause 4 of the Standard Terms is set out at paragraph 21 below.

## The Claim

12. Sowwah alleges that Forever Rose has failed to make any of the Tenant Payments since 1 October 2023. Reminders were sent to Forever Rose’s agent in the period between October 2023 and October 2024. A final demand for payment of AED 580,112.27 for the Tenant Payments due from 1 October 2023 until 1 October 2024 was made (the “**2024 Final Demand**”).
13. The 2024 Final Demand was contained in a letter dated 29 October 2024 which annexed statements of account. In addition to the Tenant Payments, it included a calculation of a Late Payment Fee. The amount claimed under the 2024 Final Demand was AED 580,112.27 for Tenant Payments and the Late Payment Fee of AED 34,573.89, a total of AED 614,686.16.
14. The 2024 Final Demand stated that if the outstanding amount was not paid within 30 days of the date of the letter, Sowwah reserved the right either to commence proceedings or to serve a further notice terminating the Lease, in accordance with clause 16.1 of the Lease. Forever Rose did not respond to the 2024 Final Demand. No payment has been made.
15. On 23 January 2025, Sowwah served a notice of termination (the “**Termination Notice**”) on Forever Rose. Another notice (the “**Notice of Breach**”) was served on 24 April 2025. The Notice of Breach recorded that, as at 23 April 2025, a total of AED 924,741.27, inclusive of outstanding Tenant Payments, the Late Payment Fee and Liquidated Damages. Forever Rose was given until 5.00 pm on 16 May 2025 to remedy the breach. It did not do so.
16. A second Notice of Breach (the “**Second Notice of Breach**”) was served on 19 May 2025 informing Forever Rose that Sowwah would proceed to carry out works required to yield up and reinstate the Unit and that it would charge Forever Rose for those costs. Subsequently, Sowwah exercised its right, conferred by clause 7.4.2 of the Standard Terms, to carry out those works, with the costs to be recovered as a debt owing by Forever Rose.
17. On 17 June 2025, Sowwah served a final demand on Forever Rose (the “**Final Demand**”), by which the total amount outstanding as at 16 June 2025 was recorded as AED 912,591.33. This included a credit to Forever Rose of AED 103,557.51 in relation to Sowwah’s retention of a security payment.
18. In its Claim, issued on 21 August 2026, Sowwah claims a sum of AED 1,199,568.12, which includes the Tenant Payments, the Yield Up Costs, Liquidated Damages and the Late Payment Fee.<sup>12</sup>
19. Clause 17.2 of the Standard Terms deals with Liquidated Damages. It provides:

**“17. EFFECT OF EXPIRY OR TERMINATION**

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<sup>12</sup> A breakdown of the amounts claimed is set out at paragraph 23 below.

...

17.2 *Where the Tenant has not validly exercised its option to renew this Lease (if any) and subject to the Applicable Law, if the Tenant fails to vacate and continues to occupy the Premises after the expiry or termination of this Lease whether with or without the consent of the Landlord, then such occupation shall be on the basis of a temporary permission only and shall not be a renewal or creation of any tenancy, and the Tenant shall pay to the Landlord on demand liquidated damages of an amount which is acknowledged and agreed by both Parties to be equal to twice the Tenant Payments due immediately prior to the period of holding over and shall also comply with all of the terms, covenants, conditions, provisions and agreements of this Lease for the time during which the Tenant holds over.” (Emphasis added)*

20. To summarise the effect of clause 17.2:

- a. Liquidated Damages are claimable if a tenant fails to vacate and continues to occupy the premises after the expiry or termination of the lease, with or without the consent of the landlord; and
- b. Liquidated Damages represent an amount “*equal to twice the Tenant Payments due immediately prior to the period of holding over*”.

21. The Late Payment Fee was calculated in accordance with clause 4 of the Standard Terms. Clause 4 states:

**“4. LATE PAYMENT FEE**

*Without prejudice to any other right, remedy or power available to the Landlord, if any Tenant Payment (whether formally demanded or not) shall not be paid in accordance with clause 3.9, then the Tenant shall pay a Late Payment Fee on such sums at the Prescribed Rate from and including the date when payment was due to the date of receipt by the Landlord (both before and after any judgment) plus VAT.”*

22. Clause 4 requires the Late Payment Fee to be paid “*at the Prescribed Rate*”. The term “*Prescribed Rate*” is defined by clause 1 of the Standard Terms to mean “*The Emirates Interbank Offered Rate [EIBOR] of three (3) months plus 8 percent per annum plus VAT, calculated on a daily basis...*”. Sowwah has calculated the Late Payment Fee by reference to the EIBOR formula. Interest has been calculated from the date the payment fell due and accrues daily on “*each outstanding Tenant Payment from the date it fell due to the date*

[the] *Claim Form was filed*” on 20 February 2026. The Claim states that the Late Payment Fee continues to accrue at AED 232.90 per day.

23. Sowwah seeks summary judgment in the following amounts:
- a. Tenant Payments of AED 608,525.79;
  - b. Late Payment Fee of AED 207,413.39, to which a daily rate of AED 232.90 from the date of the claim to date of payment is sought;
  - c. Yield Up Costs of AED 45,885;
  - d. Liquidated Damages of AED 337,743.94;<sup>13</sup> and
  - e. interest on the amount awarded. Interest is sought on the basis that it is represented by the Late Payment Fee. If that were not payable, interest is sought under rule 179 of the Court Procedure Rules.
24. The total amount claimed is AED 1,199,568.12. After the proceeding was commenced, Forever Rose applied for a stay (the “**Stay Application**”) on the grounds that it was insolvent and intended to appoint a liquidator. For reasons set out in my order of 4 December 2025, that application was dismissed.

### **Analysis**

25. Mr Al-Samadi has made two witness statements, one in support of the Stay Application and the other on the Summary Judgment Application. I have had regard to both for the purposes of determining the Summary Judgment Application. In broad terms, Mr Al-Samadi makes bare allegations that Sowwah has not conducted itself appropriately in attempting to negotiate a settlement and has failed to take all reasonable steps to protect its financial position.
26. Forever Rose alleges that the Summary Judgment Application is “*premature, procedurally unfair, and inappropriate*” because:
- a. Forever Rose is insolvent and cannot afford to appoint a voluntary liquidator;
  - b. Forever Rose cannot afford legal counsel and is self-represented;
  - c. there are substantial factual disputes requiring a trial;
  - d. the parties were engaged in ongoing surrender negotiations over the Lease;
  - e. Sowwah caused delays and failed to mitigate its losses;

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<sup>13</sup> See paragraph 20 above.

- f. the quantum claimed is disputed, including Late Payment Fee and “*unreconciled amounts*”; and
  - g. the insolvency process provides a compelling reason not to dispose of the case summarily.
27. In my view, none of the points raised by Forever Rose is sufficient to conclude that it has a real prospect of successfully defending the claims for the Tenant Payments and Yield Up Costs. No reference was made to any contemporary dispute about claims that fall within the category of Tenant Payments or the Yield Up Costs. Nor do any of the reasons advanced by Forever Rose to oppose the Summary Judgment Application indicate a real prospect of success in defending the claims.
28. The fact that the parties were engaged in ongoing surrender negotiations over the Lease does not affect liability.<sup>14</sup> The law requires a debtor to seek out its creditor to pay moneys owing under any financial instrument into which it has entered. So far as the Tenant Payments and Yield Up costs are concerned, the way in which the parties have conducted themselves does not give rise to any real prospect of a defence based on mitigation, if only to lessen the amounts claimed.<sup>15</sup>
29. The fact that Forever Rose is insolvent and cannot afford to appoint a voluntary administrator is not relevant to whether the claims for Tenant Payments and Yield Up Costs are valid. Nor is the assertion that Forever Rose cannot afford legal counsel and is required to be self-represented.<sup>16</sup>
30. In those circumstances, I find that there is “*no real prospect*” that Forever Rose could successfully defend the Tenant Payments and Yield Up Costs claims. Nor is there any compelling reason why summary judgment on those two claims should not be entered.<sup>17</sup>
31. However, there is a real prospect that Forever Rose could defend the Liquidated Damages, and Late Fee Payment claims on the basis that they could amount to unenforceable penalties. I have reached the view on the basis of the decision of the Supreme Court of the United Kingdom in *Cavendish Square Holding BV v Makdessi*. Careful consideration needs to be given to the question whether the amounts claimed for Liquidated Damages and Late Payment Fee can be commercially justified.<sup>18</sup>
32. In *Cavendish*, the Supreme Court held that amounts ostensibly payable on breach of a contract ought to be characterised as unenforceable penalties if the amount claimed was out of all proportion to any legitimate interest of the innocent party in enforcing its primary obligation.<sup>19</sup> Until *Cavendish*, the distinction generally applied was between a

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<sup>14</sup> See paragraph 26.d above.

<sup>15</sup> See paragraph 26.e above.

<sup>16</sup> See paragraph 26.a and b above.

<sup>17</sup> ADGM Court Procedure Rules, rule 68(1)(b) and (c), set out at paragraph 5 above.

<sup>18</sup> *Cavendish Square Holding BV v Makdessi* [2016] AC 1172 (UKSC).

<sup>19</sup> *Ibid*, at paragraph 32 (Lord Neuberger)

disproportionate amount payable when compared with a genuine pre-estimate of loss. The law now recognises a broader range of commercial factors that can be taken into account in determining whether an amount payable under a contract should be characterised as an unenforceable penalty. A similar approach, based on proportionality, has been adopted in both Australia and New Zealand: see *Paciocco v Australia and New Zealand Banking Group Ltd*<sup>20</sup> and *127 Hobson Street Ltd v Honey Bees Preschool Ltd*.<sup>21</sup>

33. Since *Cavendish*, the “penalty issue” has become more nuanced. The question is whether a secondary obligation (in this case, the Late Payment Fee and Liquidated Damages) imposing a detriment on a contract breaker (for failure to pay rent and other Lease related costs) is out of all proportion to any legitimate interest of the innocent party in the enforcement of a primary obligation. That is assessed by considering whether the secondary obligation is commercially justifiable.<sup>22</sup> If not, it will be open to the Court to declare the relevant provision to be an unenforceable penalty.
34. The question whether an unenforceable penalty exists is to be determined as a matter of construction of the relevant contract, having regard to the parties’ knowledge at the time it was entered into and the exercise of judicial judgment.<sup>23</sup>
35. The Late Payment Fee and the Liquidated Damages become payable at different times. Clause 4 provides that if any Tenant Payment has not been paid in accordance with clause 3.9 of the Lease, “*whether formally demanded or not*”, a Late Payment Fee shall be paid.<sup>24</sup> The amount payable is described as “*the Prescribed Rate*”, which is calculated by reference to EIBOR of “*three (3) months plus eight percent per annum plus VAT*” calculated on a daily basis.<sup>25</sup> The amount claimed as a Late Payment Fee is AED 207,413.39, to which a daily rate of AED 232.90 is added from the date on which the claim was filed,<sup>26</sup> on 20 February 2026.<sup>27</sup>
36. Liquidated Damages are payable if a tenant fails to vacate the premises after expiry or termination of the Lease “*whether with or without the consent of the Landlord*”. The amount payable during any occupation is calculated, by clause 17.2 of the Standard Terms of the Lease at “*twice the Tenant Payments due immediately prior to the period of holding over*”.<sup>28</sup> The amount of Liquidated Damages claimed is AED 337,743.94.<sup>29</sup>

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<sup>20</sup> *Paciocco v Australia and New Zealand Banking Group Ltd* (2016) 258 CLR 525 (HCA) at para [29] (Kiefel J, with whom French CJ agreed), [256] and [270] (Keane J) and [319]–[321] (Nettle J); compare Gageler J, at paragraphs [158] and [164]–[166].

<sup>21</sup> *127 Hobson Street Ltd v Honey Bees Preschool Ltd* [2020] 1 NZLR 179 (SCNZ) at paragraphs [56]–[57] (per Winkelmann CJ, for the Court).

<sup>22</sup> *Cavendish Square Holding BV v Makdessi* [2016] AC 1172 (UKSC) at paras [9] (Lord Neuberger and Lord Sumption with whom Lord Clarke and Lord Carnwath agreed); and [221] and [243] (Lord Hodge, with whom Lord Toulson agreed).

<sup>23</sup> *Cavendish Square Holding BV v Makdessi* [2016] AC 1172 (UKSC) at paras [9] (Lord Neuberger and Lord Sumption with whom Lord Clarke and Lord Carnwath agreed).

<sup>24</sup> Clause 4 of the Standard Terms of the Lease is set out at paragraph 21 above.

<sup>25</sup> See paragraph 22 above. The term “Prescribed Rate” is defined by clause 1 of the Standard Terms of the Lease.

<sup>26</sup> See paragraph 23.b above.

<sup>27</sup> See paragraph 22 above.

<sup>28</sup> Clause 17.2 of the Standard Terms of the Lease is set out at paragraph 19 above.

<sup>29</sup> See paragraph 23.d above.

37. The Late Payment Fee and the Liquidated Damages together total AED 545,157.33 out of a total claim of AED 1,199,568.12. That represents 45% of the claim.
38. As previously indicated, a Late Payment Fee, calculated on the basis of EIBOR of three months plus 8% per annum plus VAT, and on a daily basis,<sup>30</sup> is arguably out of all proportion when considered against the Tenant Payments that it is replacing. Neither Sowwah nor Forever Rose has adduced any evidence to demonstrate whether a Late Payment Fee of the type used by Sowwah is commonly in use in the commercial community in the ADGM and should be regarded as an enforceable obligation. Nor has any evidence been adduced to establish that such a claim should be regarded as out of all proportion to Sowwah's legitimate interests in enforcing the terms of the Lease.
39. Similarly, in relation to the Liquidated Damages, an effective rent payable during a holding over period to which (it may seriously be argued) was with Sowwah's implicit consent was of an amount equal to twice those Tenant Payments due immediately prior to commencement of the holding period is arguably out of all proportion to the legitimate interests of the innocent party. In making these preliminary observations, I bear in mind that there is a public interest in promoting freedom of contract but that if a consequence for breach of a primary obligation is out of all proportion to the interests of the innocent party there is a contrary public policy ground to protect more vulnerable contracting parties.
40. I am not satisfied that it can be said that there is no "*real prospect*" that Forever Rose can successfully defend the claims for Liquidated Damages and the Late Payment Fee. To the extent that Forever Rose may only reduce the amount claimed, that is a compelling reason for refusing summary judgment.

## Conclusion

41. For those reasons, I grant summary judgment in favour of Sowwah in the sum of AED 654,410.79, made up of:
- a. Tenant Payments of AED 608,525.79<sup>31</sup> and
  - b. Yield Up Costs of AED 45,885.<sup>32</sup>
42. The Summary Judgment Application, insofar as it relates solely to the Late Payment Fee and the Liquidated Damages, is dismissed. I reserve questions of interest and costs pending a trial on the unenforceable penalties issue.

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<sup>30</sup> See paragraph 22 above.

<sup>31</sup> See paragraph 23.a above.

<sup>32</sup> See paragraph 23.c above.

43. A claim restricted to the type of issues involved in this case should be capable of prompt disposal. The Registry shall allocate a case management conference to enable directions to be made for prompt disposition of the balance of the claim.



Issued by:

**Linda Fitz-Alan**  
**Registrar, ADGM Courts**  
**22 April 2026**