



ADGM COURTS
محاكم أبو ظبي العالمي



In the name of
His Highness Sheikh Mohamed bin Zayed Al Nahyan
President of the United Arab Emirates/ Ruler of the Emirate of Abu Dhabi

**COURT OF FIRST INSTANCE
COMMERCIAL AND CIVIL DIVISION
BETWEEN**

AC NETWORK HOLDING LIMITED

First Claimant

AC POOL HOLDING LIMITED

Second Claimant

KHALIL MOHAMED BINLADIN

Third Claimant

DALIA KHALIL BINLADIN

Fourth Claimant

HORIZON LIGHT INVESTMENTS LLC

Fifth Claimant

and

POLYMATH EKAR SPV1

First Defendant

POLYMATH EKAR SPV2

Second Defendant

VILHELM NIKOLAI PAUS HEDBERG

Third Defendant

RAVI NAGESH BHUSARI

Fourth Defendant

ALI HASHEMI

Fifth Defendant

LUX 2 INVCO

Sixth Defendant

CLARA FORMATIONS LIMITED

Seventh Defendant

EKAR HOLDING LIMITED

Eighth Defendant

JUDGMENT OF JUSTICE WILLIAM STONE SBS KC

Neutral Citation:	[2023] ADGMCFI 0013
Before:	Justice William Stone SBS KC
Decision Date:	7 June 2023
Hearing Dates:	5 – 22 September 2022 inclusive, and 24 and 25 October 2022
Decision:	<ol style="list-style-type: none"> 1. Permission to appeal is granted on all grounds set out in the Permission Application. 2. The costs of the Permission Application are to be in the appeal, save that there is to be no order as to costs in terms of the Defendants’ Procedural Objection.
Date of Order:	7 June 2023
Catchwords:	Application for permission to appeal
Cases cited:	Racing Partnership Ltd v Done Bros Ltd [2021] Ch 233
Case Number:	ADGMCFI-2020-015
Parties and representation:	<p>Mr David Halpern KC for the Claimants/ Applicants Instructed by Al Tamimi & Company</p> <p>Mr Alan Choo-Choy KC for the First to Sixth and Eighth Defendants/ Respondents Instructed by DLA Piper Middle East LLP</p>

JUDGMENT

The Application

1. By Application dated 12 May 2023 (the “**Permission Application**”) the Claimants seek permission to appeal to the Court of Appeal against that part of the Judgment dated 7 February 2023 (the “**Judgment**”) wherein the Court declined to make any finding of liability against the Fifth Defendant, Mr Hashemi, for the sums ordered to be paid against the First to Fourth Defendants, and further against the decision of this Court dated 7 April 2023 in declining to make an order for costs against the Fifth Defendant in addition to the costs order against the First to Fourth Defendants.
2. The Application is supported by the Argument in Support of the Permission Application dated 12 May 2023.
3. The Application is opposed by the Defendants in their Arguments in Response to the Permission Application dated 2 June 2023.
4. This opposition is founded upon two grounds: first, that the Permission Application be dismissed as a matter of procedure in that it is out of time; and second, that it be dismissed as a matter of substance.

The Procedural Objection

5. Three separate judgments were issued in this case: an initial Merits Judgment, dated 15 November 2022 (the “**Merits Judgment**”); a Quantum Judgment, dated 7 February 2023 (the “**Quantum Judgment**”); and finally, a Costs Judgment dated 7 April 2023 (the “**Costs Judgment**”).
6. The procedural objection essentially is that two time extension requests from the Defendants respectively dated 18 April 2023 and 5 May 2023 (which were granted) referenced appeal solely against the Costs Judgment, so that the extensions as were granted by the Court had no effect upon the time for permission to appeal the Merits Judgment and the Quantum Judgment, the time for appealing these judgments already having expired on 28 April 2023 (the “**Procedural Objection**”); accordingly it is submitted, the extension granted to 12 May 2023 was referable only to the time for appealing the Costs Judgment.
7. It follows, conclude the Defendants, that the Permission Application, insofar as it relates to the Merits Judgment and Quantum Judgments, was out of time, and that since the appeal against the Costs Judgment (although in itself strictly within time) was “entirely parasitic” upon the appeal against findings within the Merits and Quantum Judgments, this similarly should be dismissed and treated as out of time.
8. The issue of time in which to apply for permission to appeal in a case in which it was anticipated that there would be successive and related decisions upon differing aspects of the case made it appropriate to afford the parties the opportunity to mount a cumulative appeal relating to all elements upon which judgment was to be rendered. Accordingly, the Court made an Order dated 23 November 2022, paragraph 1 of which directed that: “*The time period for any application to appeal pursuant to Rule 206(2) of the ADGM Court Procedure Rules 2016 is to commence from the date of the Order finally disposing of the proceedings, including in relation to costs.*” (emphasis added).
9. The concluding clause of that Order was intended to ensure that time for appealing the judgments in this case would begin to run *only* after costs also had been decided, thereby enabling the issue of costs to be included within any appeal against the Merits and Quantum Judgments: the Court had been under the impression throughout that this was both understood and accepted by the parties.
10. Nevertheless, the Defendants now say that since their twin extension requests of 18 April 2023 and 25 May 2023 referenced solely the Judgment and the Order dated 7 April 2023, it must follow that the extension which ultimately was granted to 12 May 2023 was to be confined to any costs appeal, and that as the time for any appeal from the Merits and Quantum Judgments already had expired and this was unaffected by the time extension granted to 12 May 2023.
11. Against the background of the Court having made it clear that time for appealing would begin to run after determination of all live issues including costs, so that any appeal to be raised potentially could encompass all relevant parts of the case, it is unfortunate that the Defendants now ignore this and seek to use their own requests for discretionary time extensions as a means of ‘*hiving off*’ the issue of costs from those of liability and quantum, and thus to demonstrate that the Claimants are out of time in their application for permission to appeal.
12. The time extensions granted to the Defendants were considered by the Court in the context of and on the basis of the approach encompassed in its Order of 23 November 2022. The Defendants’ extension request of 18 April 2023 was one to which the Claimants had raised no objection, the consequent email from the Registrar of 25 April 2023 stating that the extension was granted to file “*any application for permission to appeal*” to 5 May 2023; the additional seven day extension as granted on 8 May 2023 (after an interim two day extension pending notice of the Claimants’ response, which in this final instance had been to object) served simply further to extend the expiry date to 12 May 2023, the Order of 8 May 2023 stating “*The time period for any application for permission to appeal pursuant to Rule 206(2) of the Rules be extended to 5pm on 12 May 2023.*”

13. It is in this circumstance that the Defendants submit that it was only the time to apply for permission to appeal the Costs Judgment which was extended to 12 May 2023, and that the Order of 8 May 2023 (the “**May Order**”) must be thus construed.
14. The Court declines to accede to this submission and to confine the purport of the May Order as now sought. In the Court’s view the May Order represented the final extension for the institution of *any* appeal dealing with this case, of which costs was but one such issue, and reflected the approach initially put in place shortly after delivery of the Merits Judgment when the Claimants’ email of 21 November 2022 first had raised the question of when and in what circumstances time to appeal was to begin to run. This clearly represented the understanding of the Claimants, whose application for permission to appeal was filed on 12 May 2023, the last day available day for so doing under the principle thus established.
15. Accordingly, the procedural argument is dismissed, and the Court rules that the application for appeal as now filed by the Claimants is within time.
16. In any event, and for the avoidance of doubt and in so far as such may be necessary, pursuant to its powers under Rules 7(2) and (4) and 8(1) of the ADGM Court Procedure Rules (the “**CPR**”) , in the exercise of its unfettered discretion the Court also grants an extension of time to the Claimants to 12 May 2023.
17. Having made such findings, the Court now briefly considers the grounds of appeal which the Claimants wish to mount.

The Substantive Application

Claimants’ Appeal

18. Although this case contained within it many issues and sub-issues, the Claimants’ intended appeal is in relatively narrow factual and legal compass, and focuses entirely on the manner in which the Court variously dealt with the Claimants’ case against Mr Hashemi, the Fifth Defendant:
 - a. first, it is said that the Court was in error in failing to find that Mr Hashemi was liable to the Claimants in the tort of ‘*unlawful means conspiracy*’ since liability is not dependent upon establishing that the tortfeasor knew that the acts in question would amount to breach of contract, and therefore that the Court should have found that Mr Hashemi was jointly and severally liable with the First to Fourth Defendants for the damages and interest awarded;
 - b. second, that in this context the Court should have followed one line of English Court of Appeal authority running contrary to the approach this Court adopted, and that the Court should have considered itself bound by the majority decision in *Racing Partnership Ltd v Done Bros Ltd [2021] Ch 233*;
 - c. third, it is submitted that as a general proposition the Court erred in law in holding that it was not bound by the English Court of Appeal; and
 - d. fourth, that the Court erred in declining to award costs against Mr Hashemi personally, notwithstanding that it had declined to find that Mr Hashemi had incurred personal liability in unlawful means conspiracy.

Defendants’ Objections

19. The argument opposing the Permission Application extensively criticises each of the proposed grounds of appeal and argues that the findings at trial in terms of these issues were correct: for present purposes there is no need to set out in detail the arguments made, which substantially mirror the Defendants’ submissions at trial, submissions which are considered in the Merits Judgment and which substantially were accepted by the Court.

20. However, although the Defendants say that none of the proposed grounds of appeal possess merit, this is nothing to the immediate point: it cannot be said that any of the issues raised in the Permission Application represent matters which can brook no argument, and accordingly that the issues in question are not susceptible to successful contrary argument: in the view of the Court the position is entirely to the contrary.

Decision

21. It is not in dispute that the benchmark to be attained for the grant of permission to appeal is set out in Rule 208(4) of the CPR which reads:
- “Permission to appeal may be given only where the Court considers that the appeal would have a real prospect of success or there is some other compelling reason why the appeal should be heard.”*
22. After reflecting on the respective submissions, the Court holds that permission to appeal is to be granted for all of the grounds itemised by the Claimants in the Permission Application.
23. The Court considers that in the circumstances the statutory benchmark clearly is met, and that issues arising in terms of the tort of unlawful means conspiracy, the differing treatments of this tort in English jurisprudence, and the issue of *stare decisis* in terms of English Court of Appeal decisions are matters both significant and appropriate for appellate consideration in this jurisdiction.
24. Hence the Order granting leave for permission to appeal.
25. Costs of the application are to be in the appeal, save that there is to be no order as to costs in terms of the Defendants’ Procedural Objection, which in the view of the Court in the circumstances ought not to have been pursued.



Issued by:

Linda Fitz-Alan
Registrar, ADGM Courts
7 June 2023