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
EMPLOYMENT DIVISION
BETWEEN

RACHA ALKHAWAJA
Claimant

and

TPL INVESTMENT MANAGEMENT LTD
First Defendant

and

TPL REIT MANAGEMENT COMPANY LIMITED
Second Defendant

JUDGMENT OF JUSTICE SIR MICHAEL BURTON GBE

Neutral Citation:	[2024] ADGMCFI 0009
Before:	Justice Sir Michael Burton GBE
Decision Date:	22 July 2024
Hearing Date:	20, 21, 22 May, 11 June and 27 June 2024
Decision:	1. Judgment be entered against the First Defendant in the sum of USD 150,027.39 (the "**Judgment Sum**"). 2. The Claimant's claim based on the Incentive Letter Agreement dated 14 October 2022 is dismissed. 3. The First Defendant shall pay the Claimant compensation pursuant to Article 3(2) of the ADGM Employment Regulations 2019 (Compensation Awards and Limits) Rules 2019 at the rate of 5% per annum on the Judgment Sum from 15 October 2023 to today in the amount of USD 5,775.03. 4. The First Defendant shall pay the Claimant interest on the Judgment Sum at the rate of 5% per annum from the date of this Order until payment. 5. By **4.00 pm on 12 August 2024**, the parties shall file submissions as to the costs of these proceedings. 6. By **4.00 pm on 2 September 2024**, the parties shall file any costs submissions in reply.
Date of Order:	22 July 2024
Catchwords:	Agreement conferring non-terminable rights. Validity of agreement under articles of association. Whether agreement authorised. *Duomatic* principle. Breach of fiduciary duty. Interpretation of 'bad leaver' provision.
Legislation Cited:	ADGM Employment Regulations 2019 (Compensation Awards and Limits) Rules 2019
Cases cited:	Guinness plc v Saunders [1990] 2 AC 663 Tayplan Ltd v Smith [2012] BCC 523 Ball v Hughes [2017] EWHC 3228 (Ch) Knight v Frost [1999] BCC 819 Fairford Water Ski Club Ltd v Cohoon [2021] BCC 498 Re HLC Environmental Projects Ltd [2014] BCC 337 L'Estrange v Graucob [1934] 2 KB 394 Biggin and Co Ltd v Permanite Ltd [1951] 1 KB 422 One Step (Support) Limited v Morris-Garner & Anor [2019] AC 649 Watson Laidlaw & Co Ltd v Pott Cassels & Williamson (A Firm) [1914] SC (HL) Yam Seng PTE Ltd v International Trade Corporation Ltd [2013] EWHC 111 (QB)

	Williams v Leeds United Football Club [2015] IRLR 383 Shah v Shah [2002] QB 35 Euro Securities & Finance Ltd v Barrett [2023] Ch 279 Godden v Merthyr Tydfil Housing Association (unreported, 15 January 1997)
Case Number:	ADGMCFI-2023-140
Parties and representation:	**Claimant** Mr. Iain Quirk KC, Essex Court Chambers Instructed by Quinn Emanuel Urquhart & Sullivan UK LLP **Defendants** Mr. James Bickford Smith, Littleton Chambers; Mr. James Green, Littleton Chambers; and Ms. Lily Church, Erskine Chambers Instructed by Al Tamimi & Company

JUDGMENT

Introduction

1. This has been the hearing of a Claim by the Claimant, Ms Alkhawaja, represented by Mr. Quirk KC, arising out of her employment by the First Defendant, TPL Investment Management Limited, an ADGM registered entity ("**TPL ADGM**"), as its Chief Executive Officer, pursuant to a contract of employment dated 16 May 2022. By the Employment Contract ("**EC**") the Claimant was entitled (*inter alia*) to: (i) a salary of AED 183,500 per month, (ii) an end of service gratuity (if applicable); and (iii) a business class flight to the UK. She resigned from that employment orally at a board meeting on 23 June 2023, with a termination date of 30 September 2023. She was also appointed as a director of TPL ADGM and of the Second Defendant, TPI Ret Management Company Ltd, ("**TPL Pakistan**"), of which TPL ADGM is a 100% subsidiary. Her claims are against both TPL ADGM and TPL Pakistan, represented by Mr. Bickford Smith of Counsel.

2. Prior to her joining TPL ADGM on 1 June 2022, she and Mr. Mohammed Al Jameel ("**Mr. Jameel**"), who was an ultimate owner of the TPL group of companies and a director of the Defendants, reached an agreement; she was a very experienced investment banker, wanting to move on from her then employment, and Mr. Jameel was keen to take her on, to establish a feeder fund in Abu Dhabi, attracting international investors to invest in TPL Pakistan. What they agreed was set out in an email dated 3 April 2021 (the "**April Email**"), signed by Mr. Jameel, which provided, so far as material, (in addition to an interim arrangement before the Claimant commenced employment with TPL ADGM, which had not yet been incorporated) under the heading "*Carried Interest*" that the Claimant would receive "*10% revenue share of the top line of [TPL Pakistan] revenues [and] 20% equity in ADGM fund management company [which was to be TPL ADGM]… These will be governed by the Carried Interest Distribution agreement that Morgan Lewis will draft, as part of their scope of work.*"

3. Morgan Lewis carried out a great deal of other work for the Defendants from March 2021. An invoice rendered to TPL Pakistan by Morgan Lewis dated 22 August 2022 contains reference to their work in reviewing the "*carry arrangement letter/equity incentive plan letter*", although many of such entries are marked "*out of scope*". It was the Claimant who gave Morgan Lewis their instructions to draft the carried

interest agreement on or around 8 June 2022, and they drafted it after consultation with her, but with no other contact with a director or in-house lawyer of the Defendants. A number of drafts were prepared by Morgan Lewis during the course of June 2022, which were sent to the Claimant, and the final draft was submitted by her to Mr. Jameel under cover of an email dated 29 June 2022, which stated "*[t]his is my incentive rights draft letter prepared by Morgan Lewis as we initially agreed, to formulate our understanding, simplified after a few revisions.*" Mr. Jameel did not sign the draft letter for some time, but eventually, after the Claimant had threatened to resign if he did not, he did so on behalf of both Defendants in early November 2022, but dated the document 14 October 2022. Mr. Jameel said in cross-examination: "*We had a telecom transaction which was… super critical. [The Claimant] had just sent a resignation...I didn't have anyone else... I was in a situation where I ...either accepted her terms or I let her walk away, and I was not in a position to let her walk away.*" "*My only question was, has Morgan Lewis reviewed [the draft letter] thoroughly and am I comfortable signing it, that was my only question... She said yes, and I signed it. It took two minutes.*"

4. It is described as "*Letter Agreement*" and has been called by the parties the Incentive Letter Agreement ("**ILA**"). It reads in material part as follows: "*This letter agreement… Is provided to document certain incentive arrangements agreed amongst [the Claimant and the Defendants]".* There followed the definition section, including:

> "*Bad Leaver" means with respect to [the Claimant], the termination of her Firm Engagement in circumstances involving ... [inter alia] her committing an act constituting fraud, gross negligence or wilful misconduct in the performance of her duties, as determined by a court of competent jurisdiction or other regulatory or governmental body*."
>
> *"Incentive Rights" means rights to (i)... 20%… of all revenues received by [TPL ADGM], including, but not limited to, management fees and performance fees, attributable to any investment vehicle managed or advised by [TPL ADGM] and any other compensation pursuant to other Revenue- Generating arrangements and earned during the term of this Letter Agreement and (ii) 10% of all revenues received by members of the TPL Funds other than [TPL ADGM] including, but not limited to, in payment of Management fees and Performance fees, attributable to any Investment Vehicle managed or advised by [TPL Pakistan] and any other compensation pursuant to other Revenue-Generating arrangements, and earned during the term of this Letter Agreement…*
>
> *"Management fee" means any management, advisory, distribution, management or administration fees or similar management fee or profit share paid by any Investment Vehicle to any member of the TPL Funds…*
>
> *"Performance fees "means the performance-based compensation including performance fees and carried interest payable…*
>
> *"Revenue-Generating Arrangements" means any contract, arrangement, invoice or other written instrument pursuant to which a member of the TPL Funds is entitled to the payment of fees (including Management Fees, Performance Fees or otherwise), commissions or other forms of consideration … and pursuant to which any member of the TPL Funds receives revenues that would form part of the Incentive Rights.*
>
> 1. *<u>Incentive Rights:</u> Throughout the term of this Letter Agreement as set forth in clause 4, [the Claimant] shall be entitled to receive funds representing the Incentive rights which shall be payable to [the Claimant] within ... 60 days following the end of the*

calendar quarter..... provided that in the event [the Claimant's] Firm Engagement is terminated or ceased due to her death or permanent disability, incentive rights shall continue to apply following such termination only with respect to revenues received by members of the TPL Funds in relation to Revenue-Generating arrangements that were existing prior to such termination (the "Pre-Existing Arrangements")...

…

4. *Term: Termination. This Letter Agreement shall be effective from the date hereof and shall continue to be in full force and effect for so long as any Revenue-Generating Arrangements are existing and members of the TPL Funds are entitled to receive revenues that would form part of the Incentive Rights in relation to such Revenue-Generating Arrangements, provided that:*

    a. *in the event that [the Claimant's] Firm Engagement is terminated or ceases in circumstances where [TPL Pakistan or TPL ADGM] determines that [the Claimant] is a Bad Leaver, this Letter Agreement shall terminate with immediate effect from the date of [the Claimant's] termination and [the Claimant] shall only be entitled for the payment of funds representing Incentive Rights accrued and received by members of the TPL Funds prior to the date of termination; and*

    b. *in the event that [the Claimant's] Firm Engagement is terminated due to [the Claimant's] death or permanent disability, this Letter Agreement shall survive only for so long as any members of the TPL Funds are entitled to receive revenues in connection with Pre-Existing Arrangements and shall thereafter be terminated.*

5. *Enforceability: Conflicts. This Letter Agreement has been duly authorised, executed and delivered by [the Defendants] and, shall constitute a valid and legally binding agreement of each of [the Defendants] … enforceable in accordance with its terms against [the Defendants]."*

5. The Claimant sent a copy of the ILA to Mr. Ali Asgher, the Chief Executive Officer of both Defendants, and he included provision for 10% of management and performance fees receivable by TPL Pakistan for 2023 and 2024 as payable to the Claimant in a board pack sent for the 7 June 2023 Board Meeting of TPL Pakistan, which formed part of the budget which was approved by the Board.

6. The Claimant had started work for TPL ADGM in June 2022 and had had a good deal of success, assisting to establish three profitable development projects in Pakistan. However, at that same Board meeting of 23 June 2023 she announced her resignation as CEO, though intending to stay as a non-executive director: it is recorded in the minutes that she informed the Board that she had a notice period of three months and "*assured the Board of a smooth transition*". She left for her home in France almost immediately afterwards for the Eid public holiday break and stayed there for her entire notice period. On 28 June 2023, Mr. Jameel sent her a WhatsApp message wishing her a good Eid in France, but his evidence is that he did not know she was going to stay there for her entire notice period. There followed communications, from which it is clear that from July 2023, the Claimant after a time effectively failed to cooperate with the Defendants until they would agree to pay her in accordance with what she regarded as her entitlements. At first, discussion related to her salary, but by 25 July 2023, when the Defendants

sent a draft settlement agreement recording what they were offering under the EC and the ILA, and Mr. Jameel and the Claimant had an outspoken telephone conversation, it became clear that there was a major difference in their respective understanding as to what her entitlement was: the Defendants' calculations in their draft settlement agreement were based upon the Claimant's entitlement under the EC and, so far as the ILA was concerned, the relevant percentage of management and performance fees payable to date. The Claimant made it clear that she considered she was entitled under the ILA to the relevant percentages of performance fees and management fees ongoing for the entire life of the development projects, which she described in the telephone call with Mr. Jameel as "*perpetual*" and "*in perpetuity*". This was entirely rejected by Mr. Jameel on behalf of the Defendants and it remains the gap between the parties today. After that telephone call, although the Claimant and her successor Mr. Asgher had a virtual handover, which the Defendants regarded as insufficient, she refused to be in further contact with the Defendants, so that the Defendants had to attempt to make communication by message through the Claimant's husband. After a notice sent by the Defendants in a letter dated 17 August 2023 requiring her attendance at the Abu Dhabi offices in person on 18 August 2023, the Defendants, knowing that she was in France, the Defendants terminated the Claimant's employment summarily by letter dated 21 August 2023.

7. The Claimant claims her entitlement pursuant to the EC in respect of the unpaid notice period, her end of service gratuity, and the contractual flight allowance, and also claims under the ILA not only the sums due to date (agreed as a figure at US $1,068,554) but ongoing, so long as the developments remain in force; an estimate of which future losses is put by her expert (in the alternative to the Claimant's claim for a declaration as to her continuing entitlement), as being in the region of US $3.6 million. The Defendants, while accepting the claims under the EC, with the exception that they rely on justification of her dismissal so as to resist the end of service gratuity) would rely on the Bad Leaver provision so as to resist any entitlement under the ILA if it is valid, but primarily contend that the ILA is void or voidable, for the reasons set out below.

The Defendants' Case on the ILA

8. For the Defendants, Mr. Bickford Smith puts their case on the ILA as follows:

   a. TPL Pakistan is not bound by the ILA. Remuneration of a Director must be authorised as required by the articles of association of the company, which in the case of TPL Pakistan requires a general meeting of the shareholders (Article 56). There was, it seems, discussion of the remuneration of Mr. Asgher at meetings of the Human Resource and Compensation Committee and subsequently of the Board of TPL Pakistan on 7 September 2022 (which was attended by the Claimant). However there was no discussion, resolution or approval in respect of the remuneration of the Claimant by the shareholders or (save by the inclusion in the Budget referred to in paragraph 5 above) by the Board of TPL Pakistan. In the light of the authority of *Guinness plc v Saunders* (1990) 2 AC 663, especially at 688–9 and 691–3 per Lord Templeman (see also Palmer's Company Law Part 8 Chapter 8.9 at 8.901, which also references *Tayplan Ltd v Smith* [2012] BCC 523), a contract between a company and its director for remuneration is void and cannot be enforced if it fails to comply with the company's articles, and the ILA was not so approved, agreed or authorised. Without a valid contract for remuneration approved in accordance with TPL Pakistan's articles of association, the Claimant cannot recover any remuneration. She cannot rely on the authority of *Re Duomatic Ltd* [1969] 2 Ch 365, which permits the validity of a contract not the subject of a resolution by a meeting of shareholders if in fact all the shareholders can be shown to have agreed to it, because in the case of TPL Pakistan, whose shareholders are published on the Companies Register by reference to the annual returns of TPL Pakistan under the *Pakistan Companies Act 2017*, apart from TPL Properties Ltd ("**TPL Properties**"), which was the overwhelming majority

shareholder, there were seven other shareholders, three of whom were the Claimant, Mr. Jameel and Mr. Asgher, and if their approval were assumed, there would still remain four shareholders who cannot be shown to have approved, proper evidence of such approval being required for the purposes of *Duomatic* (*Ball v Hughes [2017] EWHC 3228 (Ch*)) referenced in Palmer at 8.903). Mr. Al Halabi, who gave evidence, was a director of TPL Pakistan (and, unknown to him a shareholder, though this was required of a director by Article 55) and he had no knowledge of, and had not approved, the ILA.

b. As for TPL ADGM, approval of the remuneration of directors must, by the provisions of Article 19 (2) of its articles of association, be determined by the directors, and the relevant part of the articles reads as follows (in material terms):

> *"Directors to take decisions collectively.*
>
> *7(1) The general rule about decision-making by directors is that any decision of the directors must be either a majority decision at a meeting or a decision taken in accordance with article 8*
>
> *…*
>
> *Unanimous decisions*
>
> *8(1) A decision of the directors is taken in accordance with this article when all eligible directors indicate to each other by any means that they share a common view on a matter.*
>
> *(2) Such a decision may take the form of a resolution in writing, copies of which have been signed by each eligible director or to which each eligible director has otherwise indicated agreement in writing.*
>
> *(3) References in this article to eligible directors are to directors who would have been entitled to vote on the matter had it been proposed as a resolution at a directors' meeting.*
>
> *(4) a decision may not be taken in accordance with this article. If the eligible directors would not have formed a quorum at such a meeting"*

There was no meeting of the board of TPL ADGM to approve the ILA (or the April Email). Such meeting of the board is not necessary if there were a unanimous decision of the eligible directors, being an agreement indicated between them by any means that they share a common view on a matter. The eligible directors in this case were Mr. Jameel, Mr. Asgher and a Mr. Ansari, who gave evidence before me. Assuming approval by the Claimant and Mr. Asgher (by virtue of his having seen and not objected to the ILA), there was no approval by Mr. Ansari, who was, I am satisfied, not consulted, and thus there was no unanimous decision of the three eligible directors.

c. Accordingly, there was no approval of the remuneration of the Claimant either by TPL Pakistan by its shareholders or TPL ADGM by its directors, in accordance with the articles of either company, with the result that the ILA between the Claimant and both Defendants was void.

d. In any event, the Defendants contend that the Claimant was in breach of fiduciary duty in obtaining the draft ILA from Morgan Lewis. She used her private email address to communicate with and provide instructions to Morgan Lewis, without any input from anyone else at the Defendants, and the Defendants contend that the Claimant pressurised Mr. Jameel to sign the ILA, while

representing that there was nothing different in the ILA from the April Email, and not disclosing that in fact the provisions of the ILA were extremely unusual: it provided, as the Claimant herself later put it, "*perpetual*" entitlement i.e. no provision for determination (otherwise then by leaving the Defendants as a Bad Leaver) in the event of her resigning from, or parting company with, the Defendants after howsoever short a time, still retaining her entitlement for many years afterwards in respect of any development begun with her involvement. Both Mr. Jameel and Mr. Asgher had themselves entitlement to percentages of the Defendants' revenues, but in neither case did these entitlements continue after the termination of their employment. The Defendants rely upon *Knight v Frost* [1999] BCC 819, *Fairford Water Ski Club Ltd v Cohoon* [2021] BCC 498 and *Re HLC Environmental Projects Ltd* [2014] BCC 337. They assert that there was misrepresentation by the Claimant that the ILA had been reviewed and checked by Morgan Lewis and that (as set out in paragraph 2 above) there was no material change between the April Email and the ILA; but primarily, they rely upon the duty of the Claimant as director to disclose in particular the unusual nature of the agreement, which of itself made such a difference between the terms of the April Email and the ILA. Accordingly, if the ILA was, despite the above, otherwise valid, it was voidable and avoided as it was induced by the Claimant's breach of fiduciary duty.

e. If the ILA was valid and not voidable and avoided, then the Defendants rely upon the Bad Leaver provision. The Defendants were by 21 August 2023 entitled to terminate the Claimant's employment summarily and to treat her as a Bad Leaver by virtue of her wilful disregard of her obligations, and her refusal to cooperate from July 2023 in complying with lawful directions.

The Claimants' Case on the ILA

9. Mr. Quirk vigorously opposes the suggestion that the ILA was void as not in compliance with the articles of association of the Defendants, recording that such a case was not made until the pleadings in this litigation. He points to the Claimant's dismissal as being constructed, in order for the Defendants to attempt to take advantage of the Bad Leaver provision, which they must have thought was the only route out for them. Mr. Quirk puts the Claimant's case on the ILA as follows:

a. There was a valid agreement by both TPL Pakistan and TPL ADGM, in accordance with their respective articles of association. So far as TPL Pakistan is concerned, the provisions of *Duomatic* were complied with, because in fact TPL Properties, controlled by Mr. Jameel, was the owner of all the shares in TPL Pakistan, which was described in the Information Memorandum published by TPL Pakistan in December 2021, in the Executive Summary, as a "*100% owned subsidiary of TPL Properties Limited*", described in the Overview as holding *"(directly and through nominees) 100% of shares in*" TPL Pakistan.

b. In the alternative the Defendant companies are estopped from denying the validity of the ILA by clause 5 of the ILA, and/or by the representation by Mr. Jameel that he had the authority of the Defendants and/or estopped by convention in that both Claimant and Defendants treated the ILA as binding.

c. There was no breach of fiduciary duty. Mr. Jameel had the opportunity to read the ILA and was an experienced businessman. The Claimant relies upon *L'Estrange v Graucob* [1934] 2 KB 394 per *Scrutton LJ* at 403:

> *"When a document containing contractual terms is signed, then, in the absence of fraud, or, I will add, misrepresentation, the party signing it is bound and it is wholly immaterial whether he has read the document or not."*

d. The Bad Leaver point was a stratagem in order to avoid liability. There was no or no sufficient breach of obligation by the Claimant, who was pursuing her justified financial claim against the Defendants and not failing in her duty to them, certainly not guilty of "*gross negligence or wilful misconduct*" as would be required by the ILA, and in any event the Defendants were not entitled to treat the contract of employment as repudiated.

Quantum

10. As to quantum, much of this was agreed, subject to liability. The parties agreed the following figures:

a. The Claimant's unpaid salary was agreed as US $100,000 and the flight allowance at US $ 4,000.

b. The Claimant's end of service gratuity was agreed at US $ 46,027.39, subject to the Defendants' defence of justified dismissal.

c. Compensation, pursuant to Article 3(2) of the ADGM Employment Regulations 2019 (Compensation Awards and Limits) Rules 2019 (the "**ADGM Compensation Rules**"), at the rate of 5 per cent per annum on the employment sums, was agreed as amounting to US $5,251 for the period from 15 October 2023 to 26 June 2024, and continuing.

d. It was common ground that in respect of the ILA, no sum is due in respect of the 20% of TPL ADGM's revenue. With regard to TPL Pakistan, it was agreed that three projects (Mangrove, One Hoshang, and Technology Park) were in question and that, subject to liability, 10% of the relevant revenues (by concession only management fees and performance fees being assessed) resulted in the amount to date being US $1,068,554. I indicated that, so far as the future was concerned, the claim being made by the Claimant for a declaration as to future sums, requiring constant recalculation, and if necessary litigation, over the next eight or nine years, was not an appropriate remedy, and that I would rather take the course of assessing as of now the likely projection of future loss. In doing so I have had the benefit of the guidance of many learned judges faced with a similar situation. Devlin J. in *Biggin and Co Ltd v Permanite Ltd* [1951] 1 KB 422 at 438 said that "*in such a situation the court is bound to do the best that it can*". Lord Reed in *One Step (Support) Limited v Morris-Garner & Anor* [2019] AC 649 at 36-37 recognised that "*there are, however, cases in which precise measurement is inherently impossible*", relying upon Lord Shaw in *Watson Laidlaw & Co Ltd v Pott Cassels & Williamson (A Firm)* [1914] SC (HL) 18, 29–30 as "*requiring the exercise of a sound imagination and the practice of the broad axe*". Leggatt J in *Yam Seng PTE Ltd v International Trade Corporation Ltd* [2013] EWHC 111 (QB) described this at [188] as "*the principle of reasonable assumptions*". I had the benefit of expert evidence from. Mr. Hisham Farouk of Grant Thornton on behalf of the Claimant, and Mr. Farrukh Ansari of Morison Global on behalf of the Defendants. Both experts used similar discounting formulae so far as the future was concerned, but each approached the question from a very different basis. Mr. Farouq concentrated on the Information Memorandum of December 2021 and the forecasts there contained, while Mr. Ansari concentrated on the three projects and his own expert view as to how they would each go forward over the next 9 years in the Pakistan context. Mr. Farouk arrived at a figure between US $3.57m and US $3.74m, which he then discounted to allow for some of the delays, which Mr. Ansari had foreseen, to between US $3.05m and US $3.14m. Mr. Ansari's figure is US $1.4m.

Conclusions

11. I turn then to my conclusions on the issues of liability. I deal first with the question of whether the Defendants are able to establish justified dismissal and that the Claimant was a Bad Leaver, within the meaning of the ILA.

12. I have no doubt that the Claimant was surprisingly irresponsible for a senior and experienced executive:

    a. She knew that there was or likely could be a problem about the acceptance by the ADGM Registration Authority of her successor, and yet delayed in completing the necessary documentation required by ADGM. Even though she believed that there was not such urgency as the Defendants were insisting, she was not entitled to delay and stall as she did, when the Defendants were understandably pressing, and setting deadlines, for the provision of the completed form. She began by making excuses and then effectively ceased to correspond at all.

    b. She did not tell the Defendants that she was going to be in France throughout her notice period, and thereby, and by responding inadequately to requests for assistance, she effectively withdrew cooperation by July 2023, giving up communicating such that the Defendants were only able to pass messages via her husband.

    c. She was pressing for payment of what she believed to be due, but there is little doubt, as indeed she accepted in cross examination, that she was stalling on compliance with the Defendants' instructions; she was thus creating considerable difficulty for them.

13. This formed the basis for an allegation of repudiatory breach of her employment obligations, which could well have been addressed by the Defendants being able to accept her repudiation, by making a final demand for her compliance and her return to the UAE to complete the smooth handover. But it is plain to me that the Defendants jumped the gun. It may be that the Defendants' realisation for the first time, after the July telephone conversation, that the Claimant was making demands with which they were not going to comply, in the light of her approach to the ILA, caused them to lose sight of their obligations under the EC, and to concentrate on finding a way to terminate the ILA. The Defendants refer to *Williams v Leeds United Football Club* [2015] IRLR 383 for the proposition that termination by an employer can be justified even if motivated by other reasons, but I must be satisfied that there was repudiatory conduct which the Defendants accepted. In the event, instead of making what might well have been a perfectly justifiable final demand to bring matters under the EC to a head, in order to regard her as in repudiatory breach (not having previously done so as they endeavoured to communicate through her husband) the Defendants sent to her, knowing her to be in France, a letter dated 17 August 2023 (but not sent to the Claimant until 18 August 2023 by an email timed at 9.32 AM (UAE time)), requiring her to attend the Dubai office on the 18 August 2023, which would have been at most an hour or so later an obviously impossible requirement. If, as I conclude, and the Defendants impliedly represented to the Claimant by making their final demand, the non-attendance would have constituted the repudiatory breach which they were to accept, the Claimant’s non-compliance with this impossible condition was not sufficient to terminate the EC summarily, particularly as there were only a few weeks until the expiry of the notice. The Defendants then sent her a letter dated 21 August 2023, which, though it referred to the earlier messages and communications, specifically relied upon the letter dated 17 August 2023 requesting attendance at the Dubai offices, and terminated the EC summarily. I do not consider that the Defendants were at that stage entitled to terminate the Claimant’s employment. I can see that the Claimant, in her earlier failure to comply with instructions, can be said to have been wilful in the sense of deliberate, but in my judgment that was insufficient, on the Defendants' own case, without a wilful refusal to attend the Dubai offices, which was not the case, to make her a Bad Leaver.

14. I now deal with the question of the validity of the ILA:

a. With regard to TPL Pakistan, there was no shareholders' meeting to approve the remuneration of the Claimant and in particular the ILA. If, as stated in the Information Memorandum of TPL Pakistan, TPL Properties had been the sole owner of TPL Pakistan, there would not be such difficulty, notwithstanding the requirement for clear evidence in respect of consent required by *Duomatic*, in concluding that TPL Properties gave its assent through its CEO, Mr. Jameel. But TPL Properties was not the sole owner of TPL Pakistan. The statements in the Executive Summary of the Information Memorandum, particularly as clarified in the Overview, do not give rise to any estoppel as against TPL Pakistan, given what in fact was the factual situation, namely as recorded in the Companies Register, as set out at paragraph 8(a) above, that there were other shareholders whose assent cannot be assumed. One of those was Mr. Al Halabi. There were four other directors and shareholders, said by Mr. Al Halabi to be independent. The statement is made in the Overview in the Information Memorandum that TPL Properties held all the shares in TPL Pakistan including through nominees. But I note that, in the annual return for TPL Properties, certified by the Joint Registrar of Companies in April 2022, whereas the individual seven shareholder/ directors simply gave their names and addresses, the eighth shareholder (holding 39, 999, 993 shares) was recorded as TPL Properties "*(through Mohammed Ali Jameel)*". There is no suggestion on the face of the return that the other shareholders/directors held their shares on behalf of TPL Properties. In any event they were the legal shareholders, and a number of them, including Mr. Al Halabi, were present at a meeting of the Board of TPL Pakistan on 7 September 2022 (referred to at paragraph 8(a) above) when the remuneration of Mr. Asgher was discussed. I am not satisfied that there is any evidence to show that the independent shareholders would have voted to approve the unusual and very generous arrangement for the Claimant, and in particular I am not satisfied that Mr. Al Halabi would have done so. Mr. Al Halabi did not consider that the independent shareholders were nominees, despite what is said in the Information Memorandum, as opposed to their being "*nominal*" shareholders, with a very few shares so as to satisfy the requirement for directors to hold shares. But, be it nominee or nominal, there is no evidence that they gave their assent for the purpose of *Duomatic*.

b. With regard to TPL ADGM, I am satisfied as to the proper construction of the articles of association set out in paragraph 8(b) above – and in the event Mr. Quirk in his reply effectively no longer pursued his contrary interpretation – namely that Article 8 only applies in relation to a decision of the directors taking a common view, where all eligible directors had the same view, and thus only in respect of unanimous decisions. Where, as in this case, I am satisfied that Mr. Ansari did not indicate a common view at the time, nor indeed now, the argument by reference to TPL ADGM must fail.

15. If the ILA was not authorised by either of the Defendants, then clause 5 falls with it. If Mr. Jameel warranted that he had authority of the Defendants – and he said the following in cross-examination:

> *"I did bind the company… ideally I shouldn't have done it but I did, because typically what happens is HR committee and the rest of it... and [that] is what should have happened. But if you're in a situation where I had to take a decision because if I had not signed it at that point of time her resignation would have just come through"*

then Mr. Jameel would be (subject to what follows below) in breach of warranty of authority, but that does not render the Defendants liable. The Defendants have not, as Mr. Quirk explored in cross-examination, taken the position that the Claimant is not entitled to any remuneration at all, but that does not constitute an estoppel, and in any event there is a substantial difference between denying that any remuneration

was authorised for a CEO, and denying that there was authorisation for the unusually generous perpetual terms of the ILA. The straightforward position is that the companies themselves cannot be rendered liable, if the ILA was not valid in accordance with their articles of association, either by a representation of one of their directors, or by virtue of convention between that director and the director who has no enforceable contract for remuneration as in *Guinness plc v Saunders*. Mr. Quirk sought to rely on two authorities where estoppel applied, notwithstanding that a deed missing a relevant signature was otherwise invalid: *Shah v Shah* [2002] QB 35 and *Euro Securities & Finance Ltd v Barrett* [2023] Ch 279 citing at [15] an exception was made to the principle enunciated by Simon Brown J in *Godden v Merthyr Tydfil Housing Association* (unreported, 15 January 1997) that "*the doctrine of estoppel may not be invoked to render valid a transaction which the legislature has, on grounds of general public policy, enacted to be invalid.*" However, I am entirely satisfied that this limitation would not apply to a case where a contract has been purportedly entered into beyond the powers of a company. I am satisfied that estoppel does not assist the Claimant.

16. In those circumstances neither of the Defendants is bound by the ILA. But if they were, the Defendants assert that the ILA would be voidable and avoided because it was entered into by the Claimant in breach of her fiduciary duty. It is clear that the contract is unusual or at any rate extremely generous, as providing for the payment to the Claimant of respectively 10% and 20% (though the latter did not in the event arise before she resigned) of revenues from any developments commenced during the Claimant's employment. There was no provision for termination if she resigned, at any stage, or if her employment contract was terminated otherwise than as a Bad Leaver, or if she ceased to be a director or a shareholder. Neither Mr. Jameel nor Mr. Asgher had any such non-terminable entitlement. In the event, over 9 years, the Claimant would be entitled to up to US $4 million in respect of the period after she has ceased to have any involvement or responsibility in respect of the three ongoing projects. Whereas her percentage entitlement for 2023 and 2024 was, together with that of Mr. Asgher, included in the budget and approved by the Board (as discussed in paragraph 5 above), the significant feature of the ILA, namely what she herself called its "*perpetual*" nature was never discussed or approved.

17. The following features seem non-controversial:

    a. Mr. Jameel was, as I would describe it, 'between a rock and a hard place' when he signed the ILA.

    b. He had not read it, and signed it trusting the Claimant and being told (as discussed in paragraph 3 above) that it had been approved by Morgan Lewis. It had not been shown to the Defendants' in-house counsel. The Claimant agreed in cross-examination that Mr. Jameel was a busy man, who was dependent on the professionals he instructs to review documents before he signs them.

    c. Contrary to what the Claimant said in her 29 June 2022 email (quoted in paragraph 3 above) the ILA was not simply a formulation of the understanding in the April Email, but in particular, it was not a "*simplification*" of it. It introduced the perpetual nature of the entitlement.

    d. There was no mention of this perpetual aspect. Mr. Jameel was, as the Claimant knew, a commercial man, who did not trouble himself with the financial aspects.

    e. The Claimant knew that there was no approval of the ILA by the Boards or at general meetings of the Defendants (unlike, for example, the discussion of the contractual remuneration of Mr. Asgher, which she had attended).

18. I have considered the authorities relied upon by the parties. The Defendants assert that there were misrepresentations by the Claimant, in particular as to:

    a. there being no material difference from the April Email; and

    b. there having been approval by Morgan Lewis.

19. As to the latter aspect, it is true, as both parties knew, that Morgan Lewis had drafted it, though in the event after consultation (only) with the Claimant (though it is indeed surprising that Morgan Lewis did not at least raise a query as to the perpetual nature of the arrangement). Mr. Quirk responds by reference to the fact that Mr. Jameel had the opportunity to read it, citing *L'Estrange v Graucob*. But in the light of the authorities referred to above, relied on by the Defendants, it is what is not said by the Claimant that is significant. I conclude that there was a fiduciary duty on the Claimant positively to disclose, and make sure Mr. Jameel understood, what he plainly did not appreciate until the July 2023 telephone conversation referred to in paragraph 6 above, namely that there was a big difference from the April Email and the ILA, being the non-terminable nature of the very substantial entitlement which the Claimant would have as a result of the ILA, a substantial undisclosed benefit to her, and a corresponding substantial undisclosed disadvantage to the Defendants. The fact that the Claimant had Mr Jameel over a barrel (see paragraph 3 above) only emphasises the importance of complying with her fiduciary duty to the Defendants.

20. In those circumstances, if the ILA were otherwise valid, I conclude that it was voidable and avoided as in breach of the Claimant's fiduciary duty, but in the circumstances no rescission is necessary.

21. I turn to the question of quantum, which does not therefore arise. I found both the experts impressive in their own way. Mr. Farouk rooted himself on the forecasts contained in the December 2021 Investment Memorandum, reissued in 2024, though seemingly not revisiting the earlier figures. He has made some adjustments for what has occurred since, but that is effectively where he rests. Mr. Ansari was convinced that his role as an independent expert meant that he should carry out his own assessment of the prospects of the three projects, allowing for what has occurred since, with discounting for what he firmly considered were the uncertainties of the Pakistan construction and development industries. If I had been required to carry out the exercise referred to in paragraph 10(d) above, I would have erred on the side of Mr. Farouk, and assessed the figure at US $2.5m.

22. The Claimant is entitled to the sums claimed under the EC, totalling US $150,027.39 plus compensation under the ADGM Compensation Rules at the rate of 5 per cent per annum, in accordance with paragraph 10 above. But for the reasons given at paragraphs 14 *et seq* above, the Claimant's claim under the ILA fails. As to costs, the parties shall file costs submissions within 21 days, and any reply submissions shall be filed 21 days thereafter.

ABU DHABI GLOBAL MARKET COURTS
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Re-issued by:

Linda Fitz-Alan
Registrar, ADGM Courts
4 September 2024