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

ABU DHABI COMMERCIAL BANK PJSC

Claimant

and

PRASANTH MANGHAT
Defendant

JUDGMENT OF JUSTICE SIR ANDREW SMITH

Neutral Citation:	[2024] ADGMCFI 0010
Before:	Justice Sir Andrew Smith
Decision Date:	30 July 2024
Decision:	1. Joinder Application refused. 2. Costs reserved.
Hearing Date:	10 July 2024
Date of Order:	30 July 2024
Catchwords:	Joinder of additional defendant. Jurisdiction under Founding Law, Article 13.7(a). Jurisdiction over a "*necessary or proper*" party.
Cases Cited:	Nest Investment Holding Lebanon SAL and ors v Deloitte & Touche (ME) [2018] DIFC CA 011 Union Properties PJSC v Trinkler & Partners Ltd [2023] ADGMCFI 0009 Al Ayar v Klinkhamer [2024] ADGMCFI 002 A4 v B4 [2019] ADGMCFI 0007 Abu Dhabi Commercial Bank v Shetty & Others [2021] 0004 In re NMC Healthcare Ltd and Associated Companies [2021] ADGMCFI 0006 Enka Insaat Ve Sanayi AS v OOO Insurance Co Chubb [2020] UKSC 38 Good Challenger Navigante SA v Metalexportimport SA [2003] EWCA Civ 1668 Sandra Holdings v Al Saleh [2023] DIFC CA 003 John Russell and Co Ltd v Cayzer, Irvine and Co Ltd [1916] 2 AC 298 ID v LU [2021] EWHC 1851 (Comm) Massey v Heynes & Co (1882) 21 QBD 330 Marex Financial Ltd v Sevilleja [2020] UKSC 31
Legislation Cited:	Federal Law No. 5 of 1985 on the Civil Transactions Law of the United Arab Emirates Federal Law No. 2 of 2015 on Commercial Companies Civil Code and Article 84 of the CCL Abu Dhabi Law No 4 of 2013 ADGM Courts Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015

	Dubai Law 12 of 2004 in respect of The Judicial Authority at Dubai International Financial Centre Arbitration Regulations 2015 Civil Procedure Rules Practice Direction 6B
Case Number:	ADGMCFI-2022-111
Parties and representation:	***Claimant*** Mr Rajesh Pillai KC and Mr Scott Ralston Instructed by Holman Fenwick Willan LLP ***Defendant*** Ms Sophia Hurst Instructed by Kobre & Kim (GCC) LLP ***Dr Shetty*** Ms Ruth den Besten KC and Mr Kajetan Wandowicz Instructed by Farrer & Co LLP

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JUDGMENT

THE APPLICATION

1. These proceedings are bought by Abu Dhabi Commercial Bank PJSC ("**ADCB**") against Mr Prasanth Manghat. By an Application Notice dated 3 May 2024 (the "**Joinder Application**"), ADCB applied for permission to join Dr B R Shetty as second defendant under rule 56(1) of the ADGM Court Procedure Rules (the "**CPR**"), and to amend the Particulars of Claim. It first intimated that it intended to do so by a letter dated 25 April 2024 from its solicitors, Holman Fenwick Willan LLP ("**HFW**") to Dr Shetty's solicitors, Farrer & Co LLP ("**Farrers**") and others. Rule 56(1) of the CPR provides as follows: "*(1) Where the claim form has been served, the Court's permission is required to remove, add or substitute a party*".

2. The Joinder Application is supported by a witness statement dated 3 May 2024 of Mr Damian Honey, a partner in HFW. By Orders of 14 May 2024 and 17 May 2024, I directed a timetable for the service of further evidence. In response to the Orders, Dr Shetty filed a witness statement dated 14 June 2024 of Mr Benjamin Longworth, a partner in Farrers. ADCB served a further witness statement of Mr Honey in reply dated 21 June 2024.

3. I heard the Joinder Application on 10 July 2024. ADCB was represented by Mr Rajesh Pillai KC and Mr Scott Ralston. Mr Manghat was represented by Ms Sophia Hurst. Dr Shetty was represented by Ms Ruth den Besten KC and Mr Kajetan Wandowicz. All their submissions were clear and succinct.

4. Mr Manghat is neutral upon the Joinder Application (subject to the position about his costs). It is opposed by Dr Shetty: he has challenged the Court's jurisdiction to grant it, and also argued that, if the Court has the jurisdiction, it should refuse it in the exercise of its discretion.

THE PROCEEDINGS

5. These proceedings are about a massive fraud said to have been perpetrated against a group of companies (the "**NMC Group**"), of which the parent was NMC Health PLC ("**NMC PLC**"), an English company. The fraud was operated, it is said, from at least 2012 until it came to light in late 2019 or early 2020. Dr Shetty was the founder of the NMC Group, a major shareholder in NMC PLC, the Chief Executive Officer ("**CEO**") of NMC PLC from about July 2011 until about March 2017 and thereafter its Non-Executive Vice-Chairman until about February 2020. Mr Manghat was the Chief Financial Officer of the NMC Group from about 2011 until December 2014, its Deputy CEO from January 2015 until about March 2017 and its CEO thereafter until February 2020.

6. On 9 April 2020, on the application of ADCB, a major creditor of NMC PLC, the English High Court made an administration order in respect of NMC PLC because it was insolvent. On 27 September 2020. this Court appointed administrators over 36 subsidiaries of NMC PLC, including NMC Healthcare Ltd ("**NMCH**"). These companies had been incorporated variously in Abu Dhabi, Dubai and Sharjah, and were re-registered into the Abu Dhabi Global Market ("**ADGM**") earlier in September 2020.

7. In outline, ADCB alleges that Mr Manghat knowingly participated in the fraud, in particular a so-called loan recycling scheme, whereby property and monies were improperly extracted from the NMC Group, and the resulting debts of the NMC Group were not disclosed in the Group's financial statements. It also alleges that Dr Shetty knew of and participated in the loan recycling scheme and received benefits from it by way of "*Direct Shetty Payments*" and "*Indirect Shetty Payments*". The structure of ADCB's pleaded claim against Mr Manghat is that: (i) misrepresentations were made to it, including that financial statements of NMC PLC had been honestly prepared and were not materially misstated; (ii) NMC PLC

was carrying on its business properly and legitimately, and Mr Manghat was not aware of anything that prevented financial statements of NMC PLC from giving a true and fair view; (iii) Mr Manghat made or was otherwise responsible for those misrepresentations, and knew that they were false; (iv) in reliance on the representations, ADCB entered into agreements for, and advanced, facilities to the NMC Group; and (v) as a result, ADCB suffered loss when the NMC Group was revealed to be insolvent because it cannot recover outstanding sums owing on the facilities. ADCB makes claims under Federal Law No. 5 of 1985 on the Civil Transactions Law of the United Arab Emirates (the "**Civil Code**"), particularly Articles 282 and 285, and Article 84 of the Federal Law No. 2 of 2015 on Commercial Companies (the "**CCL**"). It places a value of "*at least*" some US$1.1 billion on the claims.

8. The claims that ADCB seeks to bring against Dr Shetty are, *mutatis mutandis*, similar to those against Mr Manghat in that they are put under Articles 282 and 285 of the Civil Code and Article 84 of the CCL, and the same value is put on them. Ms den Besten emphasised that the claims against Dr Shetty would be based upon particular representations that he is said to have made, but, as I see it, the nub of ADCB's case against him would be its allegation that he was being dishonest in his dealings with it because of his participation in and knowledge of the fraud, in particular the loan recycling scheme.

9. The ADCB claim against Mr Manghat had been listed for a hearing over five weeks commencing in August 2024. However, by an Application Notice dated 14 September 2023, Mr Manghat applied for the trial date to be vacated, and these proceedings to be "*subject to coordinated case management*" with other proceedings in the Court, to which I refer as the "**JA claim"**, and that they be tried concurrently with the JA claim.

10. The JA claim has been brought by NMCH, NMC Holding Ltd (**"Holding"**) and their joint administrators (the "**JAs**"). The defendants are Dr Shetty, Mr Manghat and the Bank of Baroda (**"Baroda"**). The proceedings include claims in fraudulent trading and, against Dr Shetty and Mr Manghat, in wrongful trading, and claims under United Arab Emirates (**"UAE"**) law alleging fraud and gross negligence. The JA claim is said to have a value of "*at least*" US$5 billion. Pursuant to an order dated 4 September 2023, ADCB amended its particulars of claim to adopt allegations pleaded by the Claimants in the JA claim: in support of its present application, ADCB observed that its "*case in relation to the fraud with the NMC Group is largely pleaded on the basis of allegations made by the JAs in the JA Claim"*.

11. In his defence to the ADCB claim, Mr Manghat does not dispute that a substantial fraud was perpetrated against the NMC Group, but denies that he was aware of it or participated in it, and says that it was orchestrated by others, including Dr Shetty. He pleads that Dr Shetty and others "*were the architects, perpetrators and beneficiaries of the fraud, with substantial payments being made to them without any apparent commercial rationale which was concealed from Mr Mangat, and seemingly the NMC plc Board, its Auditors and other shareholders*" and that Dr Shetty, "*in particular, abused the trust that Mr Manghat held for him during the Relevant Period*". In broad terms, his defence in the JA claim is similar. In the JA claim, the thrust of Dr Shetty's defence is not to deny the fraud, but to deny having knowledge of it or being party to it, contending that it was perpetrated by others, including Mr Mangat. Mr Honey fairly sums up the position as follows: "*Dr Shetty and Mr Manghat blame each other. Each of them alleges they should not be found liable because the fraud was committed by the other"*.

12. For reasons that I explained in a judgment dated 29 December 2023 ([2023] ADGMCFI 0025), by an order of 14 February 2024 I granted Mr Manghat's application, vacated the August 2024 trial date, and ordered joint case management and a concurrent trial with the JA claim. The trial is now due to begin on 23 March 2026.

THE ENGLISH PROCEEDINGS

13. The background to these proceedings is that, having on 30 November 2020 obtained ex parte worldwide freezing orders against them in the English High Court, ADCB had brought proceedings there against Mr Manghat, Dr Shetty and four other senior officers of the NMC Group, including a Mr Suresh Kumar, who had been the Group's Deputy Chief Financial Officer from November 2016 until February 2020. Dr Shetty, Mr Manghat and two other defendants successfully challenged the jurisdiction of the English Court, and the English proceedings were stayed against those defendants by a judgment of 1 April 2022 of HH Judge Pelling QC following a hearing in November and December 2023. He concluded (at para 183 of his judgment, [2022] EWHC 1020 (Comm)) that *"(a) there is another forum which is clearly and distinctly more appropriate than the English forum namely Abu Dhabi and (b) ... there are no circumstances by reason of which justice requires this claim to be tried here rather than Abu Dhabi*". He so concluded on the basis of undertakings given by the four defendants whereby Mr Manghat gave an undertaking dated 8 December 2023 that he would not challenge the jurisdiction of the Courts of the Abu Dhabi Judicial Department (the "**ADJD")** or the ADGM, and Dr Shetty and the two other defendants who challenged the English jurisdiction gave undertakings dated 6 and 8 December 2023 to submit to the jurisdiction of the ADJD Courts.

14. After the English proceedings were stayed, ADCB did not, I understand, bring proceedings against Dr Shetty in the ADJD Courts or elsewhere, nor has it done so against the other two defendants against whom the English proceedings were stayed. It has pursued the English proceedings against Mr Kumar, and I understand that they are listed for trial on 22 October 2025. On 10 May 2022, ADCB brought these proceedings against Mr Manghat in this Court: it has not brought proceedings against him in any other Court.

THE ISSUES ABOUT JURISDICTION

15. The jurisdiction of this Court is statutory. Article13.1 of Abu Dhabi Law No 4 of 2013 as amended by Abu Dhabi Law No 12 of 2020 (the "**Founding Law**") provides that "*The Global Market's Courts shall be of two degrees, first instance (formed of a single judge) and appeal (formed of three judges). Without prejudice to the provisions of this law and the Global Market Regulations, the Global Market's Courts shall be considered as courts of the Emirate, with jurisdiction over disputes and matters in accordance with the provisions of this law and the Global Market Regulations*". Thus, as it was put by Justice Sir Jeremy Cooke when explaining the analogous position in the Dubai International Financial Centre ("**DIFC**"), the question whether a rule confers jurisdiction "*must always be a question of construction in light of the particular provision of the Law or Regulation in question, when seen in the context of the statute or regulation as a whole and the purpose which lies behind the provision and the statute": Nest Investment Holding Lebanon SAL and ors v Deloitte & Touche (ME)* [2018] DIFC CA 011 at para 39.

16. Service is not a basis of jurisdiction in the ADGM, unlike in England. As Prof Adrian Briggs explained in relation to the Recast Brussels Regulation (EU Regulation 1215/2012), "*There are ... two kinds of service: service which creates and defines jurisdiction, and service which notifies the pre-existence of jurisdiction. Though each serves an important function, each operates within the confines of a coherent, self-contained, system, and takes its colour from its surroundings*": *The Hidden Depths of the Law of Jurisdiction* [2016] LMCLQ 236, 238. In England service is of the first kind, whereas in the ADGM it is of the second kind. The corollary of this is that, unlike in England, the presence of a defendant within the ADGM has no immediate importance to a claimant's ability to establish the Court's jurisdiction to determine his claim.

17. Article 13.8 of the Founding Law provides that: "*The Global Market's Courts may hear and adjudicate any civil or commercial claim or dispute where the parties agree in writing to file such claim or dispute with them whether before or after the claim or dispute arises*". ADCB was able to bring its claim against Mr Manghat in this Court because he had agreed by his undertaking of 8 December 2021 not to challenge its jurisdiction to determine ADCB's claim against him. ADCB's position in the English proceedings had previously been that the ADGM Court did not have jurisdiction over the claims against Dr Shetty, Mr Manghat and others, and in its claim form here, the only basis on which it asserted this Court's jurisdiction was Article 13.8.

18. Dr Shetty did not give such an undertaking. ADCB submitted that the Court has jurisdiction to determine its claim against him under (i) article 13.7(a) of the Founding Law and (ii) article 13.7(d) of the Founding Law, together with CPR r.24(2); and that the Court should exercise its discretion to permit the joinder of Dr Shetty as a defendant.

19. In the translation published by the ADGM Court on its website, Article 13.7 of the Founding Law provides as follows:

> "*The Court of First Instance and shall have [sic] exclusive jurisdiction to consider and decide on matters according to the following:*
>
> *a) Civil or commercial claims and disputes involving the Global Market or any of the Global Market Authorities or any of the Global Market Establishments;*
>
> *b) Civil or commercial claims and disputes arising out of or relating to a contract entered into, executed or performed in whole or in part in the Global Market, or a transaction entered into or performed in whole or in part in the Global Market, or to an incident that occurred in whole or in part in the Global Market;*
>
> *c) Any appeal against a decision or a procedure issued by any of the Global Market Authorities according to the Global Market Regulations;*
>
> *d) Any request, claim or dispute which the Global Market's Courts has [sic] the jurisdiction to consider under the Global Market Regulations;*
>
> *e) Any issues concerning the interpretation of any articles of the Global Market Regulations*".

20. The term "*Global Market Establishments*" (in article 13.7(a)) is defined in Article 1(1), and includes companies registered in the ADGM.

21. The term *"Global Market Regulations"* (in Article 13.7(d)) is also defined in Article 1(1): they are "*Any regulations or resolutions related to the Global market and issued by the Board of Directors*", and so they include the ADGM Courts Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 (the "**ADGM Courts Regulations**"). Section 16 of the ADGM Courts Regulations, which is headed "*General Jurisdiction of the Court of First Instance",* provides at sub-section (2) that:

> *"…there shall be exercisable by the Court of First Instance all such jurisdiction as is conferred on 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; or

e. any request, in writing, by the parties to have the Court of First Instance determine the claim or dispute."

The CPR are within the expression "*ADGM enactment*", which is defined at section 227(1) of the ADGM Courts Regulations to mean "*ADGM regulations and any rules made under ADGM regulations, including court procedure rules*".

22. In response to these submissions, Dr Shetty contended that:

a. The Court has no jurisdiction to determine the claim against him under the Founding Law, Article 13(7)(a) because it applies only where the ADGM, a Global Market Authority or a Global Market Establishment (as those terms are defined in Article 1(1)) is a party to the claim; and that the ADCB claim is not such a case.

b. CPR 24(2) is a provision about the service of documents, and not about the Court's jurisdiction.

c. Even if the Court has jurisdiction because the case is covered by Article 13(7)(a) of the Founding Law or falls under CPR r.24(2), it should not exercise its discretion to permit joinder of Dr Shetty.

JURISDICTION UNDER ARTICLE 13.7(A)

23. Although Mr Pillai presented ADCB's contention that the Court has jurisdiction under Article 13.7(d) and CPR r.24(2) as his "*primary*" case, it is convenient first to consider the position under Article 13.7(a). Here Dr Shetty contends that Article 13.7(a) requires that the proceedings be ones to which the Global Market, a Global Market Authority or a Global Market Establishment is a party, and that a lesser or looser "*involvement*" with the claim or dispute does not suffice.

24. In response to this contention, Mr Pillai relied on two first instance judgments of this Court. In *Union Properties PJSC v Trinkler & Partners Ltd* [2023] ADGMCFI 0009, where the claims included one for conspiracy, I considered a challenge to the jurisdiction brought by one of the thirteen defendants, a Mr Ahmed Khouri. Counsel for Mr Khouri argued that neither of the Claimants nor Mr Khouri was a "*Global Market Authority*" or a "*Global Market Establishment*", and so Article 13.7(a) was not engaged, although one of the other defendants and alleged conspirators was an ADGM registered company. I said this: "*I cannot accept that section 13(7)(a) requires a party to the claim or dispute to be a Global Market Authority or a Global Market Establishment. The word 'involving' must be given a wider meaning if sensible effect is to be given to the concepts of a claim or dispute 'involving' the Global Market, and of a claim or dispute 'involving' a Global Market Authority; and the word bears the same meaning when the question is whether a claim or dispute involves a Global Market Establishment*" (at para 58).

25. In *Al Ayar v Klinkhamer* [2024] ADGMCFI 002 at para 37b, Justice William Stone SBS, KC agreed with this part of my judgment in the *Union Properties* case, and said that "*in principle [he did] not consider that in itself 'party status' necessarily is dispositive of the Article 13(7)(a) issue*" that was before him (although on the facts he held that the claim was not covered by Article 13.7(a) even on a wide interpretation of it).

26. My judgment in the *Union Properties* case was based on the translation of the authoritative Arabic text of Article 13.7 of the Founding Law that is published on the ADGM Court website. Dr Shetty challenges the accuracy of the translation, and relies upon English text of Article 13.7(a) that is in the Official Gazette, issued by the General Secretariat of the Executive Council of the Emirate of Abu Dhabi (the "**Official Gazette version**"). The Official Gazette version is as follows: "*Civil or commercial cases and disputes to which the Global Market or any of the Global Market's authorities or institutions thereof is party".* Ms den Besten put before the Court a third translation of Article 13(7)(a) made by Ibrahim & Partners, Dr Shetty's UAE lawyers: it reads, "*Civil and commercial claims and disputes in which the Global Market or any of the Global Market authorities or any of the Global Market Establishments are a party*".

27. This leads to two questions: (i) on the proper interpretation of the Arabic text, what connection with the Global Market, a Global Market Authority or a Global Market Establishment is required by Article 13.7(a)? and (ii) does ADCB's claim against Dr Shetty have such a connection?

28. Dr Shetty's representatives first raised a question about the accuracy of the translation on the ADGM Court's website by letter dated 28 June 2024, after the date for evidence stipulated by the Order of 17 May 2024 had expired, and they have not sought permission to introduce late evidence about it. Instead, shortly before the hearing, they invited ADCB to agree to have a joint translation prepared. I do not criticise ADCB's rejection of the proposal: it said that the proper way to challenge the translation on the ADGM Court website, on which ADCB had relied, would have been by evidence properly filed, and went on to say that "*Literal translations and legislative intentions are not necessarily the same thing"*, meaning (as I take it) that, on an important question of this kind, it would not be satisfactory for the Court to rely on an agreed translation without fuller explanation of the nuances of the language and how the provision should be interpreted and applied. Dr Shetty has put before the Court a letter from Ibrahim & Partners setting out their translation, and has appended to his skeleton argument what was described as a "*word-for-word breakdown of Article 13.7(a) and its correct translation prepared by Dr Shetty's legal team (of which one member speaks Arabic)*", but the Court has no evidence on the point. Ms den Besten was constrained to assert that the "*actual Arabic text of the law is unambiguous; it unequivocally requires that a [Global Market Establishment] is party to a claim or dispute",* without evidence to support the assertion.

29. I cannot accept Ms den Besten's contention that this matter can be resolved without evidence on the meaning of the Arabic text. She submitted that expert evidence of UAE law is not required because the Court is required to determine its own jurisdiction, but in order to do so, the Court needs satisfactory material about the meaning of the Arabic language (in the absence of agreement about it).

30. Moving on to the second question, Mr Pillai contended that, even if the version of Article 13.7(a) in the Official Gazette is to be preferred, as Dr Shetty contends, the Court has jurisdiction under it. It refers to "*cases and disputes*" (or in the translation on the ADGM Court website and that by Ibrahim & Partners "*claims and disputes"*). ADCB advanced two arguments: first, it was said that its dispute with Dr Shetty is one "*involving*" a Global Market Establishment because it is about the fraud that was perpetrated on and through NMCH and other NMC Group companies now registered in the ADGM. Thus, as Mr Pillai submitted, given that the language should be given a broad and pragmatic reading so as to promote the purpose of the ADGM and its Court, it covers these proceedings. Secondly, he suggested that Global Market Establishments are party to the claim or dispute because NMCH and Holding are party to the JA claim, which is to be tried concurrently with the ADCB proceedings: and so Global Market Establishments are party to the litigation that includes these proceedings.

31. I need not, and do not, comment on this second suggestion, but I see some force in the argument that, even if ADCB's claim cannot be said to be a claim or case within Article 13.7(a), there is a relevant "*dispute"* to which ADGM companies are party. I note that, in referring to a "*dispute"* (the translation of

the Arabic word that is transliterated as *"w al-manaza'at"*), article 13.7(a) differs from the language of Dubai Law 12 of 2004 in respect of The Judicial Authority at Dubai International Financial Centre (as amended) (the "**DIFC JAL**"). Article 5(A) (1) and (2) of the DIFC JAL provides as follows (according to the translation of it on the website of the DIFC Courts:

> "*1. The Court of First Instance shall have exclusive jurisdiction to hear and determine:*
>
> *(a) Civil or commercial claims and actions to which the DIFC or any DIFC Body, DIFC Establishment or Licensed DIFC Establishment is a party;*
>
> *(b) Civil or commercial claims and actions arising out of or relating to a contract or promised contract, whether partly or wholly concluded, finalised or performed within DIFC or will be performed or is supposed to be performed within DIFC pursuant to express or implied terms stipulated in the contract;*
>
> *(c) Civil or commercial claims and actions arising out of or relating to any incident or transaction which has been wholly or partly performed within DIFC and is related to DIFC activities;*
>
> *(d) Appeals against decisions or procedures made by the DIFC Bodies where DIFC Laws and DIFC Regulations permit such appeals;*
>
> *(e) Any claim or action over which the Courts have jurisdiction in accordance with DIFC Laws and DIFC Regulations.*
>
> *(2) The Court of First Instance may hear and determine any civil or commercial claims or actions where the parties agree in writing to file such claim or action with it whether before or after the dispute arises, provided that such agreement is made pursuant to specific, clear and express provisions.*

32. These provisions were enacted by amendments to the DIFC JAL made in 2011: they antedate the Founding Law. In broad terms, the Founding Law was, it seems, modelled on them, but Article 13.7(a) of the Founding Law departs from the wording of the DIFC JAL in that it does not use the Arabic word that is translated "*actions*". In his judgment in the *Nest Investment* case (cit sup), Chief Justice Tun Zaki Azmi expressed the view (at para 5) that, in the context of article 5(A)(1)(e) the term "*claim or action"* was not intended to have a different meaning from the word *"application"* in an earlier version of the Article which it replaced. On the face of the translations that are available, the ADGM Founding Law uses wider language, and, if this is so, this would lend force to Mr Pillai's argument that the use of the word "*dispute*", or "*w al-manaza'at*" is significant and broadens the scope of article 13.7(a).

33. However that might be, I find myself unable to determine the scope of Article 13.7(a), and whether it covers the claim that ADCB seeks to bring against Dr Shetty. The question about the different translations of the Article was properly raised by Dr Shetty, but (perhaps because it was not raised earlier) I do not have material before me to express a concluded view, or even a provisional view, about the questions that it raises. They are of too much general importance to be determined without more information. Had ADCB's application depended on the answers to them, I should have had to adjourn it to obtain more assistance, but, as I shall explain, it does not do so.

ARTICLE 13.7(D) AND CPR R.24(2)

Introduction

34. There is no dispute that the CPR are "*Global Market Regulations*" within the meaning of Article 13.7(d) of the Founding Law, and therefore the Court might have jurisdiction over a claim because it is conferred by the CPR. ADCB presented its case that the Court has jurisdiction to determine its claim against Dr Shetty on the basis that the source of the jurisdiction is CPR 24(2), and that the crucial question here is whether, on its proper interpretation, CPR 24(2) is to be interpreted as giving the Court jurisdiction. The submissions of Mr Pillai and Ms den Besten focused on this question.

35. Article 24(2) was introduced into the CPR by the *Court Procedure Rules Amendment No 1 of 2022* enacted on 23 September 2022 (the "***2022 Amendment***"). It provides as follows:

> "*A claim form may, in accordance with this Part, be served on a person out of the jurisdiction where:*
>
> *(a) there is between the claimant and the defendant a real issue which it is reasonable for the Court to try; and*
>
> *(b) the claimant wishes to serve the claim form, or have the claim form served, on another person who is a necessary or proper party to that claim*".

36. Dr Shetty's argument was that CPR r.24 is only about service of proceedings: it does not confer on the Court any jurisdiction that it does not otherwise have, but is about how proceedings over which the Court has jurisdiction in any event may be brought to the defendant's attention. Hence, as Ms den Besten observed, rule 24(2) is found in Part 4 of the CPR, which is headed "*Service of Documents*", and is introduced in CPR r.15(1) as follows: "*This Part applies to the service of documents except where any rule, practice direction or other ADGM enactment or a Court order requires that a document, including a claim form, must be served by any other method*". CPR r.15(4) provides that *"A claim form may be served outside the jurisdiction in accordance with Rules 24 and 25*". (CPR r.25 requires a claimant who serves a claim form under CPR r.24 to include in it a statement of the grounds on which he is entitled to serve it out of the jurisdiction.)

37. As I shall explain, to my mind a crucial question here, which is anterior to the interpretation of article 24(2), is whether or not the Court has jurisdiction under CPR r.56 to give permission that a defendant be added as a party to proceedings only if the Court has an independent source of jurisdiction to hear and determine the claim against the additional defendant: that is to say, if the Court would have had jurisdiction to hear and determine the claim if it had been brought against that defendant alone. On this approach, the focus on service of the claim form rather distracts from the core question. That said, the Court would be unlikely to give permission to add a party under CPR r.56 unless the proceedings could be served on him in accordance with the rules, and therefore, in a case where service of the claim form has to be made in accordance with CPR r.24, it is readily understandable that CPR 24(2) might be said to confer jurisdiction in as much as it enables the Court properly to exercise its power under CPR r.56.

38. In some circumstances, therefore, the Court might well have to decide whether a case falls within CPR 24(2). However, in this case, as I understand it (although it is not in evidence on the present application), Dr Shetty is in the UAE, and if this is so, CPR 15(2) and 15(6) (in Part 4 of the CPR) come into play. CPR 15(2) provides: "*The registry will serve the claim form on the defendant by any method permitted under Part 4 of these Rules, unless: (a) a defendant is to be served outside the United Arab Emirates, in which*

case the claim form must be served on the defendant by the claimant; or (b) otherwise directed by the Court". CPR 15(6) provides as follows: *"Where a claim form is to be served outside the jurisdiction but within the United Arab Emirates, it may be served by a method of service prescribed under this Part or the rules regarding service of the place in which it is to be served".*

39. Before returning to how CPR r.56 relates to the service rules of the CPR, I shall first consider the arguments about Article 24(2) as advanced on behalf of the parties at the hearing.

The Parties' Arguments

40. ADCB's contention that CPR r.24(2) provides for the Court to have jurisdiction in a case such as this finds some support in my judgment in the *Union Properties* case (cit sup). In that case, having held that the Court had jurisdiction over the claim against Mr Khouri under Article 13.7(a) (see para 24 above), I continued that CPR 24(2) "*provides an alternative basis for the Court's jurisdiction over the claims against Mr Khouri*" (loc cit at para 61). However, in that case it was not argued that CPR 24(2) might not be a source of jurisdiction, whereas here I have received full submissions on the point. Ms den Besten argued (politely, but clearly) that my (obiter) observation was wrong.

41. First, Ms den Besten observed that CPR r.24(2) is permissive: it provides for how a claim form "*may*" be served. She referred to similarly worded rules, such as CPR r.15(3), which provides that "*a claim form may be served*" in various specified ways, such as "*by personal service* ..." or "*by courier or other service which provides for delivery on the same or next business day*". These other rules cannot be interpreted as extending the jurisdiction of the Court. To do so would be to create a jurisdiction based upon service, and the scheme in the Founding Law would be fundamentally undermined by the CPR.

42. Accordingly, Dr Shetty contended that there is no proper basis interpreting CPR rule 24(2) as creating jurisdiction, given that other similarly worded rules do not do so. Certainly, CPR r.24(2) contains no express wording that it creates a jurisdiction that the Court would not otherwise have. Ms den Besten drew a contrast in this respect between CPR rule 24(2) and other ADGM regulatory provisions which make clear that they are intended to establish jurisdiction: she referred to section 56 of the Arbitration Regulations 2015, whereby the Court may recognise and enforce arbitration awards (see *A4 v B4* [2019] ADGM CFI 0007); to section 41 of the Courts Regulations, whereby the Court may grant injunctions (see *Abu Dhabi Commercial Bank v Bavaguthu Raghuram Shetty & Others* [2021] 0004); and to section 97(5) of the Insolvency Regulations, whereby the Court may give administrators directions in connection with their functions (see *In re NMC Healthcare Ltd and Associated Companies* [2021] ADGMCFI 0006).

43. In support of Dr Shetty's case that a procedural rule such as CPR 24(2) cannot properly be read expansively to create jurisdiction in the absence of clear and express language, Ms den Besten cited the *Al Ayar* case (cit sup), in which Justice Stone described Article 13.7(d) as relating to "*an ADGM enactment specifically conferring jurisdiction on the Court*" (at para 21c). In my judgment, that citation does not assist Dr Shetty: Justice Stone did not say, and did not, I think, mean, that an enactment has to use express words to create jurisdiction. She also cited a decision of the DIFC Court of Appeal in *Sandra Holdings v Al Saleh [2023]* DIFC CA 003, where, having endorsed the decision in the *Nest Investment* case (cit sup), it said "*The [Rules of the DIFC] cannot add nor extend the DIFC Courts' jurisdictional powers without clear expressive words to confer such powers. The ruling in Nest Investment should not be taken as an indicator that the Court had conclusively determined that all rules in the [Rules of the DIFC] confer jurisdiction on the DIFC Courts. Instead, one needs to make an assessment on a case-by-case basis to determine their true effects and ascertain if the relevant rule in fact confers jurisdiction*" (at para 58). I cannot accept that the Court meant that jurisdiction can be founded only by a provision that expressly refers to it: that would, as I shall explain, be inconsistent with the decision in the *Nest Investment*

case (where it was held that the Court had jurisdiction although the relevant rule did not expressly so provide). I am not persuaded by Ms den Besten's argument that express wording is required. When interpreting statutory provisions, the task of the Court is to ascertain the intended meaning of the legislature, whether it be express or implicit: there is no reason to adopt a different approach when interpreting the CPR. As Lords Hamblen and Leggatt said in *Enka Insaat Ve Sanayi AS v OOO Insurance Co Chubb* [2020] UKSC 38, "*The distinction [between 'express' and 'implied'] is not a sharp one: language may be more or less explicit and the extent to which a contractual term is spelt out in so many words or requires a process of inference to identify it is a matter of degree"* (at para 35). They were speaking of contractual wording, but the same is true of statutory wording.

44. CPR r.24(2), like other rules, must be interpreted having regard to its apparent purpose and having regard to its context. On Dr Shetty's interpretation of it, it would have little or no purpose. CPR r.24(1) provides that:

> "*A claim form may, in accordance with this Part, be served on a person out of the jurisdiction where each claim made against the person to be served and included in the claim form is a claim which the Court has power to determine under –*
>
> *(a) the Regulations;*
>
> *b) any ADGM enactment other than the Regulations; or*
>
> *(c) the ADGM Founding Law,*
>
> *notwithstanding that the person against whom the claim is made is not resident or domiciled within the jurisdiction or the facts giving rise to the claim did not occur within the jurisdiction*".

45. This provision (with immaterial differences) was included in the CPR before the 2022 Amendment. If CPR r.24(2) is only about service of claim forms, the new CPR 24(2) would simply duplicate CPR r.24(1) in those cases where it applied, and this part of the 2022 Amendment would have been futile. Moreover, there would be no point in CPR r.24(2) singling out cases where the two conditions stated in it are satisfied: that is, cases where there is a real issue to be tried between the claimant and the defendant, and where the person to be served is a necessary or proper party.

46. CPR r.24(2) was not the only change to CPR r.24 that was made by the 2022 Amendment. It is one of a number of new provisions that were intended, in my judgment, to enable the Court to do what Mr Pillai aptly called "*complete justice*" in cases properly brought in the ADGM. Thus:

    a. The 2022 Amendment introduced CPR r.24(4), which applies when a claim covered by CPR r.24(1) has been brought. It allows the claimant to bring, and the Court to entertain, an associated claim against the same defendant notwithstanding that there would be no jurisdiction to hear and determine the further claim alone. It provides "*A claim form may be served on a defendant in reliance on paragraph (1) where a further claim is made against the same defendant which arises out of the same or closely connected facts*".

    b. The 2022 Amendment also introduced CPR r.24(3), which is about when a counterclaim is brought under CPR r.50 or an additional claim is brought under CPR r.51, and where "*the person to be served is a necessary or proper party to the counterclaim or additional claim".* CPR r.50 allows a defendant to make a counterclaim against the claimant or to apply to the Court for an order that a

person other than the claimant be added as an additional party. CPR r.51 allows a defendant, when he serves his defence or later with the Court's permission, to make an "*additional claim*" against a third party.

The Nest Investment case

47. I have been much assisted by Ms Hurst's submissions about the DIFC Court of Appeal case of *Nest Investment* (cit sup). In it, the Claimants had applied under rule 20.7 of the Rules of the DIFC Court (the "**RDC**") to join a Mr El Fadi as a defendant in their proceedings. Rule 20 is headed "*Substitution and Addition of Parties*" and rule 20.7 is as follows:

> "[*T]he Court may order a person to be added as a new party if:*
>
> *(1) it is desirable to add the new party so that the Court can resolve all the matters in dispute in the proceedings; or*
>
> *(2) there is an issue involving the new party and an existing party which is connected to the matters in dispute in the proceedings, and it is desirable to add the new party so that the Court can resolve that issue*".

48. In broad terms, RDC 20.7 might be seen as a combination of CPR r.56 and CPR r.24(2).

49. The first question that the Court of Appeal had to decide was whether the RDC are "*DIFC Regulations*" within the meaning of Article 5(A)(1)(e) of the JAL, which provides that "*the Court of First Instance shall have exclusive jurisdiction to hear and determine: ...(e) Any claim or action over which the Court have jurisdiction in according with DIFC Law and DIFC regulations*". The Court of Appeal found that RDC r.20.7 is such a DIFC regulation. This part of decision is not relevant for present purposes because in this case it is the common ground that the CPR are "*Global Market Regulations*" within the meaning of Article 13.7(d) of the Founding Law. More importantly for present purposes, the DIFC Court of Appeal also found that, if its criteria are met, RDC 20.7 confers jurisdiction on the Court in respect of a claim against a party even if there would otherwise be no jurisdiction over the claim.

50. The main judgment was given by Justice Sir Jeremy Cooke, and Chief Justice Tun Zaki Azmi and HE Justice Shamlan Al Sawalehi concurred. Much of the reasoning of the DIFC Court is applicable here, and I respectfully agree with it. I shall therefore set out the reasons of Sir Jeremy Cooke at some length, but I should also refer to two additional observations of the Chief Justice: first, he observed that rule 20.7 could not be invoked as of right, but depended on the Court permitting the addition of a party, having been satisfied that it is "*desirable*" to do so (at para 12). Similarly, under the CPR r.56, a party may be added only with the Court's permission. This, together with the rules about service, mitigates the risk of what might be called jurisdictional overreach.

51. Further, the Chief Justice said this (at para 13): "*As many would agree, the common law courts have been since time immemorial been [sic] very protective and jealous of their jurisdiction. The courts are not ready to give up their jurisdiction unless they are legally obligated to do so. In the case of the DIFC Courts, if one goes back into the recent history and background as to why the DIFC was in the first place set up by His Highness the Ruler, it was to attract business and to improve the economy of Dubai by introducing English common law into the DIFC. The DIFC Courts must be ready to support this policy*". Similar considerations apply to the ADGM and this Court: Article 3 of the Founding Law provides that, "*The objectives of the Global Market are to promote the Emirate as a global financial center, to develop*

the economy of the Emirate and make it an attractive environment for financial investments and an effective contributor to the international financial services industry".

52. I come therefore to the reasoning of Sir Jeremy Cooke that led him to conclude that RDC 20.7 confers jurisdiction where its requirements are satisfied. He introduced the question as follows (at para 44 of his judgment): "*The ... question ... whether RDC 20.7 is apt, on its proper construction, in context, to confer jurisdiction upon the court. ... What is needed to establish that the Rule is intended to confer jurisdictional power as opposed to limited procedural power? It is agreed that there need be no express conferral of jurisdiction by the use of that word, as it appears on Article 5 of the JAL*". He went on to accept (in para 47) that "*The Rule does not expressly confer jurisdiction, by using that term, but it clearly sets out a criterion for the joinder of a party, in the same way as RDC 21 does in respect of joinder of additional parties to counterclaims or for the purposes of seeking indemnity or contribution*". So too, it might be said, does the combination of CPR r.24(2) and r.56.

53. I shall set out paragraph 48 of the judgment in full:

> *"48. The critical point, in the judgment of this Court, in interpreting RDC 20.7, is that, if RDC 20 does not confer jurisdiction, their contribution to the administration of justice is very limited indeed, providing only that a claimant who had begun an action against one defendant alone could later apply to join in that action a person that he could, as of right, have included when issuing the claim form, had he thought of it; or, put another way, the Rule would enable him to apply to have two defendants in one action instead of having to pursue them in separate actions, where there was a sufficiently common link between the two.*
>
> *48.1 If a claim against an additional Defendant falls within one of the Article 5 (A)(1)(a) –(c) gateways, there is no need for RDC 20.7 at all. A party can proceed against both defendants at the outset on the basis of those gateways without reliance on the Rule. The Rule can only be effective in giving the Court any real power where those gateways do not apply.*
>
> *48.2 To say that the Rule gives a procedural power to join two parties in the same action where there are other gateways which apply to each, gives the rule no real force at all. It adds nothing to the ability to join two defendants in the same action at the outset, as of right, whereas the whole purpose of the Rule is to give the Court a discretion to add a party where it is desirable to do so on the basis of the criteria set out there, without having to cross the same jurisdictional barriers for an ordinary claim.*
>
> *48.3 The Court can weigh up issues of forum conveniens, and other matters which militate for or against joinder and make a decision which facilitates justice being done in the most appropriate manner where there are some common issues between the new party and one or more of the existing parties.*
>
> *48.4 The Court also has the power to order that a person cease to be a party if it is not desirable for that person to be a party, so that it is open to the newraise objection [sic] and be heard on the discretionary exercise of the Court's power under RDC 20.8.*
>
> *48.5 The effect of Mr El Fadl's interpretation is to emasculate the Rule of most of its force and, in the view of the Court, to ignore its obvious intention".*

As I see it, all these points apply in this case.

54. At paragraph 53 of his judgment, Sir Jeremy Cooke turned to questions of policy and the purpose of RDC r.20.7. He referred to the obvious merit in the Court having *"something in the nature of a 'necessary or proper party' rule so that matters in dispute can be decided between all the relevant parties, without the risk of inconsistent decisions by different courts at different times with all the inherent additional cost and inconvenience involved".* It would, he said, be contrary to the overriding objective of the RDC, expressed in rule 106 thereof, to give rule 20.7 an interpretation that does not allow this. At paragraph 55, he provided illustrations of the unsatisfactory consequences that might otherwise result, and it suffices to cite just two of them: *"In a fraud claim, where a fraud has been carried out overseas by a DIFC Establishment but where the proceeds are in the hands of a special purpose vehicle defendant in a tax haven where a gateway is inapplicable, that defendant could not be added to a claim against the DIFC establishment and separate proceedings would be required in the tax haven itself";* and *"if a claim is brought against a DIFC Establishment for vicariously liability where the employee in question is outside the DIFC and carried out the acts complained of outside the DIFC, that employee could not be joined as a party ...".* The examples might easily be multiplied.

Conclusion about cases covered by CPR r.56

55. In the ADGM, CPR r.24(2) and r.56 must, like other rules, be interpreted so as to advance the overriding objective: that is to say, the Court "*must interpret and apply [them] with a view to securing that the Court is accessible, fair and efficient*": CPR r.2(3). If ADCB's submission is correct at least where there is an application to add an additional party, it seems to me that it, like the other changes to CPR r.24 introduced by the 2022 Amendment CPR r.24(2), ensures that the Court is able to do "*complete justice*" between all the parties to, or involved in, a dispute that is before the Court, the claimant having brought a claim that is within the Court's jurisdiction under the Founding Law; and so it, like the other changes, enables the Court to deal with cases the more fairly and the more efficiently. On the other hand, Dr Shetty's interpretation leaves the Court without the procedures that it requires in order to do so. For the reasons explained by Sir Jeremy Cooke, in my judgment Dr Shetty's contention is inconsistent with the purpose and policy of the CPR and the 2022 Amendment.

56. What, then, is the explanation for CPR r.24(2) being couched in terms of service of the claim form? The language of CPR r.24(2) derives from the English law discretionary power, now found in the Civil Procedure Rules Practice Direction 6B at para 3, that allows service of proceedings outside England and Wales where "*A claim is made against a person ('the defendant') on whom the clam form has been or will be served (otherwise than in reliance on this paragraph) and – (a) there is between the claimant and the defendant a real issue which it is reasonable for the court to try; and (b) the claimant wishes to serve the claim on another person who is a necessary and proper party to that claim*". The term "*necessary or proper party*" is long-established in England: it can be traced back to 1873. Under the English regime, the purpose and effect of the power is that jurisdiction is established by the service of the claim form on the "*necessary or proper party*" outside the jurisdiction. Mr Pillai submits that the intention of CPR r.24(2) is similar, and that it is to "*permit the Court to assert jurisdiction over a third party, provided the claimant can satisfy the Court that the terms of the rule are met".*

57. As I have said, ADCB's argument goes further than is necessary to determine the issue in this case: here the question is whether the Court is entitled to assert jurisdiction over a defendant when he is added as an additional defendant under CPR r.56. In a case such as this, it seems to me that jurisdiction in the strict sense is provided by CPR r.56: the Court is empowered by the rule to permit the addition of a party, and nothing in it indicates that the power may only be exercised where there is some other independent jurisdiction over the claim against the additional party. CPR r.24 allows effect to be given to the exercise of the power, and the claim against the additional party to be pursued by effective service of the claim

form even if the additional defendant is not within the ADGM or elsewhere in the UAE: in such cases, if there is another source of jurisdiction for the claim, there may be service under CPR r.24(1); if there is not, then after the 2022 Amendment it may be served under CPR r.24(2) if the conditions are met. (In reality, therefore, there can likely be service under CPR r.24(1) where there is jurisdiction over the original defendant under article 13.7 of the Founding Law, because then there will likely be jurisdiction against the additional defendant on the same basis; and there can be service under CPR r.24(2) where, as here, there is jurisdiction over the original defendant under Article 13.8 of the Founding Law or only because jurisdiction was not challenged by the original defendant.)

58. It might be said that, if it has no jurisdiction under CPR r.24(2) over a defendant joined at the outset on the "*necessary or proper party*" basis, then it would be anomalous for the Court to have jurisdiction to add him as a defendant under CPR r.56. While this point has a superficial attraction, I would not be persuaded by it even if I was wrong in the *Union Properties* case. It would be one thing for the CPR to allow a claimant to choose to launch proceedings from the outset that include a claim against a defendant when there is no claim against him that the Court has jurisdiction to determine; it is another thing for them to provide that, once proceedings have been launched by a claimant who might reasonably not anticipate that it would turn out to be necessary, and desirable in the interests of the fair and efficient disposal of the dispute, to provide for all the relevant parties to be before the Court.

59. For completeness, some reference was made at the hearing to the English case of *John Russell and Co Ltd v Cayzer, Irvine and Co Ltd* [1916] 2 AC 298 and the principle drawn from it *ID v LU* [2021] EWHC 1851 (Comm). These were decisions about the proper interpretation of English rules of procedure in the context of the very different English jurisdictional regime. It suffices to say that, as she explained in her oral submissions, Ms den Besten relied on these cases only to illustrate the need for caution before bringing a defendant before the Court on the basis of another person's voluntary submission to the jurisdiction. The discretionary nature of the power under CPR r.56 adequately accommodates that concern.

ADCB's wider submission about CPR 24(2)

60. I need not, and do not, decide whether, as ADCB argued, when a claim is brought against one defendant under other jurisdictional provisions, CPR r.24(2) allows the Court to assume jurisdiction over a claim against a second defendant that is not so covered, but I shall comment on the question briefly.

61. Ms den Besten submitted that ADCB's argument would lead to the odd result that the CPR would provide for proceedings against a "*necessary or proper party*" who is outside the jurisdiction without a corresponding provision in respect of a "*necessary or proper party*" in the ADGM. I see the force of this point, but it does not have traction in respect of defendants joined as additional defendants under CPR r.56, and so I need not engage with it. However, I observe *en passant* that this might not have concerned the draftsman of the 2022 Amendment because at that time the ADGM comprised only Al Maryah Island: there were scarcely any natural persons resident in the ADGM and any claim about corporate bodies within the ADGM would likely be covered by Article 13.7 of the Founding Law. However that might be, the drafting of the CPR might need further consideration now that the ADGM has been extended to Al Reem Island.

The requirements of CPR 24(2)

62. It remains to consider whether the application to join Dr Shetty satisfies the criteria stipulated in CPR r.24(2). Undeniably, there is between ADCB and Mr Manghat a real issue which it is reasonable for the Court to try. Dr Shetty argued, however, that he would not be a necessary or proper party to the claim

against Mr Manghat. ADCB does not suggest that he is a necessary party: the proceedings have been brought, and to date pursued, without Dr Shetty as a party, and they are not defective on that account. However, in my judgment he is a proper party: ADCB pleads that he participated in the fraud, and Mr Manghat pleads that he was responsible for it. The case falls well within the widely accepted test of who is a proper party enunciated by Lindley LJ in *Massey v Heynes & Co* (1882) 21 QBD 330, 338 (referring to Order XI rule 1(g), which then provided for the "*necessary or proper party*" basis of jurisdiction): "*Where the liability of several persons depends upon one investigation, I think they are all 'proper parties' to the same action, and, if one of them is a foreigner residing out of the jurisdiction, rule 1(g) of Order XI applies*".

63. Finally, Dr Shetty relied upon CPR r.28(3), which provides that "*Where the claim form is to be served out of the jurisdiction, the claim form must be served in accordance with Rule 24 within 6 months of the date after the date of issue of the claim form*"; and he submitted that the six months expired on 10 November 2022. He argued that, while the Court has power to extend the time for service, no application for an extension of time is before the Court, and in any case, under CPR r.28(6), an application for an extension must be made before the time for service has expired unless "*the claimant has taken all reasonable steps to comply with [the time limit] ... but has been unable to do so and acted promptly in making the application*", which requirements, it was said, are not satisfied I this case. I reject that argument: if the Court were minded to exercise its discretion to grant the application, it would of course give appropriate directions to give effect to it.

SHOULD THE COURT EXERCISE ITS DISCRETION TO PERMIT DR SHETTY TO BE ADDED TO A DEFENDANT?

Introduction

64. I therefore conclude that the Court would have jurisdiction over the claim that ADCB seeks to bring against Dr Shetty, and must now consider whether I should exercise my discretion to permit it to do so. ADCB has a properly arguable claim against Dr Shetty, and there are persuasive arguments that it should be permitted to pursue it in the same proceedings as those against Mr Manghat: that this would be fair and efficient and so advance the overriding objective of the CPR, not least because it would obviate the risk that, if proceedings against Mr Manghat and Dr Shetty are pursued in different proceedings, there might be inconsistent decisions.

65. Further, on the face of it, there are strong arguments for ADCB's claim against Dr Shetty being tried with the JA claim against him. As Mr Pillai observed, ADCB's claim in relation to the fraud is largely pleaded on the basis of the JAs' allegations in their claim, and Dr Shetty has already pleaded his defence to them, and cross-claimed against Mr Manghat on the basis that he, and not Dr Shetty, is responsible for the fraud. I readily accept that his defence to a claim by ADCB would surely be similar. The documents accompanying the statements of case in the JA claim have been provided to ADCB, and further documents are due to be disclosed in October 2024. It is likely (although not certain) that Dr Shetty and Mr Manghat will both give evidence at the trial in 2026.

66. Against this background, Ms den Besten advanced five arguments against the Joinder Application:

    a. That the correct forum to determine ADCB's claim against Dr Shetty is the Courts of the ADJD.

    b. That "*the timing of the Application is abusive*".

    c. That there is no positive case for joinder.

d. That joinder will inevitably derail the determination of both the present proceedings and the JA claim.

e. That there are likely to be added case management complexities arising out of Dr Shetty's bankruptcy.

The correct forum

67. Ms den Besten's argument that the Courts of the ADJD are the correct forum to determine ADCB's claim against Dr Shetty is based on the judgment of HHJ Pelling QC staying its proceedings against him and others in the English High Court: [2022] EWHC 529 (Comm). She submits that the judgment creates an issue estoppel between ADCB and Dr Shetty "*as to the correct forum*". In his judgment, HHJ Pelling had, inter alia, to "*identify the forum in which the case can be suitably tried for the interests of all the parties and for the ends of justice...":* loc cit at para 14. At paragraph 161 of his judgment, he explained how the argument developed before him: "*Here the possible fora are two in number being either England or Abu Dhabi. There was a dispute at one stage as to whether the most appropriate court was the ADGM CFI or the onshore courts of Abu Dhabi. However, the only defendant contending for that had been [Mr Manghat] and by the end of the hearing that contention had been withdrawn. It follows that all the challenging defendants contend the plainly more appropriate forum to be the onshore courts of Abu Dhabi*". His conclusion is stated at paragraph 183: "*In summary, I am satisfied that (a) there is another forum which is clearly and distinctly more appropriate than the English forum namely Abu Dhabi and (b) that there are no circumstances by reason of which justice requires this claim to be tried here rather than Abu Dhabi*". I accept that, when he refers to "*Abu Dhabi*" in his conclusion, HHJ Pelling was referring to the ADJD.

68. However, I cannot accept that the judgment gives rise to an issue estoppel between ADCB and Dr Shetty as to the correct or appropriate forum. I do not accept that HHJ Pelling decided that the ADJD was a more appropriate forum than the ADGM: that was not an issue before him. Certainly, it was not necessary for his decision. I would add that, in my judgment, it would work injustice, and not justice, to hold that ADCB is estopped from disputing that ADJD is the correct forum for its claim against Dr Shetty. The requirements for an issue estoppel are not satisfied: see *Good Challenger Navigante SA v Metalexportimport SA* [2003] EWCA 1668 at para 38.

69. To my mind, the highest that this point can be put is that:

a. On the application to stay the English proceedings, no party persisted in arguing that the ADGM is the correct forum to try ADCB's claim against Dr Shetty; and

b. ADCB knew when it brought these proceedings against Mr Manghat that he, and only he, had given an undertaking not to challenge the jurisdiction of this Court, but it decided, nevertheless, to proceed against him here rather than in the ADJD Courts, to which Dr Shetty, Mr Manghat and the other defendants who had challenged the English court's jurisdiction had submitted.

No positive case for joinder

70. Ms den Besten made two points under this heading. First, she said that ADCB "*will suffer no prejudice if Dr Shetty is not joined as a defendant to [its] claims in ADGM, given its interests are already adequately protected as a creditor in the estate of NMC",* meaning, I assume, of the various companies in the NMC Group. I do not accept that argument: ADCB is a substantial creditor in the insolvent estates, but it has its own independent claim against Dr Shetty *(Marex Financial Ltd v Sevilleja* [2020] UKSC 31), and it is potentially more valuable than its interest in the insolvent estates.

71. Secondly, Ms den Besten responded to evidence of Mr Honey that "*ADCB has a strong interest in pursuing key participants in the major fraud at the NMC Group as it is a leading bank in the region and it was the most significant victim in commercial terms in that it was the largest creditor. It is important to ADCB that it pursues the perpetrators of fraud and is seen to take appropriate and proportionate action".* I am not impressed by Mr Honey's point. ADCB did not pursue claims against Dr Shetty for some two years after the English proceedings against him were stayed either in the ADGM nor in the ADJD Courts nor elsewhere; nor, as far as the evidence goes, has it done so against the other defendants against whom the English proceedings were stayed, apart from Mr Manghat. Moreover, I see no reason that ADCB could not now proceed against Dr Shetty in the ADJD Courts.

Dr Shetty's bankruptcy proceedings

72. Mr Longworth has given the following evidence: "... *Dr Shetty has been carefully considering his position in the light of the claims being pursued against him and other financial liabilities. On 31 May 2024, Dr Shetty filed a formal application for bankruptcy with the Bankruptcy Department of the U.A.E. At the time of preparing this witness statement [14 June 2024], my understanding is that the application has not yet been formally admitted by the Bankruptcy Department. I will update the Court further in relation to any further significant developments. However, Dr Shetty's financial position is likely to be further adversely affected if he is joined to the ADCB Claim for the reasons explained above, and the commercial value of (at least) ADCB's claims is, in the circumstances, doubtful*". No more recent information has been put before the Court.

73. I am grateful to Mr Longworth for appraising the Court of this development, but in my judgment the information about Dr Shetty's financial position is too vague and its implications too speculative to give it weight in deciding whether to permit Dr Shetty's joinder.

The timing of the application and the likely impact of Dr Shetty's joinder on the proceedings and the JA claim

74. The crucial question for the exercise of my discretion is how the joinder of Dr Shetty will impact on the proceedings, and in particular on Dr Shetty's preparations for the trial of the JA claim, together with the timing of the Joinder Application. The starting point is that the trial is fixed to start in March 2026: ADCB did not suggest that the trial date should be deferred in order to accommodate the joinder of Dr Shetty, but argued that the timetable to the conjoined trial could accommodate it. The trial date was determined after careful consideration of the views of all parties, and they and the Court have been working towards it for some time. It would, in my judgment, be unfair and wrong to alter it. (If I were to contemplate doing so, I would, of course, have had first to invite the observations of the JAs, who pressed for a trial in 2025, and of Baroda.)

75. As I have said, ADCB made its application on 3 May 2024, having given its first indication of its intention to do so by a letter dated 25 April 2024, more than two years after the English proceedings against Dr Shetty were stayed. It gave no indication that it might do so at case management conferences on 9 March 2023 and 31 August 2023. Nor, more significantly, did it do so on 13 and 14 November 2023 and 13 and 14 December 2023, when I was engaged with difficult and hotly disputed questions about how to manage this case and the JA claim at the hearings that led to my judgments of 29 December 2023 ([2023] ADGM CFI 0024 and [2023] ADGM CFI 0025): indeed, on 13 November 2023, ADCB specifically said that it sought no findings against Dr Shetty. The possibility that ADCB might seek to make Dr Shetty a defendant to these proceedings was not even mentioned at a case management conference ("**CMC**") in both proceedings on 9 March 2024, when I had to estimate the likely length of the concurrent trial and fixed the trial to start on 23 March 2026. Mr Pillai argued that there has been a substantial change in the

"*procedural landscape*" as a result of the direction for a conjoined trial of the two proceedings, which was ordered in February 2024, but at the latest ADCB must have been aware that this might be ordered from 14 September 2023, when Mr Manghat made his application for such case management. The delay of over seven months before ADCB indicated that it might seek to add Dr Shetty as a defendant in these circumstances has simply not been explained satisfactorily.

76. Against this background, I have considered whether it is fair for Dr Shetty to have to prepare for a trial of claims against him both in these proceedings and in the JA claim starting in March 2026. The evidence of Mr Longworth is this: "*If joined as a Defendant, Dr Shetty would be required to comply with a new …set of directions in relation to the ADCB Claim alongside the significant burden already placed on him by the timetable in the JA Claim. From my professional experience in this case and others, I am in no doubt that in these circumstances Dr Shetty would be unable to meeting the existing procedural timetable in the JA claim to trial in March 2026".* Mr Honey, in response, considered Mr Longworth's conclusions to be "*unrealistic"*, but his views must be given proper weight. When I set the trial date, I recognised that the timetable to achieve it would be demanding, and since then there has (for understandable reasons and despite the efforts of the parties and their representatives) been some troubling slippage in it. Mr Longworth's evidence on this application is entirely consistent with Dr Shetty's submissions at the CMC in February 2024: as it was put in his skeleton argument, he could not "*say with any certainty that these proceedings will be ready for trial in March 2026*", although in a spirit of cooperation he engaged with working out a timetable to allow that listing; and he warned that it might later prove necessary to revisit the listing. It is not surprising, against this history, that, in Mr Longworth's view, Dr Shetty cannot be expected to be ready to defend both claims by March 2026.

77. Mr Pillai observed that Mr Manghat and other parties have not expressed the view that the joinder of Dr Shetty will disrupt the procedural timetable unduly or jeopardise the trial date. This is unremarkable: ADCB is concerned with only one action, and Mr Manghat had been engaged with the ADCB claim for over two years and was preparing for a trial of ADCB's claim in August 2024.

78. Dr Shetty is not only dealing with litigation in this jurisdiction: I have referred to his bankruptcy application, and he has brought criminal complaints against Mr Manghat in India, and brought proceedings against Mr Manghat, Baroda and others in New York. (As I have said, ADCB's claim against him in England is stayed and so too, I understand, are English proceedings brought against him, Mr Manghat and Baroda by the JAs of NMC PLC.) However, leaving aside these considerations and Ms Longworth's evidence that Dr Shetty has "*finite financial means"*, I accept that the additional burden on him if he were joined as a defendant in these proceedings would be very considerable.

79. Mr Pillai advanced arguments that the additional burden should not be overstated:

    a. The allegations made by ADCB about Dr Shetty's knowledge of and involvement with the fraud are not new to him. They are those made in the JA claim, to which he has already pleaded his defence.

    b. Dr Shetty and his legal representatives were engaged with ADCB's claims against him in the English proceedings, and are familiar with the substance of them.

    c. The relevant UAE law was explored both in the course of the stay application in the English Court and in relation to the JA claim.

    d. Dr Shetty will be giving disclosure in the JA claim. This would much reduce the task of giving disclosure in these proceedings.

80. There is force in all these points. This is not a case that should be assessed on the basis that the issues that Dr Shetty would face in these proceedings are new to him, and, for the most part, they are issues with which he will in any case have to engage at the trial in 2026 and the preparations for it.

81. The time between early August 2024 and March 2026 would usually be ample time to prepare for even a substantial trial. However, both the JA claim and the ADCB claim are unusually substantial and complex proceedings, and the allegations that Dr Shetty faces in the JA claim, and would face in the ADCB claim if joined, are many and detailed. The pleadings in the JA claim include cross-claims between defendants, and I anticipate that cross-claims might well be made in the ADCB claim if Dr Shetty is a defendant. Numerous issues about disclosure have already emerged in the JA claim, and while the parties have cooperated to reduce them, unsurprisingly the Court has had to resolve some of them. It is unrealistic not to expect that the parties will continue to be heavily engaged with standard disclosure and then further and specific disclosure beyond the end of this year.

82. The difference between the parties about the feasibility of accommodating the joinder of Dr Shetty can be illustrated by reference to their submissions about how matters might progress to the end of May 2025, the present directions being that witness statements for the conjoined trial are to be exchanged on 30 May 2025. Mr Longworth's view is that it is unlikely that pleadings will close before the end of 2024, and that he therefore does not anticipate that Dr Shetty will be able to give disclosure before witness statements are due. Mr Pillai submitted that pleadings could be closed before the end of September 2024, and that the parties can in the meanwhile "*be proactive about agreeing a list of issues for disclosure in the ADCB claim",* with a *"preliminary"* list being agreed by 16 August 2024 and a hearing in September 2024 to resolve any outstanding differences.

83. Without descending to the minutiae of a hypothetical timetable, the picture given by Mr Longworth seeks to me to be distinctly more realistic. Mr Pillai's proposals supposed that by 6 August 2024 Dr Shetty might serve his defence, and he and Mr Manghat might serve any cross-claims. This assumed that, despite the jurisdictional issues raised, the Court would not reserve its judgment on the joinder application. More significantly, it ignored that Dr Shetty and his representatives are engaged over this period and beyond not only with disclosure in the JA claim but with the amendment of pleadings, the implications of my judgment on preliminary issues ([2024] ADGM CFI 0007), and the issues for expert evidence. If they were to be distracted from these matters to deal with pleading in response to ADCB's claim, further slippage in the timetable of the JA claim for disclosure and other matters would be all but inevitable. Again, while undoubtedly disclosure in these proceedings would be less demanding after disclosure in the JA claim, Mr Pillai's timetable seems to me to underestimate the time required.

Additional Costs

84. Mr Longworth's evidence raised another objection to the Joinder Application: that it would result in additional costs not only for Dr Shetty but also the other parties to both these proceedings and (as a result of disruption to the timetable and a longer trial) the parties to the JA claim. He estimated that Dr Shetty's additional costs would "*comfortably exceed £10 million".*

85. I accept Mr Longworth's evidence. I would have refused the application in any event, but it identifies a supplementary reason for doing so.

Conclusion on the Exercise of Discretion

86. The problems in accommodating the joinder of Dr Shetty in the ADCB claim within the timetable to the March 2026 trial are a result of ADCB allowing the trial date and the procedural timetable to be directed

without indicating that it would, or might, seek to join Dr Shetty as a defendant. While that is the context in which I decide the Joiner Application it is not in itself a reason for refusing it.

87. I do not lightly refuse the Joinder Application: there is an obvious attraction in having these proceedings resolve not only issues between ADCB and Mr Manghat but also the complaints of both ADCB and Mr Manghat against Dr Shetty. Mr Pillai advocated "*robust*" case management, but case management cannot ignore the practical limits of what is fair and what is achievable. In the end I have concluded (i) that it would be unfair to Dr Shetty to require him to add the demands of these proceedings to the already demanding programme to prepare for the trial in March 2026, and (ii) that to grant the Joinder Application would seriously jeopardise the trial date. I have therefore decided that it would not be just, and would not advance the overall objective, to grant the Joinder Application.

CONCLUSION

88. I therefore conclude that I have jurisdiction to grant the Joinder Application, but in the exercise of my discretion, I refuse it.

89. I invite applications and submissions about costs and any other consequential matters by 13 August 2024. If any party requests an oral hearing of them, a brief explanation should be provided.

Issued by:

Linda Fitz-Alan
Registrar, ADGM Courts
30 July 2024