



**ABU DHABI GLOBAL MARKET COURTS**  
**محاكم سوق أبوظبي العالمي**

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**COURT OF FIRST INSTANCE**  
**CIVIL DIVISION**

**BETWEEN**

**ROSEWOOD HOTEL ABU DHABI LLC**  
**CLAIMANT**

**AND**

**SKELMORE HOSPITALITY GROUP LTD.**  
**DEFENDANT**

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**JUDGMENT UPON CLAIMANT'S RULE 253 APPLICATION**

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<b>Neutral Citation:</b>	[2020] ADGMCFI 0002
<b>Before:</b>	His Honour Justice Stone SBS QC
<b>Decision Date:</b>	6 February 2020
<b>Decision:</b>	1. Application granted. 2. Costs of the application to the Claimant, to be summarily assessed under Rule 200 of the ADGM Court Procedure Rules 2016 if not agreed, and absent objection thereto, such order <i>nisi</i> is to become absolute within 14 days of the issuance of the Order.
<b>Hearing Date(s):</b>	No hearing
<b>Date of Order:</b>	6 February 2020
<b>Catchwords:</b>	Application seeking information from director of judgment debtor company; jurisdiction; extra-territorial power to grant order.
<b>Legislation Cited:</b>	Application of English Law Regulations 2015 ADGM Court Procedure Rules 2016, r. 253; r.259(2)
<b>Cases Cited:</b>	<i>Masri v Consolidated Contractors International Co SAL and others</i> [2009] UKHL 43 <i>CIMC Raffles Offshore (Singapore) PTS Ltd and anor v Schahin Holding SA and others</i> , [2014] EWHC 1742 (Comm)
<b>Case Number:</b>	ADGMCFI-2019-003
<b>Parties and Representation:</b>	Freshfields Bruckhaus Deringer for the Claimant Bird & Bird (MEA) LLP for the Defendant

**JUDGMENT:**

***This Application***

1. This is an application dated 19 January 2020 on behalf of the Claimant pursuant to Rule 253 of the ADGM Court Procedure Rules 2016, subsection (1) of which reads:

*“A judgment creditor may apply for an order requiring a judgment debtor or, if a judgment debtor is a company or other body corporate or a partnership, an officer or director of that company or body or partner of that partnership, to attend Court to provide information about the judgment debtor’s means or any other matter about which information is needed to enforce a judgment or order.”*



2. In this instance Rosewood Hotel Abu Dhabi LLC, as judgment creditor, is seeking to obtain information from Skelmore Hospitality Group Ltd, as judgment debtor, regarding its means and other matters needed to enable enforcement of the Order of 16 December 2019 issued by this Court; as at the date of the application, the judgment debt arising from the trial of this action amounted to AED6,278,514.61.
3. The application also sought an Order permitting service of an order to attend court upon the solicitors now acting for the Defendant, Bird & Bird (MEA) LLP, which had come on the record pursuant to a Notice of Change of Representation dated 6 January 2020, and was supported by a witness statement of counsel who had conducted the trial of this action, Mr Sami Tannous of Freshfields Bruckhaus Deringer LLP, together with thirteen (13) annexures thereto.
4. In his witness statement, Mr Tannous refers, *inter alia*, to ongoing investigations into the assets of the Defendant for the purpose of enforcing the Judgment obtained in the Claimant's favour, and to concerns which now had arisen consequent upon what is alleged to have been the creation of two new Skelmore entities, namely Skelmore Holdings Management Office Ltd, registered in the Dubai International Financial Centre ("DIFC") at an adjacent address to that of the Defendant and with the like three directors, and Skelmore Holdings Ltd, a newly-created entity in Abu Dhabi Global Market ("ADGM"), which also has the same three directors.
5. In particular Mr Tannous stated that, based on evidence presently available to the Claimant, it would appear that, in anticipation of an impending adverse judgment, the Defendant had transferred its most significant and valuable asset, namely its shareholding in Roberto's Restaurant & Club Ltd, to Skelmore Holdings Ltd, and he asserts that this was done with the specific intention of avoiding satisfaction of the Judgment.
6. Against this backdrop, and given the course of this litigation and of the Defendant's conduct, characterised as a "general approach of obfuscation and delay", the Claimant wishes to obtain an Order specifically requiring Mr Emain Kadrie, in his capacity as director of the Defendant and also as shareholder both in the Defendant and in the newly-created Skelmore Holdings Ltd, to appear before the Court to provide, amongst other things, an explanation of the present asset position of the Defendant and a full written list of assets held by and debts owed to the Defendant, together with written details of all asset disposals made since the inception of proceedings in this case, and an explanation for and documents evidencing the transfer of the Defendant's shareholding in Roberto's Restaurant & Club Ltd to Skelmore Holdings Ltd.
7. In circumstances in which it is alleged that actions have been and may further be taken to dissipate assets and to frustrate the Claimant's attempt to enforce its judgment, it was requested that this application be determined without a hearing, pursuant to Rule 253(2), and that it be dealt with on an urgent basis, with directions made for the filing of written submissions accordingly.
8. By Order dated 22 January 2020, this Court ordered that the Defendant must file and serve any witness statements or submissions in response by Wednesday, 29 January 2020 and that the Claimant should serve any reply thereto by Wednesday, 5 February 2020.
9. These further submissions were received on the due dates, and this Judgment and Order is rendered on the basis of the material submitted by the parties in this application.



### ***The Defendant's Jurisdictional Objection***

10. The Defendant made no reply to any of the matters contained in the witness statement leading the application, instead raising a discrete objection, its submission being that the Court had no extra-territorial power to grant the application before it.
11. It was said that the power under Rule 253 of the ADGM Court Procedure Rules 2016, which is based on the English CPR 71, does not permit the Court to order the attendance of a director of a judgment debtor company who is outside the jurisdiction, relying for this proposition upon the decision of the House of Lords in *Masri v Consolidated Contractors International Co SAL and others* [2009] UKHL 43.
12. The Defendant relied in particular upon two extracts from the speech of Lord Mance, who delivered the opinion of the House, wherein he stated (at para 17):

“...there is nothing in CPR 71 to enable the Court to summon a third party witness who might have information about the personal judgment debtor’s assets. A corporate judgment debtor has a separate legal personality, and is not to be equated with its officers. They may have information about its affairs, but they have not submitted to the jurisdiction...

and further (at para 26):

“Although CPR 71 is limited to officers of the judgment debtor company, I regard the position of such officers as closer to that of ordinary witnesses than that of officers of a company being compulsorily wound up by the court. I conclude that CPR 71 does not contemplate an application and order in relation to an officer outside the jurisdiction.”

13. Thus, submitted the Defendant, given that the judgment debtor company is registered in the DIFC, that the director in question, Mr Kadrie, resides in Dubai and was not present in ADGM at the time the application was made, and that his appearance in court was sought “in his capacity as director of the Defendant”, on the authority of *Masri*, an authoritative precedent by virtue of Article 1 of the *Application of English Law Regulations 2015*, this application must be refused as being outwith the jurisdiction of this Court.

### ***Decision***

14. This objection strikes the Court as ambitious in the circumstances of this case.
15. It is difficult to see why the principles espoused by their Lordships in *Masri* (and by Field J in the other authority cited by the Defendant, namely *CIMC Raffles Offshore (Singapore) PTS Ltd and anor v Schahin Holding SA and others*, [2014] EWHC 1742 (Comm)) should govern the present facts, given that Mr Emain Kadrie, the Chairman of the Defendant (and, it appears, also now Chairman of the newly-created Skelmore Holdings Ltd) has been an active participant in the



procedural life of this action, and by his actions must be taken to have accepted, and to have caused the Defendant to submit, to the jurisdiction of the ADGM Courts.

16. It was Mr Kadrie who signed a witness statement dated 19 April 2019, filed with the Court on 21 April 2019, in support of the Defendant's application to join the Claimant's parent company as Second Defendant, and who later submitted a reply witness statement dated 14 October 2019, filed the following day, on the general issue: in both such witness statements Mr Kadrie described himself as "Chairman and founder of the Defendant". Mr Kadrie also signed the application notice of 26 December 2019 filed with the Court on 30 December 2019 seeking leave to appeal the Order of this Court dated 16 December 2019 issued after the hearing of this case.
17. Accordingly, in terms of the jurisdictional objection as now raised, which is solely reliant on the fact of Mr Kadrie's Dubai residence and of the DIFC registration of the Defendant, Mr Kadrie appears to be in a significantly different position from that of Mr Toufic Khoury in *Masri*, who was the Chairman, general manager and director of the judgment debtor, CCIC, and who was habitually resident in Greece and had applied to set aside the order that Mr Masri had obtained without notice, the ultimate appeal from which causing their Lordships to consider the jurisdictional issues posed by CPR 71.2.
18. This is the first occasion in this case that a jurisdictional objection in any form has been taken. At no time was any jurisdictional objection raised to the exercise of this Court's *in personam* jurisdiction over the Defendant company, Skelmore Hospitality Group Ltd, which unconditionally submitted to the jurisdiction of the ADGM Courts in line with the express agreement contained in the lease documentation (*vide* Clause 24.2 of the Standard Terms) as entered into between the Claimant and the Defendant.
19. In this circumstance there could be no room for objection to issuance of a Rule 253 application against the Defendant, the corporate judgment debtor, with the request that a duly authorised officer of the company do provide relevant information and documents in relation to its assets, wherever such be located, together with, to use the words of Rule 253(1), any information about "the judgment debtor's means or any other matter about which information is needed to enforce a judgment or order".
20. Since Mr Emain Kadrie is the founder and Chairman and director of the Defendant (and, as the Claimant asserts, in reality its "directing mind") it cannot be suggested that he was not so authorised, and in and of itself this may constitute sufficient juridical answer to the present objection; in this context, and for the purpose of this jurisdictional objection, the Court has sympathy with and is prepared to accept the Claimant's further submission that Mr Kadrie credibly can be regarded as the Defendant's *alter ego*, such that he can be assimilated to the judgment debtor for the purposes of an order under Rule 253, and thus (as was recognised in *Masri*) that in such circumstances an order may be made against him as if it were made against the judgment debtor itself.
21. A significant part of the Claimant's reply submission is concerned with principles of statutory interpretation, and examines that which often is referred to as the 'general presumption against territoriality', which their Lordships in *Masri* held had *not* been displaced in coming to their view as to the true construction of CPR 71. The Claimant points out that whilst the House of Lords



concluded that “CPR 71 was not conceived with officers abroad in mind”, crucially their Lordships recognized that the exercise was one of ascertaining the “true construction” of the relevant statutory provision “having regard to the legislative grasp or intendment”.

22. The Claimant’s contention, with which the Court agrees, is that the Defendant’s invocation of *Masri* and of *CIMC* simply seeks blind adherence to these decisions concerning the interpretation of CPR 71, and that this Court is tasked with interpreting Rule 253, and must do so with regard to the “legislative grasp or intendment” behind this Rule as intended by those drafting this legislation in 2015, and not by those drafting CPR 71 in the late nineteenth century.
23. The Claimant says, in the Court’s view correctly, that when the relevant principles of statutory interpretation are applied, the clear conclusion must be that on its face Rule 253 must be construed to apply to any officer or director in the UAE: the words “an officer or director of that company or body or partner of that partnership” is broad and unrestricted, such that it applies to any person holding a position of authority or directorship of any judgment debtor, irrespective of where that person happens to be located, and there is nothing to suggest that the language of Rule 253 (which in itself contains material differences with the language of CPR 71, namely the application in Rule 253 to directors and the absence in Rule 253 of committal powers) is to be limited in the manner the Defendant now contends.
24. In fact, there is nothing in the language of Rule 253 to suggest that the drafters intended to restrict its application even to persons outside the UAE, but for present purposes the Court does need not decide this point, given that the current objection is advanced on the basis of Mr Kadrie’s Dubai residence and there is no evidence that he was other than in Dubai at the material time; moreover, given that ADGM exists by virtue of Federal and Emirate-level legislation, all persons visiting or resident in the UAE do so by virtue of the control of Federal authorities, so that no issues of comity under international law arise, which is one of the basic principles underlying the presumption against extraterritoriality which ultimately held sway in *Masri*.
25. Accordingly, when viewed purely through the prism of statutory construction, the Court is prepared to hold, and now so does, that Rule 253 applies to all officers, directors and partners within the UAE, and that this Rule could not have intended that a director or officer or partner in a judgment debtor could not be compelled to answer questions simply by virtue of being located outside of ADGM.
26. At the end of the day, jurisdiction either exists or it does not, there is no half-way house. It is *not* open to Mr Kadrie to approbate and reprobate the jurisdiction of this Court depending upon what circumstance may be perceived to be favourable or inimical to his interests at any given time, and by reason of his participation in this case, and that of the Defendant judgment debtor, and as a matter of construction, the Court finds that there is no jurisdictional bar to the present Rule 253 application.
27. It follows that there is no valid basis for the Defendant’s objection, and thus that the Claimant’s application to conduct a Rule 253 examination of Mr Kadrie must be granted.



28. To this primary conclusion, which has been reached on the basis of the reasons hereinbefore outlined, the Court would add that if the view as now taken should be incorrect, in so far as may be necessary the Court further holds that a purposive construction of Rule 253 clearly warrants a departure from the common law approach adopted in England and Wales, and justifies giving this provision extraterritorial effect, at the least within the UAE.
29. Section 1(1) of the *Application of English Law Regulations 2015* states that the common law of England “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 – (a) so far as it is applicable to the circumstances of the Abu Dhabi Global Market; [and] (b) subject to such modifications as those circumstances require ...”.
30. In his speech in *Masri* (at para 25) Lord Mance observed that “small though the world may have become, relatively few officers of companies are likely to contemplate, let alone be able to undertake, emigration or flight to a different country in order to avoid giving information about their company affairs”. This observation was made in the context of the jurisdiction of England and Wales, which cannot realistically be regarded as analogous to the jurisdiction and unique features of ADGM.
31. Not only is it a simple and straightforward task to ‘take flight’ from the jurisdiction of ADGM by driving across the water into mainland Abu Dhabi, or to take an hour’s drive along the highway into neighbouring Dubai, but the limited geographical area of ADGM (approximately 114 hectares) and the absence of permanent residential dwellings in ADGM (save for hotel apartments) in the vast majority of instances would render otiose the operation of Rule 253 were it to be construed in terms of *Masri* principles, given the extremely limited occasions when an officer or director of ADGM might be within ADGM at the time of the application and/or the making of the order granting pursuant to Rule 253, and particularly so in instances where (as in this case) the judgment debtor is not registered in ADGM.
32. In short, given the physical limits of ADGM, the drafters of Rule 253 cannot have intended that Rule 253 would have application only to relevant persons ordinarily resident within ADGM or persons within ADGM at the time such application is made and order granted, and it is clear that for Rule 253 to have any practical effect at the least it must be extended to persons within the UAE. The Claimant’s contention that it would be all but impossible to time an application and/or order under Rule 253 to coincide with the presence within ADGM of an officer or director of a judgment debtor is obviously correct.
33. Turning finally to applicable Rule 253 procedure, the Claimant’s contention that this is an appropriate case for the hearing to be conducted before a Judge of the ADGM Courts is accepted, and in the exercise of the Court’s discretion it further is accepted that leave should be granted to the Claimant, *qua* judgment creditor, to attend the hearing and to question Mr Kadrie pursuant to the provisions of Rule 259(2) of the Rules.
34. Save for the fact of the absence from the jurisdiction of Mr Kadrie at the time of the making of the application, no objection otherwise has been raised to the terms of the draft Order annexed to the application, and with minor amendments thereto the Court is prepared to grant an order essentially in terms of the draft accompanying this application.



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35. As to costs, in principle these follow the event and must go to the Claimant, to be assessed if not agreed, and the Court grants an order *nisi* to this effect; absent objection thereto, such order *nisi* is to become absolute within 14 days of the issuance of the Order herein.

Issued by:



**Linda Fitz-Alan**  
**Registrar, ADGM Courts**  
**6 February 2020**