25 March 2025 03:34 PM

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

ABU DHABI COMMERCIAL BANK PJSC
Claimant

and

PRASANTH MANGHAT
Defendant

AND

COURT OF FIRST INSTANCE
COMMERCIAL AND CIVIL DIVISION

BETWEEN

(1) NMC HEALTHCARE LIMITED

(in administration) (subject to a deed of company arrangement)

(2) NMC HOLDING LIMITED

(in administration)

(3) RICHARD DIXON FLEMING

(in his capacity as Joint Administrator of the First and Second Claimants)

(4) BENJAMIN THOM CAIRNS

(in his capacity as Joint Administrator of the First and Second Claimants)

Claimants

and

(1) BAVAGUTHU RAGHURAM SHETTY

(2) PRASANTH MANGHAT

(3) BANK OF BARODA

Defendants

25 March 2025 03:34 PM

AND

COURT OF FIRST INSTANCE
COMMERCIAL AND CIVIL DIVISION

IN THE MATTER OF NMC HEALTHCARE LTD (in administration) (subject to deed of company arrangement) AND THE COMPANIES LISTED IN SCHEDULE 1 TO THE ADMINISTRATION APPLICATION

AND IN THE MATTER OF THE INSOLVENCY REGULATIONS 2015

BETWEEN

(1) NMC HEALTHCARE LIMITED

(in administration) (subject to a deed of company arrangement)

(2) NMC HOLDING LIMITED

(in administration)

(3) RICHARD DIXON FLEMING

(in his capacity as Joint Administrator of the First and Second Applicants)

(4) BENJAMIN THOM CAIRNS

(in his capacity as Joint Administrator of the First and Second Applicants)

Applicants

and

(1) BAVAGUTHU RAGHURAM SHETTY

(2) PRASANTH MANGHAT

(3) BANK OF BARODA

Respondents

JUDGMENT OF JUSTICE SIR ANDREW SMITH

25 March 2025 03:34 PM

Neutral Citation:	[2025] ADGMCFI 0004
Before:	Justice Sir Andrew Smith
Decision Date:	10 March 2025
Decision:	1. The Application Notice filed by the NMC Claimants on 14 February 2025 and the Application Notice filed by ADCB on 14 February 2025 seeking permission to adduce expert evidence of UAE Law are refused. 2. The Application Notice filed by Baroda on 25 February 2025 seeking a direction that UAE Law be dealt with by submissions is granted. 3. Costs shall be in each of the proceedings.
Hearing Date:	10 March 2025
Date of Order:	10 March 2025
Catchwords:	Evidence on questions of foreign law. UAE law. Calling expert evidence of UAE law at trial. Issues of UAE law determined by legal submissions. Rules 117 and 142 of the ADGM CPR. Section 73(1) of the ADGM Courts Regulations. Section 4 of the ADGM Courts Rules of Conduct. Pre-trial case management. Impartiality of expert witnesses. Costs of expert evidence. Proportionality.
Cases Cited	Sussex Peerage Case (1844) 11 Cl. & F. 85 Re NMC Health Plc (In Administration) [2024] ADGMCFI 0008 NMC Healthcare Ltd & Ors v Neopharma LLC & Ors [2024] ADGMCFI 0013 British Airways Plc v Spencer [2015] EWHC 2477 (Ch) Andrew Mitchell MP v News Group Papers Limited [2014] EWHC 3590 (QB) NMC Healthcare Ltd & Ors v Dubai Islamic Bank PJSC & Anor [2023] ADGMCFI 0017 KV (Sri Lanka) v Secretary of State for the Home Department [2018] EWCA Civ 2483 Perry v Lopag Trust Reg [2023] UKPC 16 Fidel v (1) Felecia (2) Faraz [2015] DIFC CA 002
Legislation and Other Authorities Cited:	Federal Law No. (5) of 1984 Concerning the Issuance of the Civil Transactions Law of the United Arab Emirates Federal Law No. (8) of 1984 on Commercial Companies Federal Law No. (2) of 2015 on Commercial Companies ADGM Insolvency Regulations 2022 ADGM Court Procedure Rules 2016

25 March 2025 03:34 PM

	ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 Federal Law No. (20) of 2018 on Anti-Money Laundering, Combating the Financing of Terrorism and Financing of Illegal Organizations English Civil Procedure Rules 1998 ADGM Application of English Law Regulations 2015 Abu Dhabi Law No. (4) of 2013 Concerning Abu Dhabi Global Market as amended by Abu Dhabi Law No. (12) of 2020 ADGM Courts Rules of Conduct 2016 Dicey, Morris & Collins on the Conflict of Laws (16th Ed, 2022) Phipson on Evidence (20th Ed 2022, and Second Supplement, 2024)
Case Numbers:	ADGMCFI-2022-111; ADGMCFI-2022-299; and ADGMCFI-2020-020
Parties and Representation:	**Case No.: ADGMCFI-2022-111** ***Claimant*** Mr Rajesh Pillai KC and Mr Scott Ralston (Instructed by Holman Fenwick Willan LLP) ***Defendant*** No appearance **Case Nos.: ADGMCFI-2022-299 and ADGMCFI-2020-020** ***Claimants / Applicants*** Mr Henry King KC, Mr Damien Bruneau and Mr Jerome Squires (Instructed by Quinn Emanuel Urquhart & Sullivan UK LLP) ***First Defendant / Respondent*** Ms Karishma Vora Instructed by Cyril Amarchand Mangaldas) ***Second Defendant / Respondent*** No appearance ***Third Defendant / Respondent*** Mr Harish Salve KC, Ms Sarah Tresman and Mr Mark Baldock (Instructed by Baker & McKenzie LLP)

25 March 2025 03:34 PM

JUDGMENT

Introduction

1. On 10 March 2025, I heard applications for orders about how the Court should be assisted on issues of the law of the United Arab Emirates (the "**UAE**") at the trial of these two actions, which are to be heard together next year. The essential question that I had to decide was whether the parties should be permitted to call expert evidence of UAE law at the trial, or whether the issues of UAE law should be determined on the basis of legal submissions. At the hearing, I rejected the applications for permission to call expert evidence, and I gave directions for the service of written outline submissions on questions of UAE law. I said that I would issue a written judgment explaining the reasons for my decision.

2. In one of the actions, to which I shall refer as the "**JA proceedings**", NMC Healthcare Ltd, NMC Holdings Ltd and their Joint Administrators bring claims against Dr Bavaguthu Raghuram Shetty, Mr Prasanth Manghat and the Bank of Baroda ("**Baroda**") for "[at] *least USD 5 billion*". The claims fall into two categories. First, there are so-called "**civil claims**", which are brought by the corporate Claimants against Dr Shetty and Mr Manghat for fraudulent conduct and for failing to act with reasonable care (under Articles 282 and 285 of Federal Law No. (5) of 1985 of the UAE, the "**Civil Code**"); in breach of their duties as director or manager of the corporate Claimants and associated companies (under various sections of Federal Law No. (8) of 1984 and Federal Law No. (2) of 2015 on Commercial Companies); in extortion (under Article 304 of the Civil Code); and against Dr Shetty in unjust enrichment (under Articles 318 and 319 of the Civil Code). Claims are brought against Baroda on the basis of allegations that it acted fraudulently and without proper care in contract (under Article 246 of the Civil Code) and in tort (under Articles 282 and 285 of the Civil Code). Secondly, there are the so-called "**insolvency claims**", which are made by the Joint Administrators under Section 251 of the ADGM Insolvency Regulations 2022 (the "**IR 2022**") in fraudulent trading against Dr Shetty, Mr Manghat and Baroda, and under Section 252 of the IR 2022 in wrongful trading against Dr Shetty and Mr Manghat. For present purposes, it is the civil claims which are relevant: it is common ground that they are all UAE law governed. The insolvency claims are governed by ADGM law.

3. The other action is brought by Abu Dhabi Commercial Bank PJSC ("**ADCB**") against Mr Manghat. The claim is for "*at least"* US $1 billion. Its claims are under the Civil Code, particularly Articles 282 and 285, and under Federal Law No. (2) of 2015 on Commercial Companies.

4. English law has long recognised that, when it is dealing with issues of foreign law, the Court will usually require the assistance of a lawyer familiar with that law. In the *Sussex Peerage Case (1844) 11 Cl. & F. 85*, Lord Brougham said that "*the proper mode of proving a foreign law is not by showing to the House the book of the law; for the House has not organs to know and to deal with the text of that law, and therefore requires the assistance of a lawyer who knows how to interpret it*" (at p. 115). In this Court, the statutory regime contemplates that the Court may be assisted on questions of foreign law either by expert evidence or by legal submissions. As I observed in *In the matter of NMC Healthcare LTD and others [2024] ADGMCFI 0008* at para 8, if the Court invites assistance about questions of UAE law by way of legal submissions rather than expert evidence, it does not follow that it loses the assistance of qualified and experienced UAE lawyers. The parties may engage them to present their arguments, and there is much to be said for doing so. In my judgment in In the matter of *NMC Healthcare Ltd and Ors [2024] ADGMCFI 0013* at para 116, I commented that submissions so presented worked very satisfactorily in that case.

25 March 2025 03:34 PM

5. Here, the Claimants in the two actions, NMC Healthcare Ltd, NMC Holdings Ltd and their Joint Administrators in the JA proceedings and ADCB (together, the "**Claimants**"), applied for permission to call expert evidence of UAE law at the trial. The Claimants in the JA proceedings were represented at the hearing by Mr Henry King KC, Mr Damien Bruneau and Mr Jerome Squires. ADCB was represented by Mr Rajesh Pillai KC and Mr Scott Ralston. Dr Shetty, represented by Ms Karishma Vora, and the Baroda, represented by Mr Harish Salve KC, Ms Sarah Tresman and Mr Mark Baldock, opposed the applications. Baroda applied for permission to deal with questions of UAE law at trial through submissions.

6. Mr Manghat is unrepresented, and did not attend the hearing because, as was informed, he was ill. The ADGM Court Procedure Rules 2016 (the "**CPR**") provide at Rule 66(2) that the Court may hear applications in the absence of a respondent, and since arguments against the permitting expert evidence were to be presented by other parties and to avoid unjustified delay and wasted costs, I did so. It appears from correspondence from his former solicitors, Messrs. Kobre & Kim, that Mr Manghat too would oppose the Claimants' applications for expert evidence. My order included provision for Mr Manghat to apply in respect of it.

The legislative regime

7. The provisions of the CPR most immediately relevant to the applications are Rule 117(2) about the Court dealing with foreign law by submissions, and Rule 142 about expert evidence. They are to be interpreted and applied with a view to securing that the Court is accessible, fair and efficient in accordance with the overriding objective: see Rule 2. Rule 117(2) provides that: "*The Court may give directions that questions of foreign law are to be dealt with by legal submissions*". Rule 142(1) provides that: "*Expert evidence shall be restricted to that which is reasonably required to resolve the proceedings*". Rule 142(2) provides that: "*No party may call an expert or put in evidence an expert's report without the Court's permission*".

8. Further, the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 (the "**Courts Regulations**") provide at Section 73(1): "*In proceedings, a person who is suitably qualified on account of his knowledge or experience is competent to give expert evidence as to the law of any jurisdiction outside the Abu Dhabi Global Market irrespective of whether he has acted or is entitled to act as a legal practitioner there*".

9. It will be noted that Rule 117 of the CPR refers to questions of "*foreign law*", whereas Section 73(1) of the Courts Regulations refers to questions of "*the law of any jurisdiction outside the Abu Dhabi Global Market*". It is not controversial that both these expressions cover many questions of UAE law, but Baroda submitted that it is too simplistic to say that therefore all UAE law is "*foreign*" or is the law of a "*jurisdiction outside the Abu Dhabi Global Market*": it distinguished between provisions of UAE law, such as the Civil Code and the Commercial Companies legislation, which do not apply in the ADGM and are properly characterised as "*foreign*", and provisions of UAE law that do apply in the ADGM, such as the Federal Law No. (20) of 2018 on Anti-Money Laundering, Combating the Financing of Terrorism and Financing of Illegal Organizations. Its contention was that the latter are not properly to be regarded as foreign law, or as being of a jurisdiction outside the ADGM.

10. Baroda raised this point because there is an issue between it and the Claimants in the JA proceedings about whether Federal Law No. (20) of 2018 informs the scope of the duties owed by Baroda to its customers, and Baroda submits that the interpretation of the Federal Law No. (20) of 2018 does not "*require proof*". Issues such as this, as Baroda's argument continues, are,

25 March 2025 03:34 PM

however, "*intertwined*" with questions properly regarded as foreign law. It suggested that, if evidence of foreign law is permitted, its limits will not be clear-cut, and there would be a risk of confusion and misunderstanding. I am not impressed by Baroda's argument about this. Any such problems, were they to arise, could be managed at the trial. If an expert gives evidence not properly admissible, the Judge would no doubt be asked to disregard it.

Evidence "reasonably required to resolve the proceedings"

11. In this case, the Claimants together sought permission for expert evidence on over fifty questions of UAE law, many of which involve several sub-questions, and some of which are couched in quite general terms. On the face of it, it might seem surprising if the resolution of so many issues is reasonably required to resolve the proceedings, although all arise on the pleadings. After all, the core allegation against each of the Defendants is that he or it was involved in fraud on a massive scale. However, for reasons that will become apparent, I do not need to go through each of the issues, and sub-issues, to forecast whether its determination is likely to be reasonably required to resolve the proceedings or whether it is likely at trial to prove inconsequential.

12. Rule 142(1) of the CPR derives from Rule 35.1 of the English Civil Procedure Rules 1998, and it uses exactly the same language. On their face, the words "*reasonably required to resolve the proceedings*" require the Court to consider two questions when dealing with an application for permission for expert evidence: (i) would the evidence go to an issue the determination of which is reasonably required in order to resolve the proceedings? and (ii) is expert evidence reasonably required to determine the issue? The Court has, of course, to determine these questions as best it can before the trial and usually before an expert report has been prepared.

13. The first question might be regarded as logically anterior, but, as was observed by Warren J in *British Airways Plc v Spencer [2015] EWHC 2477 (Ch)*, the second question can be used at least "*as a filter*" when examining the issues on which permission for expert evidence is sought. The criterion is whether the evidence is "*reasonably required*" to resolve the issue, and not, as Warby J observed in *Andrew Mitchell MP v News Group Papers Limited [2014] EWHC 3590 (QB)* at para 27, one of "*absolute necessity*". In this jurisdiction, where the issue is one about the law of another jurisdiction, the assessment for the Court is whether the evidence is reasonably required given that the Court may permit the parties to make submissions about it.

14. However, it is not enough for the evidence to be reasonably required to resolve an issue on the pleadings. In the *British Airways* case, Warren J explained that, unless the evidence is necessary to resolve an issue (rather than merely helpful to do so), the Court will consider the importance of the issue to the resolution of the proceedings when deciding whether to permit expert evidence. Thus, as he explained (at para 65), in the *Mitchell* case, although the evidence was not necessary, nevertheless "[b]*ecause the issue to which it went was central to the case and because the evidence might be conclusive, it was admitted. But if in another case a similar issue were to arise which, instead of being central, was merely peripheral, the court might take the view that the expert evidence was not reasonably required to resolve the proceedings. The balance would come down in favour of refusing to admit that evidence*". In striking this balance, the Court "*should … be prepared to take into account disparate factors including the value of the claim, the effect of a judgment either way on the parties, who is to pay for the commissioning of the evidence on each side and the delay, if any, which the production of such evidence would entail (particularly delay which might result in the vacating of a trial date)*" (para 63).

25 March 2025 03:34 PM

English law and the Application of English Law Regulations 2015

15. I shall return to the judgment in the *British Airways* case, but before doing so I should say something about the standing in the ADGM of English case-law on how issues of foreign law should be resolved. The starting point, as stated in the ADGM Application of English Law Regulations 2015 (the "**AEL Regulations**") at Article 1(1), is that: "*The common law of England (including the principles and rules of equity), as it stands from time to time, shall apply and have legal force in, and form part of the law of, the Abu Dhabi Global Market …*". However, this starting point is subject to qualifications, including that the law is applicable:

"*(a) so far as it is applicable to the circumstances of the Abu Dhabi Global Market" (at AEL Regulations, article 1(1)(a));*

"(b) subject to such modifications as those circumstances require" (at AEL Regulations, article 1(1)(b)); and

"(c) subject to any amendment thereof (whenever made) pursuant to any Abu Dhabi Global Market enactment" (at AEL Regulations, article 1(1)(c)). The CPR are within the definition of "*Abu Dhabi Global Market enactment*".

16. The relevant English law was not controversial: it is stated in chapter 3 of *Dicey, Morris & Collins on the Conflict of Laws* (16th Ed, 2022), and Mr Pillai helpfully drew the main points together in ADCB's skeleton argument. Issues of foreign law are questions of fact, not of law. The task of the Court when interpreting foreign statutes is not to decide how it would interpret them: rather the focus is on how they would be interpreted and applied by relevant authorities in foreign jurisdiction: see *NMC Healthcare Ltd & Ors v Dubai Islamic Bank PJSC & Anor [2023] ADGMCFI 0017* at para 24, citing *Iraqi Civilians v Ministry of Defence* [2016] UKSC 25 at para 14 per Lord Sumption JSC, and *Byers v Saudi National Bank* [2022] EWCA Civ 43 in which Newey LJ said this (at para 104): "*Where the foreign law is in the form of a provision of a code, statute or other written source, the task of the Court remains one of determining how the foreign Courts would interpret and apply it, based on the evidence of the expert witnesses. Generally speaking the Court's task is not to address how it would interpret and apply the provision; the wording of the provision is to be considered only as part of the evidence and as a help to decide between conflicting expert testimony*".

17. As is reflected in Newey LJ's judgment, traditionally the Court in England is assisted in this task by expert evidence. This is particularly so when the foreign law in question does not share a common heritage with English law and is "*contained in sources written in a foreign language whose meaning and/or relationship to each other is not easy to understand*": *KV (Sri Lanka) v Secretary of State for the Home Department [2018] EWCA Civ 2483* at para 31 per Leggatt LJ. However, that does not prevent a Judge from using his own skill and experience. In *Perry v Lopag Trust Reg [2023] UKPC 16* Lord Hodge said (at para 15): "*There is … a spectrum of circumstances in which the principal variable is the degree to which the judge can use his or her skill and experience of domestic law and of the domestic rules of statutory interpretation to ascertain the foreign law and apply it to the case in question. For example where a judge is an English lawyer, at one end of the spectrum there are cases in which the foreign law is a common law system which applies the same or analogous principles and means of legal analysis as English law. In such cases there will be considerable scope for the trial judge to bring to bear his or her legal skills and experience in domestic law in determining and applying the foreign law*".

25 March 2025 03:34 PM

18. By application of the AEL Regulations, in the ADGM questions of foreign law are similarly to be regarded as statements of fact, and the task of the ADGM Judge in determining a statutory provision of UAE law is that described by Newey LJ. However, the AEL Regulations do not, in my judgment, prevent an ADGM Judge from dealing with questions of foreign law without the assistance of expert evidence more readily than the English Courts. Mr King and Mr Pillai acknowledged this. I am encouraged in my view that the ADGM should be ready to deal with issues of foreign, particularly UAE, law without expert evidence by the observations of Chief Justice Michael Hwang SC in *Fidel v (1) Felecia (2) Faraz [2015] DIFC CA 002*, where (at para 59) he pointed out that English Judges have expressed discomfort with the rigidity of the conventional English approach.

19. As I have said, the AEL Regulations permit a more flexible approach to these matters. English law does not have a procedural rule corresponding to Rule 117 of the CPR, which expressly contemplates that questions of foreign law may be dealt with by way of submissions. I need not decide whether Rule 117 of the CPR constitutes an implied "*amendment*" of the English common law within the exception in Article 1(1)(c) of the AEL Regulations: if it does not, the point is covered by the exceptions at Articles 1(1)(a) and 1(1)(b). The Claimants in the JA proceedings acknowledged in their skeleton argument (and ADCB did not dispute) that Rule 117 of the CPR "*gives the ADGM a distinctive flexibility, a flexibility which enables the court to achieve the best approach in the circumstances of each particular case*".

20. There is another point where, as in this case, the ADGM Court is concerned with questions of UAE law. Judges of this Court come from, and have been trained in, the common law tradition. That said, the nature of the litigation in this Court means that its Judges accumulate from experience more knowledge of UAE law and something of an instinct as to how it is applied than is typically the case when a common law Judge is concerned with a civil law dispute. Indeed, to take an extreme case, in every case in this Court the Judge will consider whether the Court has jurisdiction to deal with it by reference to the Federal legislation in the ADGM Founding Law (Abu Dhabi Law No. (4) of 2013 Concerning Abu Dhabi Global Market as amended by Abu Dhabi Law No. (12) of 2020). In *Fidel v (1) Felecia (2) Faraz* (loc. cit.), Chief Justice Michael Hwang made similar observations about the position of common law Judges in the Court of the Dubai International Financial Centre (esp at para 57).

21. The point must not be overstated: a little learning about UAE law acquired from one case (or more than one case) may be a dangerous thing if applied to different facts. But the risk of this is mitigated if the Judge has the assistance of counsel who is qualified in and has experience of UAE law. It seems to me that the experience and familiarity that a Judge of this Court might have with UAE law and the approach of UAE Courts is properly regarded as a "*circumstance*" that, in a particular case, could justify modification of the traditional approach of the English courts to questions of foreign law.

The Claimants' argument that expert evidence is "necessary" to resolve issues

22. The Claimants in the JA proceedings argued that expert evidence would not only be helpful to resolving the issues of UAE law on the pleadings in this case, but that it is "*necessary*" to do so; and that therefore issues of proportionality do not arise. They cited *Phipson on Evidence* (20th Ed, 2022 and in its Second Supplement, 2024 at para 33-43) in support of their contention that a distinction of this kind is to be drawn between cases where expert evidence is necessary and where it is merely of assistance. This view apparently derives from the judgment in the *British Airways* case, where Warren J referred to evidence being necessary "*in the sense that a decision*

25 March 2025 03:34 PM

cannot be made without it" (loc. cit. at para 63), and said that "*unless the evidence is necessary in order to resolve an issue, whether it should be admitted needs to be assessed in the context of the resolution of the proceedings as a whole*" (at para 64). As I read his judgment, Warren J was not prepared to accept that the Court might conclude before trial that the determination of any issue properly on the pleadings is not reasonably required to resolve the proceedings: if the outcome of an issue cannot affect the outcome of a case, "*it should be struck out or be excluded from consideration*". Thus, he considered that, if there is an issue on the pleadings and expert evidence is necessary to resolve it, the Court will permit expert evidence however peripheral it considers the issue to be and regardless of other considerations.

23. For my part, I am inclined to think that there are cases in which the Court might properly refuse expert evidence on the basis that, however important for deciding an issue, it appears so unlikely to affect the result of the proceedings that the expense of permitting the evidence would be disproportionate to the prospect of the evidence proving to be useful. Indeed, I am not convinced that there are any issues where evidence is necessary in the sense that without it the Court cannot make a decision, even if the Court is driven to determining it on the basis that the party with the burden of proof has not discharged it, or in the context of issues of foreign law, on the basis of a presumption that the foreign law is the same as the domestic law. After all, there are cases in which no party can afford expert evidence, but the Court does not declare it impossible to decide the case.

24. I am encouraged to think that, on an application of this kind, the Court may properly decide that the issue (though not demurrable on the pleadings) will not be crucial by this consideration: were it to turn out at trial that, contrary to all expectations, the proceedings could not properly be resolved without expert evidence, the trial procedure is flexible enough for the Court to direct a post-trial hearing to hear it. Certainly, this would not be ideal: generally, the Court seeks finality at trial. But, if the risk is remote, other case management considerations in a particular case might warrant taking it.

25. However that might be, to my mind in this case expert evidence is not necessary (in Warren J's sense or in any meaningful sense) to resolve the issues of UAE law. The Claimants in the JA proceedings advanced three reasons that it is.

26. First, they said that it is necessary because of "*the sheer number of UAE law issues*". I do not accept that this in itself could give rise to a need for evidence to resolve any one of them or somehow create a need cumulatively.

27. Their other two reasons were: "*the fact that the underlying law is in Arabic and there is likely to be little formal academic commentary on the relevant provisions of UAE law" and "the fundament*[al] *difference of approach between UAE law and ADGM law*". I am not persuaded: for example, many of the issues concern the meaning and effect of the Civil Code; and, as I said in my judgment in *NMC Healthcare Ltd & Ors v Dubai Islamic Bank PJSC & Anor [2023] ADGMCFI 0017* at paras 20 - 21, it was common ground between the experts in that case that, as well as in court decisions, guidance on the interpretation of the Civil Code is found in scholarly writings (including Al-Waseet, the work of El-Sanhoury) and, importantly, in the Official Commentary on the UAE Civil Code of the Ministry of Justice. Mr King referred to Article 2 of the Civil Code, which provides that: "*In understanding, interpreting and construing the text, the rules and fundamental of Islamic doctrine shall be followed*", but was unable to provide an example of where this important principle bears upon (or might bear upon) the issues for determination in this case. More fundamentally, experience shows that, with the assistance of submissions, the

25 March 2025 03:34 PM

Court is able to reach decisions on issues of UAE law, despite the differences of language and tradition from those of this jurisdiction.

28. I therefore had to weigh the respective arguments for and against dealing with UAE law issues with the assistance of expert evidence and with legal submissions. The Claimants advanced arguments in support of their applications for expert evidence about: (i) benefits resulting from ancillary directions that are usually made when expert evidence is permitted; (ii) the importance of the UAE issues; (iii) the impartiality and independence required of expert witnesses; (iv) the merits of cross-examination; (v) proportionality; and (vi) how any appeal might be conducted.

Pre-trial case management

29. The case management decision whether to permit expert evidence about questions of foreign law or whether to permit submissions about them is essentially about how the trial is best conducted. In their skeleton arguments, the Claimants submitted that an advantage of permitting expert evidence is that, because expert reports would be served well before trial, the issues would become more focused and maybe narrowed. An order permitting expert evidence has to define the particular issues which it may address: Rule 142(3) of the CPR. Further, differences about translations can be flushed out before trial and the Court can make directions about how these might be resolved (for example, through the services of an independent translator).

30. I accept that these are important considerations, but the argument assumed that, if questions of foreign law are dealt with through submissions, they will first be presented at, or in skeleton arguments shortly before, the trial. This assumption is unwarranted. The Court can give directions for other procedures designed to garner what the Claimants presented as advantages of an order permitting expert evidence. In this case, I made an order defining the issues of foreign law that might be the subject of submissions; directing that skeleton arguments about the defined issues should be filed and served some months before the trial (indeed, adopting the timetable for the provision of expert evidence reports that had been proposed by the Claimants); requiring that the parties provide translations of all statutory provisions, judicial authorities and other material on which they intend to rely in support of their submissions about UAE law; and providing that any such translation shall be taken to be authoritative, unless another party raises a timeous objection to it and proposes an alternative translation. (I did not direct a meeting of UAE lawyers instructed by the parties for defining and narrowing their differences, such as is usually made when expert evidence is permitted. In view of the number of issues and the number of parties, I am sceptical about whether such a direction would have been much productive had I permitted expert evidence.)

The importance of the issues

31. The Claimants in the JA proceedings contended that the issues of UAE law are "*highly important*" to the civil claims, and the expert evidence is not sought on issues that are less than central. ADCB submitted that the UAE law issues are "*central to the questions of liability and quantum that the Court must resolve*". I do not understand it to be controversial that at least a good number of the issues of UAE law might well be of major importance, and, while their true importance cannot be known before the trial, I am prepared to accept this for present purposes. It does not, however, follow either that they should be resolved with the assistance of expert evidence. What matters is whether the issues, however important, are resolved justly, that is to

25 March 2025 03:34 PM

say resolved correctly and whether it is more likely that they will be if the Court is assisted by expert evidence. In this case, I do not consider that it would be more likely if they would be.

Impartiality

32. The Claimants submitted that the Court should prefer the assistance about foreign law by way of expert evidence rather than through submissions because expert witnesses are required to give independent and impartial advice. Rule 140 of the CPR requires expert witnesses to "*help the Court on matters within their expertise*" and that "[t]*his duty overrides any obligation to the person from whom experts have received instructions or by whom they are paid*". Their reports must "*state at the end that the expert understands and has complied with his duty to the Court and must state the substance of all material instructions, whether written or oral, on the basis of which the report was written; and such instructions shall not be privileged against disclosure*": Rule 141(2) of the CPR.

33. I do not give much weight to this argument. First, experience teaches us that expert witnesses can find it difficult to remain entirely detached from the case which they are supporting, not through want of integrity but because the adversarial process can encourage in some a tendency to "*warm to their theme*". Further, advocates appearing in this Court are subject to the ADGM Courts Rules of Conduct 2016, including Section 4 which provides (*inter alia*) as follows:

> "…
>
> *(3) Lawyers shall not engage in conduct that undermines the dignity and authority of the Courts or which may otherwise result in procedural unfairness.*
>
> *(4) Lawyers shall ensure that they are familiar with ADGM laws and ADGM Courts Regulations and Rules as may be relevant to the matter before the Courts.*
>
> *(5) Lawyers shall inform the Courts of all relevant case decisions, legal authority, legislative provisions and any procedural irregularity of which they are aware, regardless of whether the effect is favourable or unfavourable to the contention for which they argue.*
>
> *(6) Lawyers must not attempt to deceive or knowingly or recklessly mislead the Courts by making incorrect or misleading statements of fact or law to the Courts and shall take all necessary steps to correct any incorrect or misleading statement of fact or law at the earliest opportunity …*".

Section 4(2) makes clear that these duties may outweigh a lawyer's obligation to his client.

The merits of cross-examination

34. The Claimants argued that the Court derives greater assistance from expert evidence than from submissions because of the rigour that is introduced through the cross-examination of the expert witnesses. In response, Mr Salve cited a passage from the judgment of Chief Justice Michael Hwang SC in *Fidel v (1) Felecia (2) Faraz [2015] DIFC CA 002* (loc. cit. at para 72(c)), in which he explained one of the reasons that in international arbitrations the tide is turning against receiving expert evidence of foreign law (while admitting other kinds of expert evidence):

25 March 2025 03:34 PM

> " ... *the practice of cross-examination of legal experts has been found to be a relatively inefficient way of testing their legal opinions. The usual tactics of forensic cross-examination are particularly unsuitable for this function and take up more time than the results justify. Furthermore, cross-examination of experts in all fields has been found to be not the best way of presenting the relevant issues to the arbitral tribunal and organising the points agreed or disagreed between the respective experts. This has led to the wide-scale adoption of witness conferencing in the case of experts of all disciplines. This entails two or more experts with differing views appearing together at the same time to present their respective opinions, indicating: (a) where they are in agreement; (b) where they disagree; and (c) why they disagree. Such a practice is not easily workable under the traditional method of cross-examination of expert witnesses, which is both time inefficient (because it means doubling the time for hearing both experts separately examined, cross examined and re-examined as compared with witness conferencing) and could also lead to rebuttal evidence from the experts, thereby exacerbating the inefficiency of the process. The adoption of the International Approach would therefore mean that the practice of witness conferencing will generally not be available for legal experts; however, the same effect of witness conferencing can be achieved by a Socratic dialogue between the Court and the legal experts (and between the legal experts themselves) in oral submissions*".

35. I respectfully agree with those observations. The difficulties in making cross-examination "*workable*" are potentially the greater in cases of multi-party litigation (such as these proceedings) than in a bilateral arbitration.

Proportionality

36. Dr Shetty submitted that additional costs will be incurred by the parties if expert evidence is permitted: as it is put in his skeleton argument: "*Engaging UAE law experts will add a layer of costs to legal teams. Given the complexity of this case, legal teams will need the assistance of UAE lawyers alongside them, regardless of the appointment of independent experts*". Moreover, the evidence of expert witnesses would extend the length of the trial and thereby, as Mr Salve observed, increase the costs not only expended on UAE lawyers but more generally. I cannot tell how much the additional expenditure might be, but I accept that the parties' costs will be distinctly increased if expert evidence is permitted.

37. The Claimants submitted that any additional expenditure would be relatively modest in comparison with the enormous sums claimed. That is so, but there are other questions about whether the additional costs are justified. Given my conclusion that I do not consider that issues are more likely to be resolved correctly if expert evidence is permitted, there are not benefits from expert evidence proportionate to the extra expenditure or otherwise.

38. More importantly to my mind, the Court must have regard to whether the additional costs would be proportionate to the resources available to the parties to conduct the litigation. The Claimants are well resourced, as is Baroda, but two of the Defendants are individuals. There is no clear information about Dr Shetty's position, but Mr Manghat has recently started to represent himself, apparently because of the expense of engaging lawyers at least for interlocutory hearings. I had to have regard to this given the requirement that the Court's procedures are fair: Rule 2(3) of the CPR. From such information as is available (and it might

25 March 2025 03:34 PM

well be incomplete), there appears a distinct risk that Mr Manghat might not be able to afford expert evidence. Of course, he might also be unable to afford representation to make legal submissions, but this unavoidable risk is not a reason to ignore the potential impact of the additional expense of expert evidence.

Appeal

39. It was suggested that, in the event of an appeal from the decision of the trial Judge, the Court of Appeal would be better placed to deal with the case if expert evidence about UAE law had been heard. I am not persuaded by this argument. In an adversarial system, the case management role of a Judge is to give directions, including directions about evidence, so as to conduct the trial in accordance with the overall objective. The role of the Appeal Court is generally (and subject to its power to admit new evidence) to deal with any appeal on the basis of factual material available at the trial. The structure of the Courts does not require the first instance Judge to admit evidence that it considers might assist the Court of Appeal. More specifically, Rule 142(1) of the CPR, as I interpret it, does not contemplate that expert evidence should be permitted for this reason.

Management of the trial

40. Baroda submitted that: "*The burden lies on* [the Claimants] *(qua the parties seeking to adduce expert evidence) to persuade the Court that expert evidence is reasonably required to resolve the proceedings* …". In a formal sense, that might be so, but it is not a consideration to which the Court is likely to give much weight: the real question for the Court when considering applications such as these is how it can best manage the proceedings, and in particular the trial, with a view to advancing the overall objective.

41. In these proceedings, the trial will be exceptionally demanding on the parties and their representatives, as well as the Court. It would, in my judgment, add significantly to the demands of the trial process if expert evidence were admitted. Those additional demands would have to be shouldered if there were a realistic prospect that expert evidence would assist in resolving the proceedings fairly and justly. For reasons that I have sought to explain, I have concluded that it would not do so.

Conclusion

42. For these reasons, I concluded that trial management considerations should prevail and none of the Claimants' arguments outweighed them. I therefore refused their applications for permission for expert evidence and directed that identified issues of UAE law be dealt with by legal submissions.

Issued by:

Linda Fitz-Alan
Registrar, ADGM Courts
25 March 2025