



ADGM COURTS

محاكم دبي سوق أبوظبي 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**

A6

Claimant

and

B6

Defendant

JUDGMENT OF JUSTICE WILLIAM STONE SBS KC



Neutral Citation:	[2023] ADGMCFI 0010
Before:	Justice William Stone SBS KC
Decision Date:	27 April 2023
Decision:	<ol style="list-style-type: none"> 1. The Application be dismissed. 2. The costs of and occasioned by the Application be to the Defendant, such costs to be summarily assessed if not agreed.
Hearing Date(s):	No hearing.
Date of Order:	27 April 2023
Catchwords:	Application for permission to appeal; failure to demonstrate the appeal before the Court of Appeal would have a real prospect of success
Legislation Cited:	Abu Dhabi Law No. 4 of 2013 (as amended by Abu Dhabi Law No 12 of 2020) ADGM Courts Procedure Rules 2016
Case Number:	ADGMCFI-2022-238
Parties and representation:	<p>Bakertilly Law Corporation for the Claimant/ Applicant to the Application</p> <p>Freshfields Bruckhaus Deringer LLP for the Defendant/ Respondent to the Application</p>

JUDGMENT

The Application

1. By Order dated 13 March 2023 this Court dismissed the application by the Claimant to set aside an ICC Arbitral Award issued in its final form on 9 May 2022 (the “**Award**”).
2. The Judgment of like date set out the somewhat unusual circumstance in which this Court became involved in an application to set aside an award in an arbitration in which the contractual seat was Abu Dhabi, and wherein the Abu Dhabi Judicial Department Courts had declined to decide the case on the basis that the jurisdiction to set aside the Award rested with ADGM Courts by virtue of an ICC branch office located in Abu Dhabi Global Market (“**ADGM**”).
3. Both parties confirmed in their written submissions and through counsel that they wished to submit to the jurisdiction of this Court and to ‘opt in’ to the jurisdiction pursuant to Abu Dhabi Law No. 4 of 2013 (as amended by Abu Dhabi Law No 12 of 2020) the effect of which is to permit parties to refer their claims or disputes to ADGM Courts notwithstanding a lack of nexus to ADGM.



4. The resulting Judgment declining the relief sought by the Claimant speaks for itself, and it is from this Judgment that the unsuccessful Claimant wishes to appeal.
5. Accordingly the Court now has before it the Claimant's Application for Permission to Appeal to the Court of Appeal, together with its Argument in Support, both filed on 4 April 2023 (together, the "**Application**"), and the Defendant's Argument in Response filed on 25 April 2023.

The Threshold Test

6. Rule 208(4) of the ADGM Courts Procedure Rules 2016 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."

7. The language of this section is permissive, and the discretion must be exercised in accordance with the underlying objective.

The Present Case

8. In the Application, the Claimant relies on four specific grounds in reliance on the first ('real prospect of success') limb of Rule 208(4): (1) there was an error of fact in determining the opt-in clause; (2) there was an error of law in determining the procedural law applicable; (3) there was an error of law in determining if the irregularities warrant a partial set-aside of the Award; and (4) there was an error of law in determining if a partial set-aside is sustainable as per law.
9. No reliance is placed upon the second ('some other compelling reason') limb of Rule 208(4).
10. The Defendant takes issue with each of these heads, and argues that the Application fails to meet the threshold test for the grant of permission to appeal; the Defendant further submits that in any event at least three of the four grounds specified are moot (grounds (1), (2) and (4) above), because, even if established, the outcome of the case would not change, the apparent exception being the ground that there was judicial error in rejecting the application for setting aside on the merits (ground (3) above) as to which the Defendant avers that the Claimant has not demonstrated any cogent basis for this allegation.

Decision

11. The Court has reflected on the respective submissions, and is unable to conclude that any appeal, if sanctioned, would have '*a real prospect of success*' under each and any of the four specified heads.
12. In the view of this Court, nothing put forward in the Application enables the Claimant to overcome the statutory hurdle now required to obtain permission to appeal. As to the Claimant's specific contention that there was a '*mistake of fact*' in terms of the parties' mutual recourse to the 'opt in' provision, the Court disagrees: on this point the record speaks for itself.
13. Consequently, the Application must be dismissed.



14. In these circumstances, costs are to follow the event. Accordingly, the costs of and occasioned by the Application be to the Defendant, such costs to be summarily assessed if not agreed.



Issued by:

A blue ink signature of Linda Fitz-Alan.

Linda Fitz-Alan
Registrar, ADGM Courts
27 April 2023