In the name of

His Highness Sheikh Mohamed bin Zayed Al Nahyan

President of the United Arab Emirates/ Ruler of the Emirate of Abu Dhabi

COURT OF FIRST INSTANCE
COMMERCIAL AND CIVIL DIVISION

VALERIIA RADCHENKO
Claimant

and

MARSHEL GROUP LIMITED
First Defendant

and

IRINA ERMAKOVA
Second Defendant

JUDGMENT OF JUSTICE WILLIAM STONE SBS KC

Neutral Citation:	[2026] ADGMCFI 0021
Before:	Justice William Stone SBS KC
Decision Date:	27 July 2026
Decision:	1. Judgment be entered in favour of the Claimant against the Defendants. 2. The Defendants are jointly and severally liable to pay the Claimant: a. the sum of AED 6,166,370.83 (the "**Judgment Sum**"); b. simple interest on the Judgment Sum at the rate of 5% per annum for the period from 16 June 2025 until repayment; and c. costs of and occasioned by these proceedings on the standard basis, such costs to be summarily assessed, unless agreed between the parties. 3. The Claimant be permitted to enforce the charge in her favour over 94 shares in Marshel AM as identified in the Security Over Shares Agreement.
Hearing Date:	22 July 2026
Order:	1. Judgment be entered in favour of the Claimant against the Defendants. 2. The Defendants are jointly and severally liable to pay the Claimant: a. the sum of AED 6,166,370.83 (the "**Judgment Sum**"); b. simple interest on the Judgment Sum at the rate of 5% per annum for the period from 16 June 2025 until repayment; and c. costs of and occasioned by these proceedings on the standard basis, such costs to be summarily assessed, unless agreed between the parties. 4. The Claimant be permitted to enforce the charge in her favour over 94 shares in Marshel AM as identified in the Security Over Shares Agreement. 5. There be liberty to apply in respect of the summary assessment of the costs payable to the Claimant and generally.
Catchwords:	Contractual Dispute. Whether advance was an investment or a loan. Consideration of the Makdessi principle.

Cases Cited:	Cavendish Square Holding BV v Talal El Makdessi [2015] UKSC 67
Case Number:	ADGMCFI-2025-419
Parties and Representation:	***Claimant*** Mr Neil Drahmoune Senior Associate, AMCO Law Firm ***Defendants*** Ms Domiria Marzano Legal Consultant, Abdul Hamid Al Jasmi Advocates & Legal Consultants

JUDGMENT

Background

1. This is a case about the recovery of a debt. For the most part the primary facts are undisputed. What remains in dispute, the 'defining issue', is the characterisation afforded to the transaction in question.

2. The Claimant, Ms Radchenko, is a Russian national, who on 6 May 2024 advanced to Marshel Development LLC ("**Marshel Development**"), the sum of USD 1.5 million (the "**Loan**") pursuant to a Loan Agreement executed on the same date (the "**Loan Agreement**").

3. The Loan Agreement set out the terms of the advance, the applicable interest rate, repayment date, and provisions for default. It also expressly stipulated that it would be governed by the laws of the Abu Dhabi Global Market ("**ADGM**") and that the ADGM Courts would have exclusive jurisdiction over any dispute arising out of or in connection with it.

4. As security for the due performance of the repayment obligations under the Loan Agreement, Marshel Group Limited ("**Marshel Group**"), the First Defendant, executed in favour of the Claimant a Security Over Shares Agreement dated 1 July 2024 (the "**Security Over Shares Agreement**"), by which it granted a fixed charge over 94 shares (1.88%) of the issued share capital of Marshel AM SPV Ltd ("**Marshel AM**"): this again provided for ADGM governing law and exclusive jurisdiction and was intended to remain in force until the secured obligations were discharged.

5. Thereafter, by an Assignment Agreement dated 1 July 2024 (the "**Assignment Agreement**"), Marshel Development assigned all its rights and obligations as borrower under the Loan Agreement to Marshel Group.

6. This was effected with the consent of the Claimant, and the effect of this was that Marshel Group assumed all repayment obligations to the Claimant under the Assignment Agreement.

7. Marshel Group paid the interest due under the Loan Agreement in October 2024. However, the principal amount remained unpaid as the contractual maturity date of 6 May 2025 approached.

8. On that date, the Claimant and Marshel Group executed Addendum No. 1 to the Loan Agreement ("**Addendum No.1**"), by which the repayment date was extended from 6 May 2025 to 15 June 2025 (the "**Extended Repayment Date**"), and the total sum outstanding was confirmed at AED 6,166,370.83 (equivalent to approximately USD 1,679,066.26 at an exchange rate of 3.65.)

9. On 15 June 2025, Marshel Group issued to the Claimant a cheque in the amount of AED 6,166,370.00 drawn on WIO Bank PJSC, which was intended to effect repayment in accordance with the Extended Repayment Date. However, when presented for payment the cheque was not met, and the Claimant has received no repayment, leaving the entire debt outstanding.

10. On 17 June 2025, the Second Defendant, Irina Ermakova, executed a notarised Indebtedness Declaration (the "**Indebtedness Declaration**") in her personal capacity acknowledging her indebtedness in the foregoing sum, and undertook to pay that sum on 16 June 2025. Once more no repayment was received by the Claimant.

11. Accordingly, the Claimant has brought these proceedings seeking judgment against Marshel Group and the Second Defendant for the sum of USD 1,679,066.13 (AED 6,166,370.83), and enforcement of the security over the charged shares in Marshel AM, together with interest and costs.

12. It is not disputed by the Defendants that the Loan Agreement, the Assignment Agreement, the Security Over Shares Agreement, Addendum No. 1 and the Indebtedness Declaration were signed and executed. However, the Court is asked to disregard their legal effect on the basis that the transaction was a sham and/or in substance was an investment linked to a real estate project on Al Marjan Island in Ras Al Khaimah pursuant to which the Claimant was to share the risk in that project, the losses of which to date are said to exceed AED 45 million.

The Witness Evidence

13. In addition to the documents contained in the Hearing Bundle, two witnesses of fact were called to give evidence on behalf of the Claimant.

14. These witnesses were the Claimant herself, Ms Radchenko, and Mr Vasilii Fetisov, who was involved in the transaction in question as a broker and intermediary.

15. The Claimant, who gave her evidence through a Russian interpreter, confirmed her witness statement, which dealt in some detail with the transactions in issue.

16. In her witness statement, the Claimant stated that the monies she had advanced were unequivocally a loan with a specific maturity date, and that her commercial understanding

was that the real estate project was the commercial context for the loan she advanced, and in no sense made her a shareholder, project participant or loss-sharing investor. She said that the payment mechanics were stipulated by the borrower, and that fact that she had issued a management cheque in favour of Durar Properties LLC ("**Durar Properties**") did not mean that she was accepting project risk: this, she said, was the payment route required by Marshel Development for the transaction.

17. As to the provision in section 2.04 of the Loan Agreement, which referred to a right to convert the loan into an area in the project, within a specified period, the Claimant said that as far as she was concerned this was an optional right available to her, and that she did not exercise that right, and that she did not agree that the existence of this right deprived her of the right to repayment, or render her responsible for project losses.

18. She described the advancement of the funds and the Security Over Shares Agreement, the interest payment of AED 547,500 as made to her, and the provision of security cheques, which she understood as instruments connected to repayment of the loan and the borrower's obligations.

19. The Claimant observed that whilst the original maturity date of the Loan Agreement was 6 May 2025, she was not repaid by that date, and she nevertheless agreed to Addendum No. 1 rather than immediately commence proceedings, thus permitting the borrower further time to 15 June 2025 to repay the loan, albeit at a slightly increased interest rate.

20. She also said that when Addendum No. 1 was signed, no-one had suggested to her that the transaction was an investment or that the borrower disputed the debt, or that she was expected to share in project losses or that repayment depended on the performance of the real estate project.

21. In terms of the Second Defendant's Indebtedness Declaration, the Claimant stated that this was executed after Marshel Group had failed to repay the loan by the extended maturity date, and that such Declaration was presented to and understood by her as a document confirming indebtedness. She rejected any suggestion that the Indebtedness Declaration had no factual connection to Marshel Group's debt, and noted that the Second Defendant was closely involved in the transaction and had signed relevant documents on behalf of the relevant Marshel entities.

22. As to the Defendants' '*re-characterisation*' of the case as solely an investment arrangement, the Claimant said that the first time she became aware that such a case was being advanced was when she was informed of the content of the Defence to her Claim, and that at no time had she been told of what the Defendants now claim to be the position. Nor had she had prior sight of the Defendants' internal documents upon which they now rely.

23. In short, her case was and is that she never had agreed to share any project risk, and that the transaction in which she had participated was solely a loan with a fixed principal amount, a fixed maturity date, and an agreed interest rate. Accordingly, her unequivocal position was

that the amount as now claimed remained unpaid, and she maintained her claim in the form as pleaded against the Defendants.

24. The evidence of Mr Fetisov, who had acted as intermediary broker, was firmly supportive of the case put forward by the Claimant. The thrust of Mr Fetisov's witness statement, which he confirmed in his evidence, was that his understanding throughout was that the Claimant was acting as a lender and expected repayment, and that he recalled no discussion in which the Claimant was told that repayment of her loan would be dependent upon the success of the real estate project. Mr Fetisov noted that at the time of the entry into the Loan Agreement, the Claimant was assisted by lawyers for Marshel Development, and he also recalled that the Second Defendant was closely involved with the transaction.

25. I accept the evidence of both the Claimant and of Mr Fetisov, whose testimony in my view was truthful. Neither witness made any attempt to dissemble, and neither was dented in what in each instance was brief cross-examination.

26. In her cross-examination of Mr Fetisov, Ms Marzano enquired about the commission received by Mr Fetisov's firm arising from this loan transaction – the evidence was that this was in the region of 3% – which caused her to make the suggestion that Mr Fetisov was '*an interested party*', and with, I think, the implication that his evidence was untrustworthy for that reason. I reject any such implication: Mr Fetisov was a strong witness, who made no bones about what had happened in this transaction, and who of course was an integral part of the factual matrix, given his evidence that it was he who had introduced the Claimant to this loan opportunity, and who had recommended the loan transaction to her because of the interest yield of in or around 20% pa on the sum loaned.

27. Surprisingly in the circumstances of this case, the Defendants called no evidence.

28. No suggestion has been made that witnesses were unavailable, and when the Registry wrote on 9 July 2026 to the Defendants' legal representatives to clarify the position, they responded that the Defendants "do not have any witnesses to call or any witness evidence to adduce in support of the Defence. Accordingly, no witness statements were filed on behalf of the Defendants".

29. Throughout the trial the Second Defendant was seated by her counsel. Ms Marzano, who appeared for the Defendants, was keen to inform the Court of that which she had been told by the Second Defendant and desisted when it was indicated that recounting her instructions from the Second Defendant was not evidence and was no substitute for evidence given in the witness box.

30. The result, therefore, was that the Claimant's evidence was uncontradicted and uncontested by *viva voce* evidence on behalf of the Defendants.

The Fundamental Issue: Loan or Property Investment?

31. The stark dividing line in this dispute is the nature of the monetary transaction that took place. Was this a loan in the accepted sense, or was it in reality a property investment under

which the Claimant, *qua* property investor, had assumed the risk inherent in the Ras Al Khaimah property development to which the funds loaned appear to have been deployed by the Borrower? Determination of this issue decides this case.

32. The Loan Agreement, which is in English and Russian, names the parties as "Radchenko Valeriia" and "Marshel Development LLC".

33. The Recitals are unexceptional, Recital 2 providing that the Borrower wishes to obtain and the Lender has agreed to extend the Loan to the Borrower "to be used for the purpose of financing the working capital and operations of the Company".

34. Section 2.01 stipulates the Loan Amount, namely USD 1.5 million, the interest rate of 20% pa, and the repayment date of 6 May 2025.

35. Section 2.04 provides that the "Borrower agrees to issue cheque(s) for the repayment of the Loan", and also includes, at Section 2.04 a), an option giving the Lender the right to convert the Loan into a measured area in the property development project in Ras Al Khaimah: this is termed "the conversion option" in section 2.04 c).

36. Thereafter the documentary sequence records the Security Over Shares Agreement, the Assignment Agreement, wherein Marshel Group assumed the payment obligations of Marshel Development under the Loan Agreement, and Addendum No. 1 qua Assignee, under which the maturity date set out in the Loan Agreement was extended from 10 May 2025 to 15 June 2025.

37. As at the date of Addendum No 1., namely 6 May 2025, the capitalisation and payment of interest is stated to be AED 6,022,500 (equivalent to USD 1,650,000 at a rate of 3.65), and section 3 of that Addendum lays down that "[for] the extended period from 6 May 2025 to 15 June 2025 the Lender shall be entitled to additional interest at an annual rate of 21.5%, prorated for the number of days in the extension period. This interest shall be calculated on the total capitalized amount as of 6 May 2025": after taking into account the interest to be earned to 15 June 2025, this produced the agreed new figure of AED 6,166,370.83.

38. Section 4 of Addendum No. 1 provides that a new post-dated security cheque of AED 6,166,370.83 (equivalent to USD 1,689,979.68 at the rate of 3.65) was to be issued by the Assignee (Marshel Group) to replace the original cheque, which expired on 6 May 2025, whilst section 5 provided that "[the] Parties acknowledge and agree that this is the **final extension** of the Loan term", that no further extensions shall be granted, and that any failure to repay the amount due on or before 15 June 2025 shall trigger a daily penalty: this is specified in section 6 to be AED 5,000 per day for any delay in repayment beyond 15 June 2025 until full settlement.

39. It is against this documentary backdrop that the Defendants mount the defence that this is and never was a true loan situation but as that it was a "sham transaction", and in reality it was no more than a property investment, with its attendant risks, undertaken by the Claimant in the Ras Al Khaimah property venture.

40. In this submission the Defendants appear to rely on three principal factors:

   a. the Preamble to the Loan Agreement stipulated that the purpose of the provision of funds by the Claimant was to finance the working capital and operational activities of Marshel Development;

   b. the financing of AED 5,475,000 was disbursed by the Claimant directly to Durar Properties;

   c. on 31 May 2024 the Claimant's payment was recorded in the internal register of Marshel Development under the heading 'Project-linked financing/Investment Financing', and that a Marshel Management Approval document dated 16 May 2024 confirming receipt of AED 5,475,000 provided by "Mrs Valeriia Radchenko" has been accepted by Marshel Development "as project-linked financing for the purpose of funding Marshel's obligation under the Head of Terms with Durar Properties LLC" – which, say the Defendants, clearly demonstrate that the Claimant was treated as a property investor, and that the Claimant was classified within the 'Investor List' in the project.

41. As to paragraph 40 (a) above, in her evidence the Claimant said that she was aware of the purpose to which the funds she was lending would be put – in the circumstances it would have been astonishing if she were not – but that she was providing capital for whatever commercial activities Marshel Group wished to use it for, and that so far as she was concerned she was simply a Lender who was earning interest at the agreed rate upon the money lent.

42. For my part I am unable to see why knowledge of the purpose to which the Borrower uses the funds as lent should convert the lender into an active participant in whatever commercial endeavour it was for which the funds were earmarked: having borrowed the funds the Borrower obviously was going to utilise such funds for whatever commercial purpose it chose. Working capital means what it says, and this argument is rejected.

43. As to paragraph 40 (b) above, the 'direct disbursement' point, the Claimant stated in her evidence that such disbursement direct to Durar Properties was done at the behest of the Borrower, and that this was the required machinery for transmitting the funds the subject of the Loan: this is borne out on the papers, since there is a Declaration signed by the Second Defendant, for and on behalf of Marshel Development, that the Claimant issue a Manager's Cheque equivalent to AED 5,475,000 dated 6 May 2024 in the name of Durar Properties Ltd (which appears to be the joint venture partner of Marshel Development in the Al Marjan Island project).

44. As to paragraph 40 (c) above, whatever was or was not contained in Marshel Group's internal documentation, the short and irrefutable point is that the Claimant's evidence, which I accept, was that she had never seen such documents and had no idea of how the monies she had lent were being internally recorded by the Borrower of the funds.

45. Accordingly, on what has become known as the '*re-characterisation*' issue, I reject the idea that the Claimant was at any time acting other than purely as a lender to Marshel Development, and thereafter, via assignment, to Marshel Group.

46. The documents themselves do not support the case now being run by the Defendants, no contrary evidence has been given in the witness box to defend this claim, and I accept the Claimant's statement that at no point did the Defendants inform her that the Loan Agreement was a "sham", or that in fact she was participating in a real property investment with project risk attached.

47. The Court's conclusion on the 'defining issue' is that there can be no doubt that this was a Loan from the Claimant to Marshel Development, that the documents, which throughout are in the language of "loan", vindicate that conclusion, that the Claimant's evidence is consistent with and reinforces the documents, and that the "sham" epithet propounded by the Defendants regarding the Loan Agreement is perhaps more appropriately applicable to that which is termed the "First Ground" of Defence in the Defendants' Skeleton Argument prepared for the trial.

48. I find as a fact that: Marshel Group (via assignment) has assumed the status of borrower of these funds; the Claimant is the Lender of these funds in the normally accepted sense; and is not, as alleged, an investor in the property development to which her loan funds appear to have been applied.

49. It therefore follows that in my judgment, Marshel Group is liable to the Claimant for the outstanding sum now claimed.

Position of the Second Defendant

50. Despite her presence in Court, apparently instructing her counsel during the hearing, the Second Defendant chose not to go into the witness box.

51. Accordingly, the Court is in the position of having to evaluate her position on the documents, and in light of such evidence as was called by the Claimant.

52. It is clear that from the outset the Second Defendant was intimately connected to the Loan transaction: I note that she had signed the Loan Agreement for and on behalf of Marshel Development, Addendum No. 1 as 'Authorized Signatory, Marshel Group Limited (Assignee)', and further, via a 'Declaration' dated 6 May 2024, she directed the funds lent by the Claimant to Durar Properties via Manager's Cheque in the sum of AED5,475,000 drawn by the Claimant; a subsequent Declaration, again signed by the Second Defendant, and dated 8 May 2024, confirmed and acknowledged the she had received from the Claimant a Manager's Cheque of that date and in that sum drawn in favour of Durar Properties.

53. So there can be no doubt that the Second Defendant was a significant participant in the process of executing the Loan Agreement and in directing passage of the funds so lent to Durar Properties. In no sense was the Second Defendant a mere bystander.

54. However, acting as authorised signatory for Marshel Development in itself does not attract personal liability, and the case against the Second Defendant arises because of the notarisation of the Indebtedness Declaration executed by the Declarant, the Second Defendant, on 17 June 2025 in favour of the Claimant, the stated Beneficiary of the Declaration, before a Dubai Notary Public, Mr Ibrahim Salem Al Kaabi.

55. This reads, in material part:

> "By virtue of this deed, the declarant acknowledges to the beneficiary of declaration with the following:
>
> A debt of AED 6,166,370.83
>
> The declarant undertakes to pay this amount:
>
> On June 18, 2025.
>
> In the event of failure to pay the amount, the aforementioned creditor shall have the right to take all legal measures to protect her rights.
>
> Indebtedness Declaration ============= I the undersigned Mrs Irina Ermakova, Russian Nationality, holder of ID Card (number specified), In my capacity, do hereby acknowledge and declare that I am indebted for 6,166,370.83 AED...to Mrs Valeriia Radchenko, Russian Nationality, holder of ID Card No (number specified), do hereby obligate to return the amount on 18-6-2025, and the above said Creditor shall have the right to take all legal actions against me as she may deem fit in this case, if I failed to settle the same. This declaration shall serve as an executive deed."

56. During the hearing Ms Marzano submitted to the Court that the Second Defendant had executed the Indebtedness Declaration because she had wished to protect her reputation among the Russian community in Dubai, and that in effect she had not consented to that Declaration.

57. Putting to one side the fact that this emerged through counsel, and is not evidence, it strikes me that given such motivation consent was not an issue: to the contrary, I suspect that the Second Defendant was all too keen to make this Declaration in order to keep the ship (and her reputation) afloat, and perhaps assumed that it was unlikely ever to be enforced.

58. Ms Marzano also suggested that there was no consideration for the Indebtedness Declaration, and that therefore it was unenforceable.

59. This ambitious submission fails. Under English law a promise made under a Deed does not require consideration to be enforceable, although in these particular circumstances there patently was consideration, given that the Indebtedness Declaration made by the Second Defendant clearly represented a last-ditch attempt to dissuade the institution of proceedings by the Claimant to recoup the outstanding debt. In this connection, the Claimant stated that after the passing of the original maturity date of 6 May 2025 of the Loan

Agreement, she had agreed to an extension "rather than immediately commence proceedings", and were it necessary to find consideration for her personal undertaking it seems to me that forbearance to sue for the indebtedness would be sufficient: the language used in the Deed itself makes reference to the Creditor's right to take action in the event of non-payment.

60. Although Ms Marzano at no stage referred to the Defendants' Skeleton Argument filed prior to the trial, I reject the argument therein (under the 'Second Ground') that the Claim is inadmissible against the Second Defendant, and the alleged invalidity of the Acknowledgment of Debt signed by the Second Defendant ('Third Ground').

61. It follows from the foregoing that I hold that pursuant to the notarised Deed of Indebtedness the Second Defendant is liable to the Claimant for the specific sum stated in the Deed- which, of course, is the like sum as contained in Addendum No. 1, and is the sum contained in the post-dated security cheque which was presented to the Bank and not honoured.

Quantum

62. There can be no argument – on the documents it appears agreed – that the amount now due and owing is AED 6,166,370.83.

63. However, Mr Drahmoune, appearing for the Claimant, asks for more. For this purpose he invokes Clause 6 of Addendum No. 1, which is the Penalty Clause which provides that in the event of delay in repayment beyond 15 June 2025 "the Borrower shall pay a penalty of AED 5,000 per day until full settlement is made".

64. Although Ms Marzano did not raise the point, this is opposed by the Defendants in their Fifth Ground of Defence in their Skeleton Argument, wherein reliance is placed on the '*Makdessi principle*' from *Cavendish Square Holding BV v Talal El Makdessi* [2015] UKSC 67.

65. This principle of detriment on the contract breaker out of all proportion to any legitimate interest of the innocent party in the enforcement of the primary obligation is now well-established as a matter of judicial approach, and on the *Makdessi principle* I reject the daily penalty rate of AED 5,000.

66. In my view the Claimant's interests are protected by the award of interest at 5% on the principal sum from the date of breach.

67. I note that the Defendants also take issue with the contractually agreed rate of interest under the Loan Agreement and Addendum No 1. However, the Court has no intention of interfering with the commercial bargain struck at arm's length between the Claimant and Marshel Development, and thereafter, by assignment, with Marshel Group, and in the context of this argument limits its interference to rejection of the Penalty Clause.

Order

68. It follows from the foregoing that the Court orders and directs that:

a. Judgment be entered in favour of the Claimant against the Defendants.

b. The Defendants are jointly and severally liable to pay the Claimant:

   i. the sum of AED 6,166,370.83 (the "**Judgment Sum**");

   ii. simple interest on the Judgment Sum at the rate of 5% per annum for the period from 16 June 2025 until repayment; and

   iii. costs of and occasioned by these proceedings on the standard basis, such costs to be summarily assessed, unless agreed between the parties.

c. The Claimant be permitted to enforce the charge in her favour over 94 shares in Marshel AM as identified in the Security Over Shares Agreement.

d. There be liberty to apply in respect of the summary assessment of the costs payable to the Claimant and generally.

Issued by:

Linda Fitz-Alan
Registrar, ADGM Courts
27 July 2026