

Racha Alkhawaja v. TPL Investment Management Ltd & Anor

The Abu Dhabi Global Market Court in *Alkhawaja v TPL Investment Management Ltd (1) TPL Reit Management Company Ltd (2)* has handed down judgment in what was the highest value claim ever heard in the ADGM Employment Division.

The judgment is the first in the ADGM courts to consider a variety of company law issues, including a director's authority to enter into contracts on behalf of the company, warranty of authority, directors duties, issues concerning directors remuneration and *Re Duomatic* (at paragraphs [8] and [14]-[20]).

Lily Church appeared for the defendants, led by James Bickford Smith and James Green of Littleton Chambers.

The Claimant was the former CEO of an ADGM investment manager (D1), and a former director of its Pakistan Real Estate Investment Trust parent (D2). C brought a claim for sums claimed to be due under an 'Inventive Letter Agreement' which on the claimant's case entitled her to a perpetual share in respect of multi-million dollar real estate investment projects in Karachi (the "ILA Claim"). She also brought a related wrongful termination claim under the ADGM Employment Regulations.

The Defendants successfully defended the ILA Claim on points of company law. In summary, it was held that:

1. D1 was not bound by the ILA - D1's Articles required that the remuneration of a director must be determined by the directors. The Articles were based on the English Model Articles for private companies which provided for informal unanimous decision-making by the directors. In the circumstances, there was no meeting of the board of D1, nor was there sufficient evidence that each eligible director gave its informed consent. Consequently, the ILA was void.
2. D2 was not bound by the ILA - D2's Articles required that the remuneration of a director must be authorised at a general meeting of its shareholders. No such meeting was held. There was insufficient evidence that all shareholders gave their informed consent for the purpose of *Re Duomatic*. Consequently, the ILA was void.
3. Alternatively, the ILA was entered into by C in breach of her fiduciary duties as a director of D1 and D2. The terms of the ILA were onerous, granting C the right to receive sums from the Ds seemingly in perpetuity with no provision for termination if C resigned or her contract of employment otherwise terminated. Those terms were unlike any remuneration the other directors of D1 and D2 received. In the circumstances, C was under a positive duty to disclose to the ultimate owner of the TPL group and a director of D1 and D2 (who signed the ILA under a false apprehension) and make him understand the onerous terms of the ILA. Consequently, if the ILA was valid (which it was not), the judge would have concluded that it was voidable and avoided as in breach of C's fiduciary duty.

As for the Employment Claim, the judge found a wrongful termination, to be compensated according to the regulations in the agreed sum of \$150,027.

A copy of the judgment can be found [here](#).

Lily's profile can be found [here](#).