



ADGM COURTS

محاكم 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**

BAI MINGGUO

Claimant

and

ANTHONY DARIUS SADEGHNIA

Defendant

JUDGMENT OF JUSTICE STONE SBS KC



Neutral Citation:	[2024] ADGMCFI 0005
Before:	Justice Stone SBS KC
Decision Date:	22 May 2024
Decision :	<ol style="list-style-type: none"> 1. Judgment be entered for the Claimant in the sum of USD 300,000 (the "Judgment Sum"). 2. The Defendant's Counterclaim is dismissed. 3. The amount of USD 300,000 paid into Court by the Defendant pursuant to the Order dated 15 January 2024 be paid out of Court to the Claimant in satisfaction of the Judgment Sum after the expiry of 7 calendar days from the date of this Order. 4. The Defendant pay the Claimant interest on the Judgment Sum in the amount of USD 20,671.23 (calculated at the rate of 5% per annum from 5 January 2023 until the date of this Order). 5. The Claimant is to have the costs of and incidental to these proceedings, such costs being summarily assessed on an indemnity basis in the sum of AED 585,000. 6. Liberty to apply.
Hearing Date(s):	23, 24, 25 April 2024
Date of Order:	22 May 2024
Catchwords:	Material Adverse Changes. Irregularities. Company control. Whether Claimant entitled to Deferred Payment under SPA. Indemnity costs.
Legislation Cited:	ADGM Court Procedure Rules
Cases Cited:	<p>Finsbury Food Group PLC v Axis Corporate Capital UK Ltd and Ors [2023] EWHC 1559 (Comm)</p> <p>Travelport Ltd and Ors v Wex Inc [2020] EWHC 2670 (Comm)</p> <p>Akorn Inc. vs Fresenius Kabi AG, C.A. No 2018-0300-JTL</p> <p>Decision Inc Holdings Proprietary Ltd and Anor v Stephen Garbett and Anor [2023] EWHC 588 (Ch); [2023] EWCA Civ 1284</p> <p>Mannai Investment Co Ltd v Eagle Star Life Assurances Co Ltd [1997] AC 749</p>



	Laminates Acquisition Co v BTR Australia Ltd [2003] EWHC 2540
Case Number:	ADGMCFI-2023-021
Parties and representation:	<p>Claimant Mr. Manuel Casas (instructed by Obeid Medawar Law Firm LLP)</p> <p>Defendant Mr. Angus Gloag (instructed by Moarbes LLP)</p>

JUDGMENT

This Dispute

1. This is a long-running dispute with a chequered procedural history: the initial trial dates in mid-January 2024 were adjourned upon Mr Sadeghnia's eleventh hour application and appointment of his second firm of solicitors, who thereafter ceased to act. Mr Sadeghnia's third (and current) legal representation was retained shortly before the rescheduled trial dates after a further period of inaction from the Defendant.
2. The parties to this case, Mr Mingguo (who was referred to throughout the trial, and will be referred to hereafter in this judgment, as "Mr Bai") and Mr Sadeghnia, respectively are seller and buyer of 80% of the shares in a company known as World Credit Savings Limited ("**WCS**"), which was founded by Mr Bai within Abu Dhabi Global Market ("**ADGM**").
3. WCS holds a licence for activity within the financial services sector, and is a company regulated by the Abu Dhabi Financial Services Regulatory Authority (the "**FSRA**").
4. Mr Sadeghnia, an entrepreneur and investor living in Dubai, wished to buy WCS in order to set up a financial services business within ADGM, and considered that purchase of a company already licensed within this jurisdiction would facilitate immediate access to activity in this sector without the necessity of incorporating a new company and obtaining a new FSRA licence.
5. After meeting Mr Bai, a Chinese businessman resident in Beijing, and the sole owner of WCS, Mr Sadeghnia made no secret of his ambitions in the financial services arena, telling Mr Bai that he had access to large amounts of potential investment dollars, and that he saw the purchase of Mr Bai's company as a path to future riches for himself and Mr Bai.
6. Negotiations between the two men over a period of several months yielded a Sale and Purchase Agreement (the "**SPA**") and a Shareholders' Agreement (the "**SHA**"), both dated 31 July 2022, the SPA being amended on 26 August 2022. Under these agreements Mr Sadeghnia was to purchase 80% of WCS shares from Mr Bai for the price of USD1.4 million, this sum to be paid in two instalments.
7. It is undisputed that the initial payment of USD 1.1 million was paid and received by Mr Bai, albeit not in the manner contractually anticipated. It is also undisputed that Mr Sadeghnia has received all the shares he purchased in WCS, and there is no controversy that the shares have been successfully transferred.



8. The current dispute solely focuses upon the non-payment of the second instalment of USD 300,000 (the “**Deferred Payment**”) which has not been paid to Mr Bai, in consequence of which he issued proceedings on 8 February 2023 in order to recover what he says he is owed.
9. Mr Sadeghnia is not merely a passive Defendant. On 14 March 2023 his Defence to the Claim was filed, and the following day his then solicitors advanced a Counterclaim, wherein the Defendant formally sought dismissal of the Mr Bai’s Claim for the Deferred Payment, and: (a) sought a declaration that “*Material Adverse Changes exist*” and/or that the Defendant is otherwise entitled to withhold the Deferred Payment in accordance with Clause 4.3 of the SPA; and (b) requested specific performance of the Claimant’s obligation under the SPA to procure a change in control of WCS’s bank accounts and email servers/systems, and/or to take all steps necessary to facilitate a full and complete transfer of control of WCS and the operation of its business to the Defendant.
10. The FSRA ultimately approved the change of ownership of WCS on 2 November 2022 (albeit only after extended correspondence with Mr Bai as to Mr Sadeghnia’s commercial history and inquiries as to Mr Sadeghnia’s source of wealth), and thereafter vetted the attempted (and unsuccessful) appointments by Mr Sadeghnia of new senior management within WCS. As a result of the current litigation, pending judgment in this case the FSRA has declined further involvement in or with the operation of WCS.
11. In the meantime, Mr Bai has retained a 20% minority shareholding in WCS and has remained in his former position of SEO of WCS (albeit unpaid): his wish to resign from this position was declined by the FSRA on 8 November 2022, the FSRA making it clear that until a new SEO has been approved by it, Mr Bai would be unable to leave this role. Since then, Mr Bai has remained nominally in place, notwithstanding the ongoing disagreement with Mr Sadeghnia, the 80% owner of WCS whom Mr Bai now says he regards as his ‘new boss’.

The Respective Cases

12. Mr Bai maintains that the Deferred Payment was due within three months from the signature of the SPA, and that nothing has occurred to place this indebtedness in doubt: he wishes to obtain payment: his position is that this sum remains due and owing from the Defendant.
13. Mr Sadeghnia takes a different view (or views). He says that he fulfilled his obligation under the SPA by payment of the first instalment of USD1.1 million, but that he did not pay the Deferred Payment by reason of serious unrectified “*irregularities*” on the part of Mr Bai, and that under the relevant provisions of the SPA he was not required to make the second payment: “*in circumstances where there were Material Adverse Changes or “irregularities” that were not rectified by Mr Bai...Mr Sadeghnia was entitled to withhold the Deferred Payment until such time as any irregularities were regularized, and a Fulfilment Statement issued*” (Closing Submission, para 52). Accordingly, since Mr Bai had refused to permit him to gain control over WCS’s activity and business, he had not made the payment, albeit the bar then is raised in the submission made (Closing Submission, para 69) that by reason of his failure to properly transfer WCS to Mr Sadeghnia, in contravention of the terms of the SPA, “*Mr Bai has forfeited any claim to the Deferred Payment*”..

Evidence at the trial

14. The Court has had the opportunity of seeing and hearing each party give evidence, in addition to receiving a large amount of documentary evidence surrounding the share transaction and its aftermath.
15. Both parties claim to be experienced businessmen, although it is only Mr Bai who has a background in and experience of finance, and who had a solid grasp of the regulation of finance companies in ADGM and the obligations thus imposed on approved office bearers of regulated companies: in his evidence he indicated that he was protective of his career in the finance industry and the importance



of compliance with FSRA regulation. Mr Bai was an impressive witness who struck the Court as essentially honest and who spoke good English: it was only his extremely strong northern Chinese accent which prompted the Court to suggest use of the Putonghua interpreter. Regrettably a personal attack is launched against Mr Bai in the Defendant's unusual Closing Submission, which includes matters neither pleaded nor put, and wherein Mr Bai variously is said to be guilty of "*deliberate dishonesty both towards the Regulator and the unsuspecting buyer*", "*improper conduct*", "*bad faith*" and "*intentional misrepresentation*". The Court neither recognises nor accepts these characterizations. Nor does the Court agree with the proposition in the Defendant's Skeleton Argument (para 53) that Mr Bai's submissions are "*a desperate attempt to resume control of WCS without any legal basis for doing so*", and that this case is an "*attempt to draw out these proceedings as much as possible, in order to put pressure on Mr Sadeghnia to give up his Majority Shareholding*": to the contrary, it seems obvious that Mr Bai just wants to be paid for what he has sold.

16. In contrast, Mr Sadeghnia was considerably the less impressive when giving evidence. At the time of the share purchase, the width of his commercial experience is unclear, and certainly he had had no experience in the financial industry, demonstrating little grasp of the detail of the financial regulatory framework applied by the FSRA on companies such as WCS. At times the Court found it difficult to accept his evidence at face value, and there were instances during cross-examination when he was disingenuous in his responses and appeared to be calibrating his answers best to fit his case. In so far as there are substantial inconsistencies between the evidence of Mr Bai and Mr Sadeghnia, the Court has no hesitation in preferring the account of events as proffered by Mr Bai.

The Issues

17. This is a case larded with detail, much extraneous and irrelevant to the issues in question, and in substance this dispute devolves into consideration of the following principal matters:
- a. What are the relevant contractual provisions?
 - b. When was the Deferred Payment contractually due?
 - c. Have there been "*Material Adverse Changes*" ("**MAC**"), was there a notice/ written confirmation thereof, and absent such notice, what is the consequence?
 - d. Is there merit/ relevance in the Counterclaim allegations, and does that provide a basis for non-issue of a Fulfilment Statement?
 - e. In light of the conclusions reached on the foregoing issues, what is/ are the appropriate remedy/ remedies in this case?

Relevant Contractual Provisions

18. The parties memorialised their share transaction in three documents: the SPA dated 31 July 2022, subsequently signed on 11 August 2022; the amendment to the SPA dated 26 August 2022; and the SHA dated 31 July 2022.
19. Within the SPA specific provisions are worthy of highlight.
- a. Recital D notes that "*the Purchaser wishes to acquire full clear title to the WCS Sold Shares and to gain control over the Business and the Seller is willing to transfer such WCS Sold Shares control to the Purchaser...the Parties expressly recognize the instrumental nature of the acquisition, the aim and purpose of which includes, along with the WCS Sold Shares, the Business activities of the Company*";



- b. whilst Recital E states that “for the avoidance of doubt, excluded from this acquisition: (a) the business related to the platform AMQ, its clients and any related activities; and (b) Any cash assets currently held in the company’s accounts shall be transferred by the seller to the seller’s account prior to the transfer of the WCS sold shares.”
20. Section 2.2.1 states the purchase price of the shares at USD1.4 million and the payment components of this sum are dealt with at section 2.2.3, namely that the “Buyer” shall pay an initial sum of USD1.1 million by bank manager cheque, whilst Clause 2.2.4 records:
- “The Purchaser shall pay an amount equal to Three hundred thousand US Dollars (300,000 US\$), as a deferred payment...due after the expiration of three (3) months period from the signature of the Agreement...”*
21. In turn, Section 4.2.1 provided for the “Purchaser” (in this case, Mr Sadeghnia) to present the “Seller” (in this case, Mr Bai) with a post-dated cheque for the Deferred Amount; since this was due only after the shares had been transferred, clearly this was intended to operate as security for the payment of this second instalment of the purchase price.
22. It is common ground that no post-dated cheque ever was presented, and common ground that the balance of the purchase price remains unpaid. It also accepted that there has been a successful transfer of the WCS shares, this being specifically admitted on the pleadings (vide para 1 of the Particulars of Counterclaim) that “*The transfer in ownership of the Acquired Shares was finally completed in or around November 2022*”, an admission which renders moot any consideration of the “*Conditions Precedent*” addressed in Section 3 of the SPA.
23. Section 4.3.2 is of particular relevance given the argument in this case:
- “Within three(3) months of the end of the Closing Date, the Purchaser shall confirm in writing whether any change, event or occurrence that, either individually or together with another change, event or occurrence has occurred either prior to the Closing Date and/or during this three (3) month period, has resulted in or could reasonably be expected to result in a material effect on the business, assets, liabilities, financial condition, results of operations of the business or prospects or prospects of the Company (the “Material Adverse Changes”).”*
24. If the Purchaser decides that there are no MAC, Section 4.3.3 provides that he should provide the Seller with a statement to that effect, and 4.3.4 provides that “*the Deferred Payment shall be made and paid to the Seller within five (5) Business Days following the effective date of the Fulfilment Statement to the Seller*”; Section 4.3.5 provides for an extension of time for the provision of the Fulfilment Statement pending regularisation of “*the irregularities*” by the Seller.
25. As for the SHA, only Article 1, which includes definitions, is of direct relevance in the circumstances of the present dispute, ‘Control’ being defined as “*the direct or indirect shareholding of 50% or more than 50% of the share capital and/or voting rights of a company.*”

When was the Deferred Payment contractually due?

26. On the face of the SPA, the payment date is straightforward, Section 2.2.4 providing that the payment is due “*after the expiration of three (3) months from the signature of the Agreement in accordance with Section 4.3*”.
27. Section 4.3 anticipates two potential steps prior to payment: first, the issue in writing of any MAC within Section 4.3.2; and second, if that clause is not activated because the Purchaser decides there is no MAC, then pursuant to Section 4.3.3 the Purchaser should provide the Seller with a statement confirming that is the case, described as a “*Fulfilment Statement*”, with Section 4.3.4



providing that the Deferred Payment then is to be made within five business days following the effective date of the Fulfilment Statement.

28. At first blush, therefore, absent a MAC notice, a Fulfilment Statement will trigger the Deferred Payment at the expiry of 3 months and 5 business days from the date of signature of the SPA. The SPA was signed on 11 August 2022 and therefore, in the absence of a MAC notice, the Deferred Payment became due for payment on 18 November 2022. However, the issue of the contractual due date for payment is clouded by an apparent disconnect between the signing date of the SPA and the 'Closing Date' for the purpose of the Fulfilment Statement in section 4.3, since the Closing Date seems to be later than the signing date. Accordingly, if the date on which the share transfer form was uploaded and displayed on the ADGM portal, namely 29 September 2022, is taken as the date of closing (vide section 4.1, SPA), as the Court considers to be the position, then the Deferred Payment will only have become due on 5 January 2023. Neither party has adverted to this aspect, but having regard to the evidence the Court's view is that it is this latter date which is to be taken as the date upon which the Deferred Payment is due and owing.
29. Consequential provisions within Section 4.3.5 anticipate the possibility of delay in the provision of a Fulfilment Statement within three months of the closing of the share transfer (accomplished through the portal of ADGM, as per Section 4.1), until the "*regularisation of some of the irregularities pointed out by the Purchaser*", and Sections 4.3.6 – 4.3.10 provide for reference to negotiation of such differences and ultimately reference of any disagreement to an "*Independent Accountant*", whose decision on the fulfilment of the irregularities is to be final and thereby will determine the release of the Deferred Payment to the Seller.
30. In this case, however, there has been neither a Fulfilment Statement issued nor reference to what in effect is arbitration in the hands of an Independent Accountant (and no attempt by the Defendant to stay these proceedings on this basis), and the case has proceeded on the primary ground that the matters of which Mr Sadeghnia makes complaint constitute MAC: in fact, MAC has been the fulcrum of the Defendant's case throughout.

Material Adverse Changes

31. MAC is not susceptible to precise definition, not least because the factual situations in which it is invoked vary greatly.
32. In an acquisition context, MAC generally is understood as a contractual mechanism that provides a route for the buyer to terminate the agreement and to withdraw from the transaction in question if events occur that have a significant detrimental effect on the business, assets or profits of the entity to be acquired.
33. Counsel for the Claimant, Mr Casas, has drawn the Court's attention to the observation in *Finsbury Food Group PLC v Axis Corporate Capital UK Ltd and Ors* [2023] EWHC 1559 (Comm) at para 119 of the Deputy Judge that "*no set meaning has been ascribed to [MAC] clauses in the authorities*", and in *Travelport Ltd and Ors v Wex Inc* [2020] EWHC 2670 (Comm), which addresses the application of MAC clauses in the context of share purchase transactions, Cockerill J held that these provisions must be interpreted following the "*usual principles of contractual construction*".
34. In *Wex*, op cit, Cockerill J cited with approval observations from the Delaware Court of Chancery in *Akorn Inc and Ors. vs Fresenius Kabi AG, C.A. No 2018-0300-JTL*, in which Vice Chancellor Laster stated, in the context of a similar "*Material Adverse Effect*" clause:

"A buyer faces a heavy burden when it attempts to invoke a material adverse effect clause in order to avoid its obligations to close...A short-term hiccup in earnings should not suffice; rather the Material Adverse Effect should be material when viewed from the longer-term perspective of the reasonable acquirer...The important consideration therefore is whether there has been



an adverse change in the target's business that is consequential to the company's long term earnings power over a commercially reasonable period, which one expects to be measured in years rather than months...the effect should substantially affect the overall earnings potential of the target in a durationally significant manner."

35. The latest English decision on the point appears to be *Decision Inc Holdings Proprietary Ltd and Anor v Stephen Garbett and Anor [2023] EWHC 588 (Ch)*, which concerned the sale by two individuals of the shares in an IT consulting company to a corporate buyer. To this end the parties had entered into a sale and purchase agreement in relation to the shares in the company and in the share purchase agreement the sellers gave various contractual warranties to the buyer regarding the state of the company's business, one of which was that since the relevant "*Accounts Date*" there had been no material adverse change in the turnover, financial position or prospects of the company. Following completion, it became clear that the company's financial prospects were worse than feared, and the buyer brought proceedings against the sellers for breach of the material adverse change warranty, alleging that there had been a material change in the company's prospects since its last accounts date. The High Court agreed that there had been a breach of the material adverse change warranty, the judge concluding that the change had been both 'material' and 'adverse'. On appeal, the Court of Appeal *[2023] EWCA Civ 1284* reversed the decision at first instance, holding that the trial court had applied the wrong test for deciding whether there had been a change in the company's commercial prospects in that Court below by incorrectly assessing such prospects by reference to historical financial information and not by reference to how the company might fare in the future: the term 'prospects' did not refer simply to EBITDA but to future "*chances or opportunities for success*". In coming to this decision, the English Court of Appeal made no new law, although this case amply demonstrates the difficulty inherent in the assessment of 'material adverse change'.
36. The case law to-date, which covers a wide variety of commercial circumstance, emphasises the high threshold required to establish material adverse change over a longer-term period, in stark contrast to the immediate practical (and personal) complaints subsequent to the share transfer now levelled by Mr Sadeghnia against Mr Bai, and which nonetheless are claimed, individually and/or collectively, to constitute MAC.
37. It is also not easy to see how MAC successfully can be established in a company such as WCS which at the time of purchase was doing no business, nor for that matter has any valuation of the alleged MAC been attempted: the Defendant's MAC argument is marshalled solely as a defence to the claim for payment of the outstanding Deferred Payment.
38. The Defendant's Closing Submission disregards the principle of the high threshold, and (somewhat opaquely) submits that "*defining a Material Adverse Change within the acquisition agreement significantly influences the buyer's ability to justifiably delay certain payments*", which may reference the delay in paying the balance of the price for the shares or, possibly, also encompass the new argument that the WCS shares did not have to be purchased prior to formal FSRA approval of the share sale. The submission goes on to suggest that since drafting practices for MAC clauses "*tend to adopt a broad interpretative approach*" (para 54), a purposive interpretation of the MAC clause in question given the "*surrounding circumstances*" of this case supports the construction that the matters of which Mr Sadeghnia makes complaint properly should be construed as falling within the ambit of the MAC clause in the SPA.
39. This is not an argument with which the Court agrees. This approach begs the question about the validity of the matters complained of, and it is not accepted that the practical problems which Mr Sadeghnia says he encountered arising from the purchase of the WCS shares could in any sense constitute MAC affecting the longer-term commercial prospects of WCS.
40. Even were they to be established to the Court's satisfaction, the alleged defalcations on the part of the Claimant fall far short of the threshold required to attain relief under the MAC clause, and even



if true, the matters complained of by Mr Sadeghnia go to Mr Bai's contractual performance, whilst the MAC must be something that affects the company's future prospects.

41. Accordingly, the Court holds that invocation of the MAC clause (the Defendant's position from the outset as justification for non-payment of the balance of the purchase price) does not succeed as a matter of law.
42. A procedural offshoot to the issue to whether there had been a substantive MAC (which in the view of the Court there clearly has not) is the issue of a MAC notice required by Section 4.3.2 of the SPA.
43. In evidence Mr Sadeghnia accepted absence of any such formal notice, and instead reliance is placed on a single WhatsApp message to Mr Bai (whereby he said that he could not pay because there were "*too many expenses*") and an email complaining about the delay in the registration of the share transfer and about Mr Bai's refusal to transfer control of the WCS's bank accounts to him.
44. In the Court's view, these two documents, which are relied on as constituting notice (Closing Submission, para 73 which places particular reliance on the email) do not amount to sufficient notice required by the terms of Section 4.3.2.
45. English law relies on contractual notices being exercised in accordance with contractual provision. In *Mannai Investment Co Ltd v Eagle Star Life Assurances Co Ltd* [1997] AC 749, Lord Steyn (at 768H) stated that the question was whether "*the reasonable recipient is left in no doubt that the right reserved was being exercised*", whilst Lord Hoffmann observed (at 776B) that "*if the clause had said that the notice had to be on blue paper, it would be no good serving a notice on pink paper, however clear it might have been that the tenant wanted to terminate the lease*".
46. The Court has concluded that the absence of a MAC notice to Mr Bai is fatal to the attempt on the part of Mr Sadeghnia to rely upon the MAC provision in the SPA to justify his refusal to make the Deferred Payment. As Cooke J observed in *Laminates Acquisition Co v BTR Australia Ltd* [2003] EWHC 2540, at para 29: "*notice clauses ... are usually inserted for a purpose, to give some certainty to the party to be notified and a failure to observe their terms can rarely be dismissed as a technicality.*"

Defendant's Counterclaim

47. The Counterclaim, which is a relatively brief document, was advanced by the Defendant's initial solicitors in March 2023 at an early stage in this litigation.
48. In addition to seeking an Order to dismiss the Claimant's claim for the Deferred Payment, the outstanding instalment of the price for the WCS shares, the Counterclaim:
 - a. first, "*seeks a declaration that Material Adverse Changes exist and/or that the Defendant is otherwise entitled to withhold the Deferred Payment in accordance with Clause 4.3 of the SPA*"; and
 - b. second, "*requests specific performance of the Claimant's obligation under the SPA to procure a change in the company's bank accounts and email servers and/or systems, and/or to take all steps necessary to facilitate a full and complete transfer of control of the Company and the operation of the business of the Defendant*".
49. In paragraph 3 of the prayer "*the Defendant reserves his position with respect to the financial losses sustained by him and/or the Company as a consequence of the Claimant's actions, until such time as the Defendant's investigations into the irregularities surrounding the Claimant's conduct have concluded.*"



50. Thereafter, four Particulars of Counterclaim are provided of the allegations made, which are essentially unparticularised, although the thrust of this argument focuses on failure to hand over control of WCS and its business, and that the Claimant's actions have resulted or may result in breach of FSRA regulatory requirements.
51. In the Court's view, the MAC plea cannot succeed for the reasons earlier given in this judgment.
52. It is further unclear how specific performance could be granted at this stage, given that the Defendant has been majority owner of WCS since completion of the share transfer in November 2022; however, the Court has not been addressed on the point.
53. As to the purported reservation of rights regarding financial losses, no attempt has been made to introduce any evidence of alleged loss resulting from the alleged actions of the Claimant, and there has been no application for a bifurcated trial.
54. The various allegations of misconduct on the part of the Claimant lead nowhere in terms of any independent damages remedy over and above the 'umbrella' invocation of the Claimant's actions as constituting a MAC: no case has been advanced, for example, that damages found to be payable by the Defendant can be set-off and/or extinguish the outstanding debt that the Deferred Payment represents.
55. Accordingly, the sole relevance of the Defendant's case in terms of the alleged "*irregularities*" on the part of the Claimant subsequent to the signing of the SPA appears to be justification of the non-issue of a Fulfilment Statement, and hence the seeking of declaratory relief in terms of non-payment of the balance of the purchase price.

"Irregularities": The Broad Issue of 'Control'

56. Mr Sadeghnia's constant refrain is that although since November 2022 he has been owner of 80% of the WCS shares, Mr Bai had failed to transfer to him 'control' of the company.
57. This is an odd stance to take given the definition of 'Control' appearing in Article 1 of the SHA.
58. It is trite law that he who owns the majority shareholding (assuming the shares in question attract equal rights) controls the company, and on the undisputed facts Mr Sadeghnia did, and does own the majority shareholding. It is a matter of history that Mr Bai executed all documents required for the share transfer, responded promptly to the questions raised by the FSRA relating to Mr Sadeghnia's commercial provenance and source of wealth, and followed up with the FSRA with the request that they approve the share transfer, which approval was achieved on 2 November 2022. True it is that Mr Sadeghnia has made complaint about the delay in securing approval (and now is saying that he was misled into purchase of the shares before FSRA approval formally was in place), but in evidence he admitted that obtaining proof of source of funds "*took...some time*", and that he also had some confusion between availability of funds and source of funds. This allegation of delay on the part of Mr Bai also strikes the Court as a bit rich given that the evidence is that Mr Bai made considerable effort to obtain approval from the FSRA for the share transfer to Mr Sadeghnia.
59. The complaint about not having or receiving control of WCS consequent upon the share sale cannot stand as a matter of ADGM law (being the governing law of the SPA), and is rejected. Mr Sadeghnia admitted in evidence that he is able to exercise all the voting and governance rights that his 80% shareholding conferred upon him, and that by reason of his 'supermajority' he can pass any resolution in a shareholders' meeting and that, as a minority 20% shareholder, Mr Bai is powerless to block any decision.
60. Mr Sadeghnia's generic allegation about not receiving 'control' of WCS effectively breaks down into sub-categories of specific factual complaint: essentially these are four in number, although in the



Closing Submission the Defendant has added a fifth issue which hitherto had obtained no profile in this dispute.

Bank Accounts

61. This represents Mr Sadeghnia's principal criticism of Mr Bai, namely that formal control of the bank accounts of WCS was never transferred to him when he became majority owner of the company, a fact that Mr Bai admitted in his evidence.
62. Mr Casas submits that this did not occur because Mr Bai believed that he was bound by FSRA regulations and so to do would constitute a breach of such financial regulations. The Court accepts Mr Bai's evidence. Although majority owner of WCS, the position was that Mr Sadeghnia held no management position within the company (and in evidence eschewed any desire so to do), nor did he hold 'approved person' status in WCS. Mr Bai explained to the Court that he was perfectly willing to formally transfer control of the company bank accounts to an incoming SEO or CFO, given that in order to take up these positions these officers would have been approved by the FSRA, but that since Mr Sadeghnia's nominations for these positions had been rejected, he was disinclined to hand over this matter to a new owner.
63. The evidence is that on 3 November 2022 Mr Sadeghnia in fact was given the 'tokens' for the bank accounts by Mr Bai for online access, but that he had failed to log-in, saying that they did not work, even alleging that Mr Bai had changed the password. Mr Casas submits that it remains surprising that for someone to whom access to the accounts was "*crucial*", the evidence is that Mr Sadeghnia apparently waited for some three weeks before attempting (unsuccessfully, he says) to use them.
64. Mr Casas argues that the likely explanation for this apparently odd behaviour is found in a WCS Board Resolution of 23 November 2022, which had resolved that adequate capital was to be placed in the company bank account so as to maintain specified FSRA capital requirements, and that as a consequence it had been resolved that Mr Sadeghnia would send funds to the bank account on 25 November 2022 "*to replace the capital in the account to USD1,100,000 to match the company capital requirement*": it is a matter of record that such sum was not injected by Mr Sadeghnia, Mr Casas suggesting that the alleged online 'log-in problems' had materialised just when Mr Sadeghnia had assumed the obligation to make such payment.
65. In any event, the Court does not accept Mr Sadeghnia's blanket contention that he was completely shut out from the company bank accounts. Particularly odd was his assertion that as owner of 80% of WCS shares, he was unable to put money into the WCS account: in evidence he said that he knew the bank, he knew the relationship manager and had spoken to him, and it is entirely unclear why at that stage he was unable to deposit money: in the Court's view the overwhelming probability is that he was short of funds.
66. The Defendant's Closing Submission goes into detail about ADGM legislation governing Client Accounts, which makes a late appearance as a 'live' issue in this case and appears to be a hindsight point. However, even as made it does not appear to detract from the basic proposition, which is accepted, that absent appropriate authorisation from the FSRA, Mr Sadeghnia, qua majority shareholder, had (and has) no right personally to control the bank accounts of a regulated financial services entity in ADGM: this is a situation which (there is no evidence on the point) presumably continues today absent an approved SEC/CFO being in place in WCS.

Nomination for Management Positions

67. The evidence is clear that once he became the 80% shareholder of WCS Mr Sadeghnia purported to exercise the right to nominate candidates for senior management positions within WCS.



68. Equally the evidence is that it was the FSRA who rejected Mr Sadeghnia's nominated candidates for SEO and CFO, a decision that Mr Sadeghnia said in evidence that he respected.
69. It is also unclear why Mr Sadeghnia should have been of the view that by initiating these proceedings Mr Bai was in some way responsible for the FSRA declining to deal further with the affairs of WCS pending resolution of this case by the ADGM Court, or that in initiating these proceedings Mr Bai was "harassing" Mr Sadeghnia. That which the FSRA (from which the Court has heard no evidence) decides to do or not do with regard to a regulated company within its jurisdiction is entirely a matter for the FSRA: it would be absurd were the position to be otherwise, and equally absurd to suggest that Mr Bai exercised untoward influence over such matters.

Servers/Domain Names

70. This was an allegation that assumed no prominence at trial. In so far as it existed as a cogent argument, this seemed to revolve around access of Mr Sadeghnia to the WCS server. However, Mr Bai's evidence was that WCS had stopped paying for Amazon Web Services in December 2022, and the matter was taken no further.
71. As to domain names, again this takes the case nowhere: the AMQ platform and associated business specifically were excluded from the SPA.

Wrongful use of WCS funds

72. The suggestion on behalf of the Defendant that Mr Bai had no right to transfer funds out from the WCS account, and the suggestion, implicit during his cross-examination, that in so doing he dishonestly had his 'hand in the cookie jar', strikes the Court as egregious.
73. The SPA is plain on the point: the cash assets of WCS were carved out from the transaction, Recital E(b) of the SPA providing that "*Any cash assets held in the company's account shall be transferred by the seller to the seller's account prior to the transfer of the WCS sold shares*".
74. In evidence Mr Sadeghnia purported to drive a wedge between the "cash assets" of WCS and its "capital reserves", but the fact remains that this money was in the same bank account and no distinction was made between them: as Mr Casas has submitted, there is not a single piece of documentary evidence that suggests there were separate and distinct parcels of money designated for difference usage, as also there is no contemporaneous exchange of emails or WhatsApp messages that shows Mr Sadeghnia complaining or requesting that Mr Bai return to the account any supposedly wrongful withdrawal: to the contrary, Mr Sadeghnia agreed, via Board Resolution dated 23 November 2022, to inject funds, but conspicuously then failed to do so. During cross-examination Mr Sadeghnia went so far as to suggest that he could not inject funds into WCS's bank accounts without having control of those accounts, and his further curious statement that those funds in the account which stood as base capital (required by the FSRA to be in place) could never have been withdrawn was a position from which he ultimately seemed to resile, further accepting that it would have been possible to deposit money into the WCS account by the simple expedient of depositing a cheque.
75. Mr Casas submits, with a degree of justification, that the Defendant's assertion that at all times he had funds to inject into WCS does not stand up to historical scrutiny in terms of his conduct regarding payments, pointing to the delay of the initial payment of USD 1.1 million, and then paid in tranches and not through a bank manager's cheque as required under the SPA, the non-payment of the Deferred Payment, which has caused Mr Bai to institute these proceedings, and the payment into Court (exact by the Court as the price for the late adjournment of the original trial dates) which was late.



76. In the Defendant's Closing Submission, the issue of wrongful use of funds is characterized under the head 'Depletion of Capital Reserves': thus characterised this is an argument which hitherto had not emerged in this case.
77. However, the way in which the case now is put is that in a "*decision that severely compromised the stability of WCS, Mr Bai independently withdrew the regulatory minimum required capital from the company*" and "*astonishingly he then reported this action to the FSRA, effectively admitting to placing the company in violation of its capital requirements*" (Closing Submission, paras 115 and 116).
78. The point then is taken that Mr Bai should have taken any funds out before the share transfer, and thus transfer of assets after 2 November 2022 was "*unwarranted, void and constitutes a blatant breach of the SPA*", and that Mr Bai's statement that he was recovering funds he had made as a loan to the company is labelled "*a new subterfuge*".
79. This is an allegation to which Mr Casas has not responded in his Closing Submission, presumably because he was unaware that this argument was to be made, and in any event the Court is struggling to see where analytically this leads. As to the timing, all that this imports is that the company had the use of Mr Bai's cash for longer than had been anticipated in the SPA, and the evidence is that Mr Bai repeatedly had requested Mr Sadeghnia to inject funds into WCS. Nor does the Court understand why the report made to the FSRA regarding the removal of this money is anything other than appropriate and necessary given regulatory requirements to maintain a capital reserve, and there is no evidence that in so doing Mr Bai had compromised the stability of WCS, as now is alleged, nor that he had put the company licenses "*at grave risk*", a proposition which was never put in cross-examination.
80. The Court sees nothing of consequence in this point, notwithstanding its status as a constituent element of a MAC, or as a serious 'irregularity' justifying non-payment of the outstanding balance due and owing to Mr Bai in the sale of the WCS shares.

Violation of the non-compete provision in the SPA

81. Finally, the Defendant's Closing Submission references an alleged 'irregularity' in terms of breach of the non-compete provision in the SPA by the alleged establishment by Mr Bai in Dubai of what is said to be a company named 'CoinW' which, it is said, "*poses a direct threat to WCS's market position and operational integrity*".
82. During the trial Mr Bai refuted these allegations, denying that he established CoinW or held any position in that company or operated any business competing with WCS: absent any direct evidence, the Defendant is effectively bound by Mr Bai's denial in cross examination.
83. The Court takes the view that if the Defendant wished for this to be taken seriously, then he should have pleaded it and led cogent evidence in support. What will not suffice is to make an incidental accusation untrammelled by evidence, and which in turn is denied in cross examination, and expect this allegation to have any traction in the current debate.

Remedies

84. Given the view the Court has taken about the lack of substance/merit in the "*irregularities*" relied on by Mr Sadeghnia, it is difficult to see how the case can be made that these matters provide a valid basis for not only not issuing a Fulfilment Statement, but in maintaining the position that there was adequate justification for continued non-payment of the Deferred Payment, and the Court holds that it cannot. The position adopted by the Defendant to-date has been to refuse payment otherwise due whilst complaining about a litany of matters (whether categorized as MAC or, now, as



“irregularities”) which in themselves lack merit and have been employed as convenient (and misplaced) agents of delay.

85. It follows that the Counterclaim does not succeed, and that there is no entitlement to the declaratory relief sought nor to the specific performance requested.
86. The converse is that the Claimant is to succeed in his Claim for the Deferred Payment and judgment is entered for the sum of USD 300,000. The amount of USD 300,000 was paid into Court by the Defendant pursuant to the Order dated 15 January 2024 as the price for the late adjournment of the original trial dates. Accordingly, this amount is to be paid out of Court to the Claimant in satisfaction of the judgment sum.

Interest

87. As part of his Claim, the Claimant seeks pre and post judgment interest at the rate of 5% per annum. In the circumstances of this case, including where the judgment sum is to be paid out of Court to the Claimant, the Court is prepared to award interest at the rate of 5% per annum from 5 January 2023 to the date of judgment.

Costs

88. The Claimant has filed a breakdown of its costs, which amount to AED 624,984.50.
89. The Court has considered the costs claim, and considers that on a summary assessment on an indemnity basis the Claimant is to have costs in the amount of AED 585,000
90. The Court takes the view that the award of costs on an indemnity basis (vide ADGM Court Procedure Rules 199 and 203) is more than justified in the circumstances of this case, and in this context agrees with observations made by the Claimant’s counsel in his costs narrative. What should have been a straightforward claim for a relatively small sum of money in commercial terms has been characterized throughout by wholly unreasonable delay and obfuscation on the Defendant’s part, combined with the making of unsubstantiated allegations against Mr Bai, in terms both of the broad issue of ‘control’ and regrettably, in the Closing Submissions, unfounded personal attacks on Mr Bai’s good faith and integrity. In short, this has been an object lesson in how not to conduct commercial litigation.



Re-issued by:

Linda Fitz-Alan
Registrar, ADGM Courts
23 May 2024