



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**

MUSSAB MUBARAK ABDULLA MUBARAK ALDARMAKI

Appellant

and

ABU DHABI COMMERCIAL BANK (ADCB)

Respondent

JUDGMENT OF CHIEF JUSTICE LORD DAVID HOPE



Neutral Citation:	[2022] ADGMCFI 0004
Before:	Chief Justice Lord David Hope
Decision Date:	8 August 2022
Decision:	1. Appeal dismissed. 2. The Appellant pay the Respondent's costs, to be assessed summarily if not agreed.
Decision under appeal:	
Court of First Instance Division	Small Claims
Date of Decision:	20 April 2022
Before:	The Honourable Lord McGhie
Case Number:	ADGMCFI-2022-059
Hearing Date(s):	No hearing
Date of Order:	20 April 2022
Catchwords:	Appeal against judgment as to small business loan; when to make jurisdiction challenge; submission to jurisdiction by conduct; whether grounds of appeal raise questions of law
Cases cited:	Judicial Authority of Dubai International Financial Centre: Small Claims Tribunal, 7/2013, 1 October 2011
Legislation Cited:	ADGM Court Procedure Rules 2016 ADGM Court, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015
Case Number:	ADGMCFI-2022-129
Parties and representation:	Ms Asha Treesa Bejoy, ATB Legal Consultancy FZ LLC for the Appellant Ms Shaikha Saeed Alshehhi, Abu Dhabi Commercial Bank PJSC for the Respondent

JUDGMENT

Introduction

1. On or about 14 November 2007 the Respondent (the “**Bank**”) granted the Appellant a loan, the original amount of which was USD 123,076.92. On 4 March 2022, when the amount outstanding on the loan was USD 98,213.92, the Bank filed a Claim in the Small Claims Division against the Appellant (the “**Claim**”) for payment of that amount, together with post-judgment interest at the rate of 5% per annum, filing fees and costs.



2. The loan was described by the Bank in the Particulars of its case on the Claim as a small business loan, with an interest rate of 10.5% per annum. The grounds for making the claim were described in the Particulars as follows:

“The Defendant has been in default under the loan agreement for 977 days. In these circumstances, the Claimant is entitled to call on the entirety of the outstanding loan, and the total amount of 98,213.92USD (representing outstanding principal plus interest) is due and payable under the loan agreement as at the date of this claim form.”

The proceedings in the Small Claims Division

3. On 10 March 2022 the Appellant filed a Defence in which he stated that the loan he had with the Bank was a personal loan based on his salary, not a business loan as he did not own a business in 2007. It was in the amount of USD 67,970 for 144 months, with an interest rate of 9.5% not 10.5%. He said that he had not had a job since January 2019 and that he wanted to have a settlement. He proposed a settlement of USD 10,000.
4. On the same date the Appellant filed a Request for Time to Pay in which he admitted part of the Bank’s claim in the amount of USD 10,000, and proposed payment of that amount by 18 March 2022. He said that he did not have any money or assets and would need to ask his family to help him out.
5. On 14 March 2022 Justice McGhie directed the Appellant to file a witness statement saying which of a number of factual assertions, on the basis of which the Court would be entitled to conclude that the sum claimed by the Bank was due to it, he did not accept and why he challenged any of them. They included the following:

“k. The Defendant does not dispute an outstanding debt due to the Bank.

l. The Defendant does not challenge the detail of the amount claimed.

m. The Defendant says that he cannot afford to pay more than USD 10,000 because he has lost his job and has other debts.

n. The Defendant would like the Bank to accept the sum of USD 10,000 instead of any larger amount that might be due.”

6. On 21 March 2022 the Appellant filed a witness statement in which he said that the facts referred to in the Judge’s direction did not reflect the reality. He disputed the amount of the debt and had been paying an extra 1% all this year. He challenged the amount, as it was way less than the Bank claimed. The loan was not a business loan. It was personal, with his salary as a guarantee. So far he had paid AED 600,000 to the Bank, which was more than he should have done as it increased the interest without informing him. Since he had not had a job since January 2019 and the salary should be the guarantee of his monthly payment, he was offering USD 10,000 to close the loan.
7. On 31 March 2022 the Bank filed a Reply in which it rejected the Appellant’s offer and maintained its position on the Claim, including that the applicable interest rate was 10.5%. It attached two documents to its Reply. One gave details of the small business loan, confirming that the interest rate was 10.5%. The other was a Statement of Account that showed the monthly instalments payments that had been made from the Appellant’s general account with the Bank.
8. On 20 April 2022 Justice McGhie entered judgment against the Appellant in favour of the Bank in the sum of USD 98,213.92 together with interest and costs. He gave the following reasons for his decision:

“The Defendant’s challenge to the claim was essentially limited to a contention that interest on the loan should have been charged at 9.5% per annum when the claim was based on a rate of 10.5% per annum. I am satisfied that the Defendant had regular intimation of transactions on the statements of account including specific intimation that the rate of interest being charged



was 10.5%. The Defendant was advised that challenges complaining of any discrepancy in the statements required to be reported to the Claimant within 30 days. It is not suggested that any such challenge was made. He did not produce any documentary evidence to support his contention that he thought the agreed rate was 9.5%.”

The Appeal

9. On 27 May 2022 the Appellant appealed against Justice McGhie’s decision. He filed three documents, namely: (1) a Notice of Appeal to the Commercial and Civil Division of ADGM Courts (the “**Appeal**”), (2) an Application Notice seeking an extension of time for the filing of the Appeal (the “**Extension Application**”); and (3) a Notice to the Bank of service of the Notice of Appeal outside the jurisdiction of ADGM.
10. On 8 June 2022 the Bank filed a Notice of Appearance and a witness statement by a legal specialist, Ms Shaikha Saeed Alshehhi. She invited the Court not to accept the Appeal as it was out of time, to reject the Appellant’s claim that the Court did not have jurisdiction and for various other reasons relating to the facts to dismiss the Appeal.
11. On 14 June 2022 the Appellant filed submissions in reply. He set out his reasons for asking for an extension of time for the filing of the Appeal. As to the jurisdiction issue, he said that he was a native Arabic speaker and a layman who had no knowledge of the ADGM laws or ADGM Courts procedures, that the case had been initiated without his consent, and that the Bank did not explain to him his right to challenge the jurisdiction which was based on an incorrect statement as at no time prior to the filing of the claim did the Bank get an such agreement from him. He made a number of other submissions relating to the facts.
12. On 16 June 2022 upon reading the Notice of Appeal and the Extension Application, Justice Stone granted the Extension Application. He gave directions as to the time for the filing of the appeal bundle and skeleton arguments, directed that the Appeal was to be decided on the papers and that the costs of the Extension Application be costs in the Appeal. On 22 June 2022, at their request, the parties were given further time for the filing of the appeal bundle.
13. In his Notice of Appeal, the Appellant challenged the judgment on the following grounds:
 - “1. The Claimant had failed to establish ADGM court jurisdiction and had not filed any evidence to show that the Claimant has opt-in to the ADGM courts jurisdiction in this matter and the Judge was wrong in assuming jurisdiction.
 2. The Claimant had failed to discharge its burden to establish the initial borrowing and its true nature and applicable interest rate with proper neutral supporting documentation.
 3. The Claimant has only produced AECB credit report which is a report based on the information given by the Claimant bank to the AECB and the Judge has arrived at a conclusion purely based on the statements made by the Claimant bank.
 4. The Judge has allowed the claim of the Claimant bank without being satisfied that the burden of proof has not [sic] been discharged.
 5. The Claimant did not produce a copy of the loan agreement or Central bank report which is the basis of the claim and the Judge allowed the claim in the favour of the Claimant in the absence of the key document.”
14. On 28 July 2022 the parties filed their skeleton arguments. In his skeleton argument the Appellant reformulated the issues in these terms:
 - “1. Whether the Abu Dhabi Global Market (“ADGM”) Courts have the jurisdiction to hear any dispute arising out of the loan agreement between the parties herein?
 2. Whether the loan was taken for business purposes or for personal purposes?
 3. Whether the percentage of interest charged by the Respondent is maintainable?



4. Whether the outstanding amount as shown on the account statement filed by the Respondent [is] accurate?"

15. These issues must be examined in the light of Rule 205(3) of the ADGM Court Procedure Rules (the "CPR"), which provides:

"No appeal must be brought against any judgment or order given or made in the Small Claims Division except on a question of law."

Issue 1: Jurisdiction

16. The question whether the Court had jurisdiction to try this claim is a question of law. It is an important question too, because no order that the Court may make can receive effect unless it had jurisdiction to make the order. But the Court's procedural rules make it clear that it is a question which has to be raised at the outset of the proceedings. There is no indication that it can be raised at the stage of an appeal.

17. Rule 311(1) of the CPR provides:

*"Within 7 days after a defendant is served with the claim, a defendant must file in accordance with the relevant practice direction ...
(d) an application to dispute the Court's jurisdiction to try the claim."*

18. Practice Direction 3 – Small Claims provides:

"3.13 An application to dispute the Court's jurisdiction must be made by filing an application notice in accordance with Form CFI 8.

3.14. If a defendant makes an application to dispute the Court's jurisdiction, he need not, before the hearing of the application, file a defence.

19. The Claim Form stated that the Appellant's address for service was at his home in Khalifa City, which is outside ADGM. This made it necessary for the Bank to set out the grounds on which it was entitled to bring the claim against him in this Court, having regard to section 16(2) of the *ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015* (the "**Courts Regulations**") which provides:

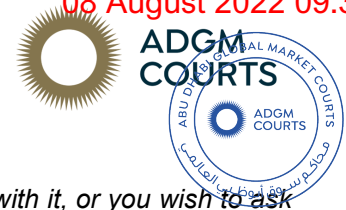
"Subject to the provisions of these Regulations, there shall be exercisable by the Court of First Instance all such jurisdiction as is conferred by it by –

- (a) Articles 13(7) and (8) of the ADGM Founding Law;*
- (b) an Applicable Abu Dhabi Law;*
- (c) these Regulations;*
- (d) any other ADGM enactment;*
- (e) any request, in writing, by the parties to have the Court of First Instance determine the claim or dispute."*

20. The Bank's grounds for saying that it was entitled to bring the claim against the Appellant in this Court were set out in the following sentence on page 3 of the Claim Form:

"The parties have agreed in writing to the jurisdiction of ADGM Courts."

21. Guidance as to how to respond to the Claim was given on page 4 of the Claim Form as follows:



“If you wish to challenge the claim, or the power of the court to deal with it, or you wish to ask for any order from the court such as time to pay, you must within 7 days after being served with the claim, file:

- *an admission and any request for time to pay*
- *an admission and any request for time to pay and a defence, together with any counterclaim, if you admit only part of the claim*
- *a defence, together with any counterclaim, if you dispute the whole of the claim*
- *an application to dispute the court’s jurisdiction.”*

22. On 10 March 2022 the Appellant filed a Defence. On the same date he filed a Request for Time to Pay: see paragraphs 3 and 4, above. But he did not file an application to dispute the Court’s jurisdiction within 7 days after being served with the Claim. Nor did he indicate at any later date that he wanted to dispute the Court’s jurisdiction before judgment was made against him on 20 April 2022.
23. The Appellant says in his Grounds for Appeal that to the best of his knowledge he never opted into the Court’s jurisdiction. He points out that he obtained the loan from an onshore branch of the Bank in November 2007. It was not until December 2015 that the ADGM Courts were established. There was no way in which he could have consented to the jurisdiction of ADGM Courts at the time when the loan was taken out. Furthermore, the Judge ought to have satisfied himself that the Appellant had opted into its jurisdiction before judgment was made against him. The Bank did not place any evidence before the Judge to indicate that this was the case.
24. He developed these points in the submissions which he filed on 14 June 2022, adding to them the suggestion that he should be excused for not having disputed the Court’s jurisdiction earlier because he had no knowledge of the ADGM laws and court procedures: see paragraph 11, above. He has developed them further in his skeleton argument. He points out that none of the contractual transactions between the parties took place within the jurisdictional limits of ADGM Courts. He refers in support of his argument to a case decided by the Judicial Authority of Dubai International Financial Centre: *Small Claims Tribunal 7/2013* on 1 October 2011 (the “**DIFC SCT decision**”). In that case the defendant was physically located outside the DIFC’s jurisdiction, and the agreement was signed outside the jurisdiction too. It had not been shown that the cause of action arose from a transaction that had been concluded in the Centre or from an incident that had occurred there. So H E Justice Omar Almuhairi held that the court had no jurisdiction to hear and determine the claim.
25. I do not think that it is open to the Appellant to raise these points at this stage in the proceedings. This is not just because he failed to do so within 7 days after he was served with the Claim as provided by Rule 311(d). His own actions show that the Court’s jurisdiction in this case is no longer open to challenge. He filed a defence without indicating that he disputed the jurisdiction of the Court to examine and rule on the points that he wanted to raise. He invoked the jurisdiction of the Court to adjudicate on his behalf when he filed his Request for Time to Pay. And he filed a witness statement setting out his reply to the questions that the Judge put to him in his direction of 14 March 2022 without questioning the Judge’s jurisdiction to make such a direction.
26. The only inference that can properly be drawn from his conduct in filing these documents is that the Appellant was content to accept that the Court had jurisdiction in this case. There was no need for any other written evidence to show that he had opted into its jurisdiction. His own conduct was enough to amount to a request in writing to have the Court determine his response to the Bank’s claim within the meaning of section 16(2)(e) of the Courts Regulations.
27. The DIFC SCT decision is of no help to the Appellant, as in that case the first and only step that the defendant took was to challenge the jurisdiction of the DIFC Courts. He did not wait until the stage of an appeal. So the judge did not have to consider the ground of jurisdiction that has been created here by the Appellant’s conduct in the Claim. The conclusion that I have drawn from that conduct is enough to resolve this issue. It means that I do not have to consider whether the Bank’s



statement that the parties had agreed in writing to the jurisdiction of ADGM Courts was or was not untrue.

28. I should add that I can attach no weight whatever to the Appellant's suggestion that he should be excused for not challenging the Court's jurisdiction earlier because he had no knowledge of the Court's rules and procedures. Guidance can be given by the Registry should this be necessary: see Practice Direction 1.3. It is the duty of every litigant who comes before this Court to make themselves aware of the Court's rules and procedures.
29. All the Appellant had to do in this case was to read the Guidance on the Claim Form: see paragraph 21, above. The fact that he filed a Request for Time to Pay when he filed his defence is enough to show that he was following that guidance, and that he was made sufficiently aware of what needed to be done if he wanted to challenge the Bank's statement that the parties had agreed in writing to the jurisdiction of ADGM Courts. The fact that he did not raise the point then shows that it was of no interest to him at that stage. This was because he was looking to the Court to exercise its jurisdiction in his favour by giving him time to pay the sum that he proposed in settlement of the Claim.
30. For these reasons this ground of appeal must be rejected.

Issues 2 to 5

31. I can take all of these grounds of appeal together, because they all make the same point. This is that the Judge allowed the Bank's claim without being satisfied that the burden of proof had been discharged. What the Bank had to do, it is said, was to establish the initial borrowing, its true nature and the applicable interest rate with proper supporting documentation. The complaint is that it did not produce any documentary proof to show that the Appellant availed himself of a business loan, that it did not file any document showing that the agreed rate of interest was 10.5% and that the account statement lodged by the Bank shows that it has been charging interest at a rate higher than that which had been agreed to by the Appellant.
32. I do not think that these grounds of challenge to the Judge's decision to allow the Bank's claim raise any questions of law which I need examine. The Judge's direction of 14 March 2022 shows that he saw the issues that he had to decide as relating to the facts only, and not to any question of law. The grounds that are now being advanced on each of these issues relate solely to questions about the facts of the case. They too do not raise any question of law. So they lie outside the scope of an appeal against any order or decision given made in the Small Claims Court: see Rule 205(3). These grounds of appeal also must be rejected.

Conclusion

33. For these reasons this Appeal will be dismissed. The Appellant must pay the costs of the Appeal, to be assessed summarily if not agreed.



Issued by:

Linda Fitz-Alan
Registrar, ADGM Courts
8 August 2022