

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**

**CASTELLO CAFE AND RESTAURANT - L.L.C - S.P.C**

Claimant

and

**TSL PROPERTIES LLC**

First Defendant

**THREE SIXTY COMMUNITIES ESTATE LLC**

Second Defendant

**MODON HOLDING - P.S.C**

Third Defendant

**MENA REAL ESTATE SOLUTIONS LLC**

Fourth Defendant

**JUDGMENT OF JUSTICE PAUL HEATH KC**



<b>Neutral Citation:</b>	[2026] ADGMCFI 0005
<b>Before:</b>	Justice Paul Heath KC
<b>Decision Date:</b>	4 February 2026
<b>Decision:</b>	See paragraph 45 of the Judgment
<b>Hearing Date:</b>	20 January 2026
<b>Date of Orders:</b>	4 February 2026
<b>Catchwords:</b>	Summary judgment. Strike out of statement of case. Security for costs. Whether there is a real prospect of succeeding on the claim. Whether economic loss can be claimed on an action in negligence. Commercial lease agreement. Authorised agent and facility management company liability under commercial lease agreement. Whether a parent company can be held liable for acts of its subsidiary.
<b>Legislation Cited:</b>	Cabinet Resolution No. (41) of 2023 Abu Dhabi Law No. (4) of 2013 as amended by Law No. (12) of 2020 ADGM Application of English Law Regulations 2015 ADGM Court Procedure Rules 2016
<b>Cases Cited:</b>	Union Properties PJSC v Trinkler & Partners Ltd [2024] ADGMCFI 0014 Al Nashef v Empire Island Tower Ltd [2025] ADGMCFI 0025 Phonogram Ltd v Lane [1982] 3 CMLR 615 (CA) Murphy v Brentwood District Council [1991] 1 AC 398 (HL) Caparo Industries Plc v Dickman [1990] 1 All ER 568 (HL) Hedley Byrne & Co Ltd v Heller & Partners Ltd [1964] AC 465 (HL) Chandler v Cape Plc [2012] 3 All ER 640 (CA) Global Private Investments RSC Ltd v Global Aerospace Underwriting Managers Ltd [2021] ADGMCFI 0005
<b>Case Number:</b>	ADGMCFI-2025-283
<b>Parties and representation:</b>	<b>Claimant</b> Dr Mabahig Habib Elgadi and Mr Allan Batta, Khalid Atiq Al Marri Advocates and Legal Consultants



	<p><b>First and Third Defendants</b></p> <p>Mr Richard Bell, Al Tamimi &amp; Company</p> <p><b>Second and Fourth Defendants</b></p> <p>Mr Lucas Fear-Segal, Barrister</p> <p>Mr Mehdi Seadon and Ms Carrie Cormack, Kennedys</p>
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## JUDGMENT

### Introduction

1. Castello Café and Restaurant – LLC – SPC (“**Castello**”) carries on business as a restaurateur. For the last 20 years or so, it has operated from locations within the Emirate of Abu Dhabi. In 2021, it decided to open an establishment on Al Reem Island. The present proceeding arises out of a lease (the “**Lease**”) into which Castello entered with TSL Properties LLC (“**TSL**”), to undertake that venture.
2. TSL is the owner of various units within the “*Three60 Communities*” complex in the City of Lights on Al Reem Island. On 12 December 2021, TSL, named as the lessor, entered into the Lease with Castello, named as the lessee. The leased premises were known as Unit No. G01 and G02, Horizon Tower, Building C15, City of Lights, Al Reem Island (the “**Unit**”). The Lease was subsequently attested before the Department of Municipalities and Transport on 12 April 2022,<sup>1</sup> some four months after the Lease had been entered into.
3. The Lease was executed before Al Reem Island was subsumed within the Abu Dhabi Global Market (“**ADGM**”) from 24 April 2023.<sup>2</sup> Because Al Reem Island is now within ADGM, it is agreed that this Court has exclusive jurisdiction to determine the present claim.<sup>3</sup>
4. While TSL and Castello are the only entities that are named as parties to the Lease, Castello alleges that three other companies are liable in respect of the events that give rise to this proceeding. They are Three Sixty Communities Estate LLC (“**Three Sixty**”), Modon Holding-PSC (“**Modon**”) and MENA Real Estate Solutions LLC (“**MENA**”).
5. Castello, in its Claim, states that:
  - a. Three Sixty serves as the facility management company for the premises;
  - b. Modon is the parent company under which TSL, Three Sixty and “*related entities*” operate; and
  - c. MENA (trading as “*Colliers*”) is the “*main facility management company*” responsible for managing the building.

<sup>1</sup> See paragraphs 24 and 25 below.

<sup>2</sup> Cabinet Resolution No. (41) of 2023, issued on 24 April 2023. Article 2 of the Cabinet Resolution states that it came into force from the date on which it was issued.

<sup>3</sup> Abu Dhabi Law No. (4) of 2013 (as amended by Law No. (12) of 2020), article 13(7).



6. The Lease was for a term of three years and eight months, commencing on 12 December 2021. The period of eight months was rent free, on the understanding that Castello would undertake a fit-out of the Unit during that time. The first payment of rent was due on 12 August 2022. The Lease was to expire by effluxion of time on 11 August 2025.
7. The core issue in dispute involves the fit-out period. Castello claims that TSL, Three Sixty, Modon and MENA are each liable, in contract or in tort, for losses suffered by Castello as a result of an inability to renew a “*No Objection Certificate*” (“**NOC**”). While it is agreed that a NOC was required to enable the fit-out to be undertaken, TSL, Three Sixty, Modon and MENA deny that they have any legal liability to Castello for (to put it neutrally) the latter’s inability to obtain a renewed NOC.
8. Castello seeks damages:
  - a. for amounts paid by it in relation to the fit-out which, as a result of the alleged breaches, are said to have been wasted;
  - b. for alleged loss of profits; and
  - c. for reputational damage, moral stress and inconvenience (moral damages).

The total amount claimed is USD 1,088,914.90, of which USD 364,811.16 (about one-third of the Claim) relates to moral damages.

9. On 12 March 2024, TSL served a notice of termination of the Lease for Castello’s failure to pay rent. The present proceeding was filed on 27 August 2025.

### The applications

10. On 20 January 2026, I heard applications by Three Sixty, Modon and MENA which sought orders:
  - a. entering summary judgment in their favour, on the grounds that there is no real prospect that Castello can succeed against them on any of its pleaded claims (the “**Summary Judgment Applications**”);<sup>4</sup>
  - b. alternatively, an order striking out Castello’s case on the grounds that it “*discloses no reasonable grounds for bringing ... the claim*” (the “**Strike Out Applications**”);<sup>5</sup> and
  - c. if neither summary judgment nor an order striking out Castello’s claim were made, an order that Castello post security for costs in favour of Three Sixty, Modon and MENA (the “**Security for Costs Applications**”).<sup>6</sup>

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

<sup>5</sup> Ibid, Rule 9(2)(a). As to the differences between the summary judgment and strike out jurisdiction, see *Union Properties PJSC v Trinkler & Partners Ltd* [2024] ADGMCFI 0014, at paragraph 31 and *Al Nashef v Empire Island Tower Ltd* [2025] ADGMCFI 0025, at paragraph 5.

<sup>6</sup> This Court has jurisdiction to make an order for security for costs under Rule 75 of the ADGM Court Procedure Rules 2016, read in conjunction with Practice Direction 7 (“**PD 7**”), paragraph 7.33.



11. TSL acknowledges that there is an arguable claim against it in respect of those brought by Castello under orthodox landlord and tenant law. That being so, it has not joined in the applications with which I am concerned and did not enter an appearance at the hearing. Whatever the outcome of the present applications, Castello's claims against TSL will proceed to trial.
12. Castello resists the applications. It contends that there is a real prospect that it will succeed at trial against Three Sixty, Modon and MENA. It also asserts that there is no basis on which any order for security for costs should be made against it.

### **The contractual arrangements**

13. Castello's claims against Three Sixty, Modon and MENA are brought in both contract and tort. As TSL is the only party named as lessor on the Lease,<sup>7</sup> it is necessary to consider the totality of the contractual documents to determine whether the claims in contract against Three Sixty, Modon and MENA have any real prospect of success. Separately, I will examine whether there is any basis for the claims in tort.
14. Clause 14.1.1 of the Lease provides that it "*shall be governed and construed in accordance with the laws of the Emirate of Abu Dhabi and the laws of the United Arab Emirates, as applied in the Emirate of Abu Dhabi*" ("**UAE Law**"). While the Lease must be construed in accordance with UAE Law, the parties agree that the question of whether any non-contractual claims can be brought against Three Sixty, Modon and MENA is to be determined under ADGM law.<sup>8</sup>
15. The first part of the Lease sets out the terms on which it has been granted, including the rental obligations assumed by Castello as lessee. Four "Exhibits" follow.<sup>9</sup> Clause 1.2 of the Lease provides that those "*Exhibits form an integral part of the Lease and shall have effect as if set out in full in the body of this Lease and any reference to this Lease includes the Exhibits*".
16. Exhibit "A" is an abstract of the terms of the Lease, Exhibit "B" provides for certain "*Rules and Regulations*", Exhibit "C" deals with the topic of the "*Lessee's Fit-Out*", and Exhibit "D" is a plan of the location of the Unit. For present purposes the terms of the Lease itself and Exhibit "C" assume significance.
17. The term "*Fit-out*" is defined in clause 1.1 of the Lease as follows:  
  

*"[Fit-out] means the fitting out and interior decoration of the [Unit] carried out by the Lessee during the Fit-out Period, at the Lessee's own cost and in accordance with the provisions of this Lease to the Lessor's complete satisfaction and as further set out in Exhibit "C" hereto and in the Lessee Manual."*
18. The term "*Lessee's Manual*" is also defined in clause 1.1 of the Lease. It:

<sup>7</sup> See paragraph 2 above.

<sup>8</sup> By virtue of section 1(1) of the ADGM Application of English Law Regulations 2015, the question whether any tortious claims exist falls to be determined under the common law of England.

<sup>9</sup> See paragraph 16 below.



*“Means the tenancy Fit-out and/or design manual and/or fit out guidelines for lessees renting premises at the Building as amended and prescribed by the Lessor or its management company from time to time.”*

19. Exhibit “C” commences with the words: *“The Lessee hereby acknowledges and agrees that the Commercial Fit-out Guidelines enclosed herewith (the “Guidelines”) ... have been read, understood and agreed upon”*. During the course of the hearing, counsel confirmed that the document described as the *“Lessee Manual”* is also known as the *“Commercial Fit Out Guidelines”* for the City of Lights.<sup>10</sup> That document contains detailed information about the way in which the fit-out process was to be undertaken. For present purposes, I treat the Guidelines as a contractual document.
20. Clause 2.2 of Exhibit “C” requires the lessee to provide the lessor’s representative *“with a copy of all permits (once secured) obtained or required to be obtained in respect of the approved drawings and specifications related to the Fit-out”*. Clause 4.1.1 of Exhibit “C” states: *“... The Lessee shall apply for and obtain, at its own cost and expense, the required permits issued by the relevant authorities as may be necessary to commence, carry out and complete the Fit-out works”*. Plainly, clause 4.1.1 puts the onus of seeking relevant permits on the lessee.
21. Clause 2.0 of the Guidelines explains the fit-out process. Clause 2.1 states that:
 

*“All applicants are required to follow the six steps listed below for a smooth transformation and safe occupation of their premises.”*
22. The term *“applicants”*, as used in clause 2.1, must refer to the lessee. That is the only way in which that clause can be read consistently with the obligation, contained in clause 4.1.1 of Exhibit “C”, for the lessee to obtain all relevant permits.<sup>11</sup> On that interpretation, the lessee was responsible for initiating and completing the following aspects of the clause 2.0 process:
  - a. clause 2.1.2 of the Guidelines provides for a formal application to be made for a NOC for the *“Three60 Communities”*;
  - b. clause 2.1.3 deals with applications for local authority approvals and permits, referring in particular to the Abu Dhabi Municipality (**“ADM”**), Abu Dhabi Civil Defence (**“ADCD”**) and Abu Dhabi Distribution Company (**“ADDC”**);
  - c. clause 2.1.4 deals with the issue of *“Tafawuq Permit for Fit-out”*; and
  - d. clause 2.1.5 contemplates the commencement of fit-out works once all relevant approvals have been given.

<sup>10</sup> See paragraph 19 above.

<sup>11</sup> See paragraph 20 above.



### The contract claim against Three Sixty, Modon and MENA

23. None of the contractual documents name Three Sixty, Modon or MENA as parties to the Lease. Presumptively, therefore, they are not contracting parties. Is there anything in the contractual documents that would suggest the presumption has been displaced?
24. So far as Three Sixty is concerned, there is a reference to Three Sixty in a document entitled “*Attested Tenancy Contract*”, signed on 12 April 2022.<sup>12</sup> That document shows Three Sixty as the “*lessor*” and Castello as the “*lessee*” in respect of the Unit. I do not consider that the “*Attested Tenancy Contract*” forms part of the suite of documents that make up the Lease. In my view, there was a clear “*slip*” in defining Three Sixty as the “*lessor*”.
25. Castello accepts that Three Sixty was acting as the facility management company for the premises in which the Unit is situated.<sup>13</sup> There is no evidence to suggest that Three Sixty was acting in any capacity other than TSL’s agent. The general principle is that a person who makes a contract ostensibly as an agent cannot afterwards sue or be sued upon it.<sup>14</sup> That principle applies in this case.
26. There is no evidence to suggest that either Modon or MENA could be regarded as parties to the Lease. Therefore, the contract claim against those companies cannot succeed.
27. For those reasons, notwithstanding submissions to the contrary made by Dr Mabahig Habib Elgadi, for Castello, I am not satisfied that any claim in contract can be brought against Three Sixty, Modon or MENA.

### The claims in tort against Three Sixty, Modon and MENA

#### (a) *Introductory comments*

28. I confess to having some sympathy for the difficult position in which Mr Lucas Fear-Segal, for Three Sixty and MENA, and Mr Richard Bell, for Modon, found themselves at the hearing. The legal bases on which Castello makes its claims against those defendants have not been articulated with precision, either in the written materials or Dr Elgadi’s oral submissions. In those circumstances, there was an element of “*shadow boxing*” in the way in which Mr Fear-Segal and Mr Bell were required to respond to the case against each of their clients.
29. In a case such as this, it is incumbent on a claimant to explain clearly the precise legal rationale on which any cause of action is based. This involves not only the identification of relevant legal principles but also articulation of relevant facts which, if proved at trial, would establish the elements of the specific cause of action. As to the latter, the Court must, for the purposes of a summary judgment or strike out application, assume that facts alleged by a claimant to be capable of proof at trial.
30. Castello’s case has not been put in that way. For example, when Dr Elgadi made her oral submissions on behalf of Castello, she (rather than clinically analysing the claims brought

<sup>12</sup> See paragraph 2 above.

<sup>13</sup> See paragraph 5.a above.

<sup>14</sup> *Phonogram Ltd v Lane* [1982] 3 CMLR 615 (CA) at paragraph 23 (per Lord Denning MR).





against Three Sixty, Modon and MENA) supported the validity of the claims by submitting that an “*injustice*” had occurred and all that Castello wanted was to seek “*justice*”. Dr Elgadi based that submission on the proposition that Castello had been a successful restaurateur over many years, had invested a considerable sum of money in the new premises yet had been prevented by the defendants from completing the fit-out due to their respective failures to secure a renewed NOC.

31. Faced with that situation, I examine the nature of the tortious claims brought against each of Three Sixty, Modon and MENA and determine whether, for the purposes of the summary judgment application, there is any real prospect that Castello could succeed on any of them following a trial.<sup>15</sup> As indicated previously,<sup>16</sup> I approach my task on the premise that Castello will be able to prove all factual assertions which make up the elements of the particular cause of action. Because of the imprecise pleaded nature of the tortious claims, I do no more than to outline the basis for them and explain my reasons for rejecting them.

(b) *The claims against Three Sixty and MENA*

32. The essence of Castello’s tortious claims against Three Sixty and MENA is that each had assumed a non-contractual obligation to Castello to ensure the NOC would be issued “*imminently*”. Those assurances are said to have created a relationship of reliance which led Castello to incur significant costs for the fit-out works in anticipation of receipt of a renewed NOC. Castello contends that Three Sixty and MENA breached that assumed obligation and caused recoverable loss to it.
33. The same circumstances are alleged, by Castello, to amount to a negligent misstatement for which claims can be brought against Three Sixty and MENA. Notwithstanding deficiencies in the factual foundation for such a claim, the latter allegation also seems to be no more than an attempt to get around the problem that pure economic loss cannot be claimed on an action in negligence *per se*.<sup>17</sup>
34. The pleaded facts do not identify any basis on which a cause of action in negligence could be established. Three criteria for imposition of a duty of care in negligence were articulated by the House of Lord in *Caparo Industries Plc v Dickman*.<sup>18</sup> They are: (i) foreseeability of damage; (ii) proximity of relationship; and (iii) the reasonableness or otherwise of imposing a duty. In the present case, the Guidelines which are part of the Lease, and to which neither Three Sixty nor MENA were parties, set out the basis on which an NOC was to be obtained.<sup>19</sup> In short, there is no room for a concurrent tortious obligation of the type pleaded against Three Sixty and MENA to be imposed. The obligation to renew the NOC rested on Castello and arose purely out of the contractual arrangements between TSL and it. There is no basis for imposing a duty of care to shift the risk of not obtaining an NOC from Castello to Three Sixty and/or MENA.

<sup>15</sup> See paragraph 10.a above.

<sup>16</sup> See paragraph 29 above.

<sup>17</sup> *Murphy v Brentwood District Council* [1991] 1 AC 398 (HL).

<sup>18</sup> *Caparo Industries Plc v Dickman* [1990] 1 All ER 568 (HL).

<sup>19</sup> See paragraph 22 above.





35. Nor does the pleaded case raise any factual allegations that, taken together, could give rise to an inference that a claim in negligent misstatement of the type arising from *Hedley Byrne & Co Ltd v Heller & Partners Ltd*,<sup>20</sup> could be successfully brought.

(c) *The claim against Modon*

36. Castello pleads that “*Modon’s operational involvement and coordination with its subsidiaries in the management and administration of the leased premises, [meant that it] bears responsibility for the delays and failure to issue the necessary*” NOC renewal. Reliance is placed on principles of corporate law and tort in which a parent company may be held liable for acts of its subsidiaries where the parent has wrongfully exercised operational control in circumstances that cause loss to another party.
37. There is no basis on which such a cause of action could succeed. Castello relies on *Chandler v Cape Plc*<sup>21</sup> to support its claim. The circumstances with which the Court of Appeal was concerned in *Chandler* were far removed from those with which I am dealing. The issue in *Chandler* was whether, on the particular facts of that case, it might be appropriate for the law to impose responsibility on a parent company for the health and safety of its subsidiary’s employees. In that situation, Arden LJ (giving the principal judgment of the Court) found that a direct duty of care was owed.<sup>22</sup> However, the grounds on which the Judge took that view are distinguishable from the present case.
38. There are no pleaded facts from which a trial court could find or infer that Modon wrongfully engaged itself in operational activities which caused harm to Castello. In addition, there is the problem of the claim being for pure economic loss.<sup>23</sup> Finally, there is no comparable authority in which such a claim has succeeded or even held to have been triable on a strike out application.

(d) *Conclusion on tortious claims*

39. In my view, none of the claims in tort against Three Sixty, Modon or MENA have any “*real prospect*” of success if they went to trial. In my view, it is appropriate to enter summary judgment in favour of Three Sixty, Modon and MENA to bring the untenable claims to an end.

### Security for Costs Application

40. Given my conclusion on the Summary Judgment Applications, I do not need to determine the Security for Costs Applications. Nevertheless, I indicate that Three Sixty, Modon and MENA have all made out cases to justify an order for security for costs, particularly as (in any event) the claims brought against them would be characterised (at the most benevolent level to Castello) as weak.
41. A decision to make an order for security for costs would have been based on the broad discretion reposed in this Court to make an order if it considers “*having regard to all the*

<sup>20</sup> *Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1964] AC 465 (HL).

<sup>21</sup> *Chandler v Cape Plc* [2012] 3 All ER 640 (CA).

<sup>22</sup> *Ibid*, at paragraphs 78-80.

<sup>23</sup> *Murphy v Brentwood District Council* [1991] 1 AC 398 (HL).



*circumstances of the case, it is just to do so*".<sup>24</sup> Although there is no gateway through which an applicant for security for costs needs to pass, the circumstance which, to my mind, triggers the need for security is the fact that Castello is a company and there is reason to believe that it will be unable to pay the Defendant's costs if ordered to do so.<sup>25</sup> Evidence of the dishonour of cheques for lease payments prior to termination of the Lease on 12 March 2024 indicates a likely inability for Castello to meet any adverse costs order.

42. Although this Court will generally not be drawn into an assessment of the merits of a claim in determining whether security should be ordered,<sup>26</sup> in a case in which the Court has been required to inquire into the merits on a defendant's application for summary judgment, it is appropriate to do so. I say that because, unlike most security for costs applications, the Court will be able to gauge with greater confidence whether there is "*a high degree of probability of success or failure*".<sup>27</sup>

### Costs

43. Three Sixty, Modon and MENA each seek an order for indemnity costs if their Summary Judgment Applications were successful. Although Three Sixty and MENA filed information about costs incurred on the morning of the hearing, I have not yet received anything from Modon. Nor has Castello had an opportunity to respond, either to the possibility of costs being awarded on an indemnity basis or quantum.
44. I reserve the question of costs for further consideration. In the absence of agreement, I shall determine costs summarily. That will involve a decision as to whether costs should be ordered on an indemnity or standard basis, as well as quantum. I am making directions as to the steps to be taken should it be necessary for me to determine questions of costs.

### Result

45. For the reasons given:
- a. Summary judgment is entered in favour of Three Sixty, Modon and MENA on Castello's Claim.
  - b. The alternative Strike Out Applications are dismissed.
  - c. The Security for Costs Applications are dismissed.
  - d. As to costs, in the absence of agreement:
    - i. Three Sixty, MENA and Modon shall file and serve any costs submissions by 4.00 pm on 18 February 2026. In the case of Three Sixty and MENA, these costs submissions shall be treated as supplementary to the information filed on the morning of the hearing;

<sup>24</sup> ADGM Civil Procedure Rules 2016, Rule 75, read in conjunction with PD 7, paragraph 7.33.

<sup>25</sup> PD 7, paragraph 7.34(b).

<sup>26</sup> *Global Private Investments RSC Ltd v Global Aerospace Underwriting Managers Ltd* [2021] ADGMCFI 0005, at paragraph 3.

<sup>27</sup> *Ibid*, at paragraph 4. See also *Dena Technology (Thailand) Ltd v Dena Technology Ltd* [2014] EWHC 616 (Comm) at paragraph 7.



- ii. Castello shall file and serve any costs submissions in response by 4.00 pm on 4 March 2026; and
  - iii. I shall give a decision on costs, on the papers, including as to whether costs should be awarded on an indemnity or standard basis, as soon as practicable after receipt of the costs submissions from Castello.
46. I make it clear that the Strike Out Applications and Security for Costs Applications have been dismissed only because Three Sixty, Modon and MENA have succeeded on their Summary Judgment Applications. In that situation, it is unnecessary for either of those applications to be formally determined.



Issued by:

**Linda Fitz-Alan**  
**Registrar, ADGM Courts**  
**4 February 2026**