

# CASE FOCUS

**Case No** .... AC Network Holding Limited & Others v. Polymath Ekar SPV1 & Others, [2023] ADGMCA 0002 issued on 17 November 2023

**Jurisdiction** .... ADGM

**Court** .... ADGM Court of Appeal

**Recommended by** .... Faridah Sarah of Ingmires Limited

## WHAT IS IT ABOUT?

This case involved a company, Ekar Holding Limited, which was a car sharing company registered in the ADGM.

In 2020, in line with a Shareholders' agreement, the company's minority shareholders were issued with a 'Drag Along Notice' by its majority shareholders, which would have had the effect of forcing the minority shareholders to sell their shareholding to a third party purchaser.

The minority shareholders challenged the validity of this Drag Along Notice, arguing that the purchaser was not a 'bona fide purchase' but was actually the majority shareholder, who was acting through another company.

The minority shareholders claimed that this was a breach of the shareholders' agreement and was conspiracy by unlawful means to breach the agreement.

The judge in the Court of First Instance decision held, after hearing the evidence, that the majority shareholder lacked knowledge that their conduct was unlawful and therefore dismissed the claim.

The judge declined to follow a 2021 decision of the Racing Partnership v Done Bros [2021] Ch 233, which was a decision by the courts in England and Wales in which the claimant did not have to prove the defendant knew his actions would be a breach of contract.

The judge at first instance held that English Law was not settled on this issue and that although the case was relevant, the ADGM was not bound by it.

The case was then appealed to the ADGM Court of Appeal on the grounds that the Court had erred in law in holding that it was not bound by a decision of the English Court of Appeal.

The Court had erred in law in holding that it was not bound to follow the decision of the majority of the Court of Appeal in the Racing Partnership case. In addition, it had erred in law in holding that liability for 'unlawful means' conspiracy was dependent on the Claimant proving that the tortfeasor knew that the proposed acts would amount to a breach of contract.

Article 1(1) of ADGM Application of English Law Regulations 2015 stated: "the common law of England (including the principles and rules of equity) as it stands from time to time, shall apply and have legal force in, and form part of the law of the Abu Dhabi Global Market".

## DECISION

The ADGM Court of Appeal decided the Drag Notice issued on 27 April 2020 was invalid.

The expert witnesses retained by the Claimants and the Defendants (with the exception of the Seventh Defendant) were ordered to reconvene, and if possible agree, their further assessment of the value of the Claimants' individual shareholdings in Ekar Holding Limited as at 27 April 2020.

The Court of Appeal disagreed with the Court of First Instance and held that Article 1(1) of ADGM Application of English Law Regulations 2015 required the ADGM Courts to directly apply English law principles, including the doctrine of precedent and that the decision in the Racing Partnership case was indeed binding authority on the ADGM.

## WHY WAS IT IMPORTANT?

This case confirms the direct enforceability of English common law in the ADGM.

The decision is significant as it strengthens the ADGM Court's global position as a court of certainty and predictability as it is required to apply English law set by precedent.

This gives foreign investors and businesses a sense of confidence in the ADGM Courts as a dispute resolution forum and will likely attract further investment within this financial freezone in the future.