



ABU DHABI GLOBAL MARKET COURTS
محاكم سوق أبوظبي العالمي

COURT OF APPEAL
BETWEEN

SKELMORE HOSPITALITY GROUP LTD.
APPLICANT

and

ROSEWOOD HOTEL ABU DHABI LLC
RESPONDENT

JUDGMENT



Neutral Citation:	[2019] ADGMCA 0001
Before:	Chief Justice, Lord David Hope His Honour Justice Sir Peter Blanchard His Honour Justice Kenneth Hayne
Decision Date:	1 September 2019
Decision:	Application for Permission to Appeal refused Applicant to pay the Respondent's costs of the Application
Decision under appeal:	
Court of First Instance Division:	Civil
Date of Decision:	27 May 2019
Before:	His Honour Justice Stone SBS QC
Case Number(s):	ADGMCFI-2019-003
Hearing Date(s):	No hearing
Date of Orders:	1 September 2019
Catchwords:	Application for Permission to Appeal; exercise of judicial discretion
Legislation Cited:	ADGM Court Procedure Rules 2016, r.56 Civil Procedure Rules 2000 (England and Wales), r.19.5
Cases Cited:	No cases cited
Case Number:	ADGMCA-APP-2019-001
Parties and representation:	LPA (Middle East) Limited for the Applicant to the application Freshfields Bruckhaus Deringer for the Respondent to the application

JUDGMENT

1. In the proceedings below the Claimant, Rosewood Hotel Abu Dhabi LLC ("Rosewood"), alleges that the Defendant, Skelmore Hospitality Group Ltd ("Skelmore"), has failed to pay sums of money said to be due and owing to it under the terms of a lease. The lease, by Rosewood to Skelmore, was



of commercial premises at the Rosewood Hotel on Al Maryah Island. The total sum involved amounts to about US\$1.362 million, together with contractual interest and costs. Skelmore disputes liability to pay any of the sums claimed.

The joinder application

2. On 21 April 2019 Skelmore filed notice of an application to join Mubadala Investment Company as Second Defendant to these proceedings. In its response Rosewood opposed the joinder application. Skelmore responded by affirming its application, but it sought to amend it by changing the name of the party which it sought to be joined to Mubadala Development Company (“MDC”). On 27 May 2019 the Judge, Justice Stone, granted the amendment and proceeded to consider the joinder application as if at the outset the entity sought to be joined was MDC. For the reasons set out in his judgment of the same date he dismissed the application.
3. Rule 56 of the ADGM Court Procedure Rules 2016 provides:
 - “(1) Where the claim form has been served, the Court’s permission is required to remove, add or substitute a party.
 - (2) An application for permission under paragraph (1) may be made by an existing party or by a person who wishes to become a party.”
4. The Judge did not understand there to be any dispute that, in dealing with an application under that Rule, the Court had an unfettered discretion whether to grant permission. In our opinion that is indeed the effect of the words used by Rule 56. Unlike CPR r 19.5 of the Civil Procedure Rules 2000 for England and Wales, for example, which states that the power to add or substitute a party may be exercised “only if ... the addition or substitution is necessary”, Rule 56 contains no such limitation. A court is hardly likely in the exercise of a discretion to join as a party somebody who has no claim relating to the subject matter of the action at all. But, if its powers extend to anyone who has, the question whether a particular entity should be joined is at the discretion of the court.
5. The Judge asked himself whether, on the amended basis that the entity sought to be joined was MDC, there was sufficient material before the Court upon which it could properly exercise its discretion in Skelmore’s favour.
6. In the Judge’s opinion there was not. Skelmore’s contention that joining MDC as a party to the action was of paramount importance to its case begged the question what precisely was the nature and extent of its case against it: see para 28. The defence as filed was in entirely general terms, and the Court had no information as to what it might be that Skelmore wished to assert or claim against MDC arising from its entry into the lease. In its reply submission of 15 May 2019 Skelmore said that, if the application were to be granted, it would bring evidence of assurances and undertakings provided to it by MDC on which it relied on entering into the lease and of the breach of those assurances and undertakings. But the Judge said that these allegations remained wholly unparticularised. He held that Skelmore had failed to discharge the burden which lay upon it to demonstrate why an order for joinder should be made.



7. As for Skelmore’s submission that the personnel involved in the lease negotiations were acting on behalf of MDC and that, as this was what it had understood and relied upon, joining MDC to these proceedings was of paramount importance to its case, the Judge said that it remained open to Skelmore to bring a separate action against MDC. He declined to permit a straightforward case for unpaid sums allegedly accruing under the lease to be sidetracked by the raising of collateral allegations that Skelmore might or might not ultimately decide to pursue against MDC.

The application for permission to appeal

8. On 10 June 2019 Skelmore applied for permission to appeal the Judge’s order to this Court. On 25 June 2019 Rosewood filed its objection to the application. On 14 July 2019 the Judge dismissed the application. He had regard to Rule 208(4) of the Court Procedure Rules 2009. That Rule deals with the consideration of an application for permission to appeal by the Court of Appeal, but it can be taken to have set out the test which should be applied by a Judge in the Court of First Instance too. It provides:

“Permission to appeal may be given only where the panel considers that the appeal would have a real prospect of success or there is some other compelling reason why the appeal should be heard.”

He held that an appeal to this Court would not have a real prospect of success and that no other compelling reason for granting permission was to be found on the facts of this case.

9. On 24 July 2019 Skelmore applied to this Court for permission to appeal, claiming that the dismissal of its application to join MDC severely prejudiced its right to a fair trial of the issues raised by Rosewood’s claim. The essence of its case and its defence to the claim is to be found in its contention that MDC, as the ultimate parent of Rosewood, directed and conducted the negotiations for the lease and remained throughout its principal interlocutor in relation to questions arising from its operation. It is claimed that, as MDC made various representations and agreed certain issues with Skelmore that directly affected its obligations under the lease, the dismissal of the joinder application deprived Skelmore of the ability fully to present its case and defence. It would be a waste of time, cause an unnecessary increase in costs and militate against the efficient conduct of justice for it to be required to take a separate case against MDC.

Decision

10. We can find no merit in this application. It is well established that an appellate court will not lightly interfere with an exercise of judicial discretion. It will only do so if it is shown that the judge applied some wrong principle or that for some other reason the exercise of his discretion was plainly wrong. In such a case there would be a real injustice if his decision were to be allowed to stand. That cannot be said to be the position in this case. Skelmore has failed to demonstrate that it has an arguable case that the Judge erred in the exercise of his discretion. Joinder of a third party may be appropriate where a defendant seeks to obtain a remedy against that party in response to a claim brought against it in the main action. But no particulars have been given, even at this stage in the proceedings, of the basis for Skelmore’s claim for a remedy against MDC. Nor is there any explanation as to how joinder of MDC would assist in the resolution of the issues that



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are in dispute between it and Rosewood. For these reasons an appeal against the Judge's decision would be bound to fail. The application for permission is refused.

11. It follows that Skelmore must pay Rosewood's costs of the application for permission. We have been invited to award Rosewood its costs on an indemnity basis. We are not persuaded that it would be appropriate for us to make such an order in this case.
12. It does seem to us, however, that there may be some force in Rosewood's complaint that by persisting thus far with its application for the joinder of MDC Skelmore is seeking to disrupt the main proceedings. So we wish to issue this warning for the future. A party who is held to have indulged in such conduct must expect to be dealt with appropriately in any award of costs. Any disruptive or time-wasting conduct in this court is always to be deprecated.

Issued by:



Linda Fitz-Alan
Registrar, ADGM Courts
1 September 2019