



ABU DHABI GLOBAL MARKET COURTS
محاكم سوق أبوظبي العالمي

COURT OF FIRST INSTANCE
CIVIL DIVISION

BETWEEN

ROSEWOOD HOTEL ABU DHABI LLC
CLAIMANT

AND

SKELMORE HOSPITALITY GROUP LTD.
DEFENDANT

JUDGMENT ON APPLICATION FOR PERMISSION TO APPEAL



ABU DHABI GLOBAL MARKET COURTS
محاكم سوق أبوظبي العالمي

Neutral Citation:	[2019] ADGMCFI 0005
Before:	His Honour Justice Stone SBS QC
Decision Date:	14 July 2019
Decision:	The application for permission to appeal the Court's Judgment dated 27 May 2019 is dismissed.
Hearing Date(s):	No hearing.
Date of Orders:	14 July 2019
Catchwords:	Application for permission to appeal judgment dismissing application to join new party; failure to demonstrate the appeal before the Court of Appeal would have a real prospect of success
Legislation Cited:	ADGM Court Procedure Rules 2016
Case Number:	ADGMCFI-2019-003
Parties and Representation:	Freshfields Bruckhaus Deringer for the Claimant/ Respondent to the application LPA (Middle East) Limited for the Defendant/ Applicant to the application

JUDGMENT:

The Application

1. By Order dated 27 May 2019, and Judgment of like date, this Court dismissed the Defendant's application, as amended, for joinder of Mubadala Development Corporation ('MDC') as 2nd Defendant in the proceedings herein.
2. On 10 June 2019 the Defendant applied for permission to appeal this Order to the Court of Appeal.
3. In response, on 25 June 2019 the Claimant filed its objection to the application for permission to appeal.
4. The Defendant's application and Claimant's objection were backed by written submissions respectively filed by Mr Nigel Hartridge of LPA (Middle East) Ltd and by Mr Sami Tannous of Freshfields Bruckhaus Derringer LLP.
5. The Defendant was given 14 days to respond to the Claimant's objection, but at the expiry of that period, on 9 July 2019, no response had been received, nor had the Court received any intimation that the Defendant wished to make any further submission.



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6. Accordingly, this Court now decides the contested issue of permission to appeal solely on the basis of the single submission as filed by each party.

Decision

7. The arguments on each side speak for themselves.
8. The Defendant asserts that the Judgment of the Court dismissing the joinder application was flawed in that it failed to apply the law correctly, misstated the pleadings, sought to place an unreasonable burden on the Defendant, mischaracterized the Defendant's evidence, and proposed an inappropriate alternative course of action (namely the potential institution of a separate action by the Defendant against MDC); the Defendant's conclusion is that in considering this application the Court failed to discharge its duty of fairness and efficiency.
9. Thus it must follow, the Defendant asserts, that permission should be granted to appeal the Judgment "in all respects other than the amendment to join MDC rather than Mubadala Investment Company", which amendment the Court had allowed.
10. In its reply submission, the Claimant takes issue with the various contentions specifically advanced by the Defendant, and argues that permission to appeal should be denied, submitting that the Court had considered the evidence in the round, and that on the basis of the material before it a proper exercise of discretion had resulted in dismissal of the joinder application.
11. In terms of the benchmark for permission to appeal, the Court accepts the Claimant's submission that this is canvassed in Rule 208, which is that permission to appeal is given only where it is considered that the appeal would have a real prospect of success, or where there is some other compelling reason why the appeal should be heard.
12. No such 'other compelling reason' is to be found on the facts of this case, and thus the sole question remaining is whether an appeal would have a 'real prospect of success'.
13. It is difficult to see how that benchmark can be satisfied in this case.
14. This was a procedural application for joinder before the judge charged with conducting the hearing of this dispute, and upon the exercise of what is accepted to be an unfettered discretion, the application was dismissed for the reasons set out in the Judgment.
15. The Court came to the view that it did on the basis of the evidence put before it, it being noteworthy that in this instance the Defendant applicant provided little if any material information which would have enabled the Court properly to exercise a discretion to allow the Defendant to join the Claimant's parent company as 2nd Defendant to the existing action.
16. This is not a case where the Defendant is prevented from pursuing MDC, or otherwise would suffer prejudice from the dismissal, it being open to the Defendant to mount separate proceedings against MDC (and presumably, if thought appropriate, to apply to have any such action heard by the same judge at the same time).



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17. Viewed in this light, the Court is unable to discern how or why the exercise of the Court's discretion should be vitiated on appeal. The view that was taken was one which it was open to the Court to take on the evidence, and the Court is unable to identify any serious procedural irregularity in the manner in which it came to dismiss the joinder application, in the sense of the Court having taken into account a matter which it should not, or having failed to take into account a matter which it should have; nor does the Court consider that the decision may be characterised as plainly wrong or manifestly unjust.
18. The Defendant's dissatisfaction with the decision is evident, but at the end of the day the Court can act only upon the basis of such information as an applicant chooses to place before it, and in this instance, for the reasons adumbrated and in face of the Claimant's opposition, the Court concluded that the Defendant had failed to discharge the burden of demonstrating why the joinder sought should be permitted.
19. It follows that in the respectful view of the Court any appeal to the Court of Appeal would not have a 'real prospect of success', and consequently that this application for permission to appeal must be dismissed also.
20. In these circumstances, costs inevitably must follow the event and be to the Claimant, to be assessed if not agreed.

Issued by:



Linda Fitz-Alan
Registrar, ADGM Courts
14 July 2019