

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

UNION PROPERTIES P.J.S.C

First Claimant/ Applicant

UPP CAPITAL INVESTMENT CO. L.L.C.

Second Claimant/ Applicant

and

TRINKLER & PARTNERS LTD

First Defendant/ Respondent

THOMAS PIERRE TRINKLER

Second Defendant/ Respondent

PATRICK ALBERT HELD

Third Defendant/ Respondent

FIRST FUND MANAGEMENT LIMITED

Fourth Defendant/ Respondent

JORG KLAR

Fifth Defendant/ Respondent

PARESH CHANDRASEN KHIARA

Sixth Defendant/ Respondent

AMNA HASAN ALI SALEH ALHAMMADI

Seventh Defendant/ Respondent

DAHI YOUSEF AHMED ABDULLA ALMANSOORI

Eighth Defendant/ Respondent

NASER BUTTI OMAIR YOUSEF ALMHEIRI

Ninth Defendant

KHALIFA HASAN ALI SALEH ALHAMMADI

Tenth Defendant/ Respondent

STEFAN DUBAGH

Eleventh Defendant/ Respondent

AHMED YOUSEF ABDULLA HUSSAIN KHOURI

Twelfth Defendant/ Respondent

HASSAN ASHOOR AL MULLA

Thirteenth Defendant/ Respondent

BLUE ROCK INVESTMENTS L.L.C

Fourteenth Respondent

DANA MIDDLE EAST INVESTMENT L.L.C

Fifteenth Respondent

MOHAMED HASAN ALI SALEH ALHAMMADI

Sixteenth Respondent

~~ISLAND FALCON PROPERTY MANAGEMENT L.L.C~~

~~Seventeenth Respondent~~

ISLAND FALCON INVESTMENTS L.L.C

Eighteenth Respondent

TEXTURE GLOBAL INVESTMENT LIMITED

Nineteenth Respondent

SUPPLEMENTAL JUDGMENT OF JUSTICE SIR ANDREW SMITH



Neutral Citation:	[2024] ADGMCFI 0019
Before:	Justice Sir Andrew Smith
Decision Date:	27 November 2024
Decision:	The Twelfth Defendant's submission subsequent to the Judgment dated 15 November 2024 is rejected.
Hearing Date:	10 and 12 September 2024
Date of Order:	15 November 2024
Catchwords:	Application to strike out proceedings. Supplemental Judgment. Submission that Judgment had not engaged with all arguments.
Cases cited:	Roberts v Gill & Co [2010] UKSC 22 McEneaney v Stevens [2017] EWHC 993 (Ch) National Bank of Kazakhstan v The Bank of New York Mellon SA [2020] EWHC 916 (Com)
Case Number:	ADGMCFI-2022-265
Parties and representation:	Mr Jeremy Richmond KC instructed by SOL International Ltd for the Twelfth Defendant

SUPPLEMENTAL JUDGMENT

1. This is a supplement judgment to my judgment of 15 November 2024, [2024] ADGMCFI 0014 (the "**Judgment**"). By an email of 19 November 2023, Mr Richmond KC, on behalf of Mr Khouri, wrote that I had not engaged in the Judgment with some of his arguments, and asked that I do so in a supplemental judgment or revised decision.
2. The English Court of Appeal has said many times that a judge of first instance is not obliged to respond *seriatim* to each submission made by the parties, and normally I would not accede to a request of this kind. However, in view of the chequered history of these proceedings and since other defendants might seek to advance similar arguments to those of Mr Khouri, I have decided (with considerable hesitation) to issue this supplemental judgment. I use the same abbreviations as in the Judgment.
3. In his skeleton argument, Mr Richmond submitted that UP had suffered no loss, and so its claims should be struck out, arguing that its "*alleged causes of action against Mr Khouri are all in tort (or cognates thereof) and can only accrue upon it suffering loss or damage*". As I said in the Judgment (at para 68), he abandoned this argument. Mr Richmond explained that he did so after Mr Dillon-Malone SC, on behalf of the Claimants, pointed out that they contend that UP was the beneficial owner of "*the sums invested and the assets held by [Capital] that are said to have been defrauded*" (the "**Investment Fund**"). I should say that, if Mr Khouri had not abandoned the argument that UP's claims should be struck out, I should have rejected it. It did not, for example, consider the position if, but for the alleged fraud, UP would have itself have kept the Investment Fund and never transferred it to Capital.



4. Having abandoned the argument that UP's proceedings should be struck out, Mr Richmond advanced in his oral submissions a new contention that, if UP was the beneficial owner of the Investment Fund, Capital suffered no loss, and its claim should be struck out "on that basis alone". I cannot accept that submission for many reasons. I confine myself to four points.
5. Firstly, and most fundamentally, it seems to me inconsistent with the law explained in *Roberts v Gill & Co [2010] UKSC 22* and summarised in *McEaney v Stevens [2017] EWHC 993 (Ch)*: see too *National Bank of Kazakhstan v The Bank of New York Mellon SA [2020] EWHC 916 (Comm)* at para 94ff. If the relationship between Capital and UP in relation to the Investment Fund is that of trustee and beneficiary, claims against third parties in relation to it are *prima facie* to be pursued by and in the name of Capital as the trustee. (In special circumstances, which must be pleaded, proceedings may be brought by and in the name of the beneficial owner, but no special circumstances are pleaded in this case.) Thus, under the normal rule, if the Investment Fund was held on trust by Capital for UP, the claims are properly brought by Capital.
6. Secondly, I consider that, whether or not the Investment Fund was legally owned by Capital and beneficially owned by UP, it is sensible that both be party to the proceedings in order to put it beyond doubt that decisions in the proceedings are binding upon them both: see *Roberts v Gill & Co* (cit sup) at para 62 per Lord Collins and at para 125 per Lord Clarke. I recognise that the ADGM Court Procedure Rules provide that a judgment on a claim by or against a trustee is binding on the beneficial owner: see rule 57. However, the joinder of both Claimants minimises the risk of future dispute about whether the arrangements between them, which on their face are governed by UAE law, give rise to a "trust" within the meaning of RSC r.57 and, more generally, minimises the risk of further litigation in this or another court.
7. Thirdly, even if the Claimants' primary position is that damages should be awarded to UP as the beneficial owners of the Investment Fund, I see no reason that they should not argue in the alternative that, if UP did not beneficially own it or otherwise has no claim for damages, Capital is entitled to recover damages for the wrongdoing.
8. Fourthly, not all the Claimants' claims are in tort or "cognates thereof", nor is loss or damage an ingredient of them all. In particular, there are claims by both Claimants for breach of fiduciary duty, and they seek an account of profits. Mr Richmond's submissions made no reference to these claims.
9. In short, the new challenge to the claims by Capital raised by Mr Richmond in his oral submissions does not, to my mind, add up to a cogent argument in support of Mr Khouri's application.



Issued by:

Linda Fitz-Alan
Registrar, ADGM Courts
27 November 2024