



ADGM COURTS
محاكم 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
COMMERCIAL AND CIVIL DIVISION**

**IN THE MATTER OF NMC HEALTHCARE LTD (IN ADMINISTRATION) (SUBJECT TO A DEED OF
COMPANY ARRANGEMENT) AND THE COMPANIES LISTED IN SCHEDULE 1**

AND IN THE MATTER OF THE INSOLVENCY REGULATIONS 2015

BETWEEN

**NMC HEALTHCARE LIMITED
(IN ADMINISTRATION) (SUBJECT TO A DEED OF COMPANY ARRANGEMENT)**

Applicant

and

- (1) NOOR CAPITAL PSC
- (2) ADEL M. EL HASSAN
- (3) ABDUL JABBAR AL-SAYEGH
- (4) MOHAMMED GHOSHEH
- (5) DR. HAMAD AL-HASAWI
- (6) DR. ABDULLA ESSA ZAMZAM
- (7) FAISAL GALADARI
- (8) RASHEED SAIF JABER AL SUWAIDI
- (9) SALEH HASSAN AL-AFALEQ
- (10) TARIQ KHALIL BADRAN
- (11) ENG. ABDULMAJED ALMESHAAAL
- (12) ABDULLAH AL SAADI

Respondents

JUDGMENT OF JUSTICE KENNETH HAYNE



Neutral Citation:	[2023] ADGMCFI 0016
Before:	Justice Kenneth Hayne
Decision Date:	26 June 2023
Decision:	<ol style="list-style-type: none">1. Each of the First and Third Respondents pay a fine of US\$10,000 in respect of each count of contempt found proved, that is, each of the First and Third Respondents pay fines totalling US\$70,000 within 28 days of the date of this Order.2. The application by the First and Third Respondents to purge their contempts is dismissed.3. Each party should bear his or its own costs of and incidental to the Witness Summons Applications that were dismissed by the Order dated 3 February 2023.4. Subject to paragraph 3 above, the First and Third Respondents pay the costs of the Applicant of and incidental to the Contempt Applications, on an indemnity basis, including the costs of the Contempt Hearing and the Consequential Hearing, such costs to be agreed or, if not agreed, to be assessed.5. Liberty to apply.
Hearing Date:	19 June 2023
Date of Order:	26 June 2023
Catchwords:	Contempt. Purging contempt. Penalty in consequence of contempt findings. Whether contemnors have remedied harm. Costs on standard or indemnity basis. Factors bearing on sanction of fine or reference to Attorney General.
Cases Cited:	CJ v Flintshire County Council [2010] EWCA Civ 393 [6] Johnson v Grant 1923 SC 789, 791 Templeton Insurance Ltd v Anthony Thomas, Harbinder Singh Panesar [2013] EWCA Civ 35, [42] Trafigura Pte Ltd v Emirates General Petroleum Corp (EMARAT) [2010] EWHC 3007 (Comm); Compania Sud Americana de Vapores SA v Hin_Pro Logistics Ltd [2013] EWHC 987 (Comm) [2022] DIFC ARB 017 and 021/2021 Gulf Wings FZE v A A and K Trading Ltd [2022] DIFC CA 014
Legislation Cited:	ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 Commercial Licensing Regulations 2015 (Fines) Rules ADGM Court Procedure Rules 2016 Insolvency Regulations 2015 (now the Insolvency Regulations 2022)



Case Number:	ADGMCFI-2020-020
Parties and representation:	Mr Richard Lissack KC and Mr Robin Loof, instructed by Quinn Emanuel Urquhart & Sullivan UK LLP for the Applicant Mr Patrick Dillon-Malone SC, instructed by Clyde & Co. LLP for the Respondents

JUDGMENT

1. On 23 February 2023, I gave reasons for finding that seven “counts” of contempt alleged by NMC Healthcare Ltd (“**NMCH**”) against Noor Capital PSC (“**Noor**”) and Mr Abdul Jabbar Al-Sayegh had been proved but that contempts alleged against ten other Respondents (the Second, and Fourth to Twelfth Respondents) (individually the “**Respondent**” or together the “**Respondents**”) had not been proved.
2. The contempts which I found Noor and Mr Al-Sayegh had committed were acts or omissions constituting disobedience of the order of Justice Sir Andrew Smith dated 5 October 2022 (the “**5 October Order**”). Six of the counts were acts in breach of paragraph 1 of that order – steps taken in the Courts of Dubai contrary to the order prohibiting Noor, whether by itself, its servants, agents or otherwise commencing, prosecuting or continuing any proceedings in any Court or Tribunal in the Emirate of Dubai against NMCH for any enforcement or execution of any debt or claim arising out of or in connection with an identified facility or Noor’s proof of debt in NMCH’s administration in the ADGM. The other count found to be proved was failure to comply with paragraph 3 of the 5 October Order which obliged Noor to apply to stay, or if Noor could not apply to stay and obtain a stay, obliged it to withdraw or cause to be withdrawn forthwith, and in any event by 5:00 pm GST on 10 October 2022, particular applications by Noor in Dubai Courts Commercial Execution No 3972 of 2020.
3. On 23 February 2023 (the “**February Hearing**”), I ordered that issues about purging the proved contempts and further orders in consequence of the findings of contempt be adjourned to a date to be fixed. Those issues came on for hearing on 19 June 2023.
4. My reasons of 23 February 2023 describe much of the course of events relevant to the issues that have been argued in this hearing about purging of contempt and about what orders should be made against Noor and Mr Al-Sayegh in respect of the contempts I have found them to have committed. These reasons must be read taking account of what is set out in the reasons of 23 February. But there are some additional matters which occurred after the February Hearing and are relevant to the issues that must now be decided. Three should be noted:
 - a. the outcome of the proceedings in the Federal Supreme Court;
 - b. further steps that were taken in the Dubai Courts after the contempt applications had been filed; and
 - c. a consent variation to the 5 October Order.
5. I deal with each in turn.

Proceedings in the Federal Supreme Court

6. As I noted in my reasons of 23 February 2023, Noor had applied to the Federal Supreme Court, in January 2023, alleging that there was a conflict of jurisdiction between the courts of the ADGM and the courts of Dubai and asking, among other things, that the Federal Supreme Court stay

NMCH's contempt applications against Noor and others. On the first return of that application, the Federal Supreme Court refused to grant the stay that had been sought and adjourned the matter for further hearing on 20 February 2023. On 6 March 2023, the Federal Supreme Court dismissed Noor's claim that a conflict of jurisdiction between the ADGM Courts and the Dubai Courts had arisen.

Further steps in the Dubai Courts

7. Mr Richard East, solicitor for NMCH, filed an affidavit describing what he said were steps taken by Noor in the Dubai Courts "*after the filing of the Contempt Applications*" and putting in evidence the correspondence his firm had with Noor's solicitors in connection with these events. There was no objection to his evidence and it was not challenged.
8. The steps in the Dubai Courts that are of immediate relevance were taken on 26 and 30 January 2023 and on 7 and 18 February 2023. None of the steps taken on those days was the subject of any of the counts of contempt dealt with in my reasons of 23 February 2023. Rather, the steps taken in January and February 2023 were steps to reinstate appeals or grievances which Noor had lodged seeking to lift the stay of enforcement of the Payment Order made earlier by the Dubai Courts.
9. On 26 January 2023, Noor filed applications to reinstate and advance grievance or appeal applications that had been made to the Dubai Courts on 7 and 8 November 2022. (The filing of the applications of 7 and 8 November 2022 was the subject of counts 5 and 6 in the contempt proceedings.) On 30 January and 7 February 2023, Noor filed applications to relist reinstated appeal proceedings. Hearing of these applications for relisting was listed for 15 March 2023. On 7 February and on 18 February 2023 Noor sought permission to serve NMCH's onshore lawyers with notice of the proposed hearing (the date for which was shifted first to 22 March and then to 29 March 2023).
10. As noted earlier, the Federal Supreme Court issued its decision on 6 March 2023. After 6 March 2023 there were some other steps taken by the Dubai courts in relation to the 7 November 2022 application, but Noor did not appear and was not represented. It is not necessary to trace those steps in any detail. On 17 May 2023, the Dubai Court declared that Noor not having appeared to prosecute its claim, Noor's grievance against the decision to stop execution proceedings should be considered "*void ab initio*".
11. Noor and Mr Al-Sayegh accept that steps taken on Noor's behalf in the Courts of Dubai on 26 and 30 January 2023 and on 7 and 18 February 2023, as described by Mr East, "*contradicted the position and intention of the Respondents as communicated to [NMCH] and the Court from 6 January 2023 onwards*". They submitted that these steps had been taken by Noor's onshore legal representative "*due to a miscommunication in instructions*" but what exactly that may mean was not explained. Rather, it was said that the steps taken "*had the effect of reinstating the status quo pending the outcome*" of the application to the Federal Supreme Court and that NMCH had suffered no prejudice in the circumstances.
12. Whether or not the steps taken did reinstate the status quo need not be decided. The declaration made on 17 May 2023 (that the grievance should be considered "*void ab initio*") might suggest that the steps taken did not affect NMCH's position in the Dubai Courts. But the steps that were taken did prejudice NMCH at least to the extent that they caused NMCH to incur costs and expenses in considering and responding to what was done. Those costs and expenses would not have been incurred but for what Noor's onshore lawyers had done because of the "*miscommunication in instructions*".

Varying the 5 October Order

13. The third event occurring after the February Hearing that should be noted may be dealt with briefly. The parties agreed that I should vary the 5 October Order. The variations being agreed, I made the order in a form that identifies, as clearly as I may, what changes have been made. No party suggested that the making of these changes bore on the issues I must now decide.

The relevant legislative provisions

14. It is important to begin consideration of the issues that were argued about purging contempt and about what further orders should be made in consequence of the findings of contempt by identifying the relevant legislative framework.

15. Section 96 of the *ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015* (the “**ADGM Courts Regulations**”) gives the ADGM Courts jurisdiction to deal with matters relating to contempt. Section 96(2) provides that:

(2) The Courts have jurisdiction under this section to deal with any person who –

(a) wilfully insults the Judge or Judges, the Registrar, any witnesses before or officer of the Court or any lawyer having business in the Court, during his or their sitting or attendance in Court or in going to or returning from the Court;

(b) wilfully interrupts the proceedings of the Court or otherwise misbehaves in Court; or

(c) is otherwise in contempt of court.

16. Section 96(3) provides that:

(3) In any such case the Court may, if it thinks fit:

(a) impose on him a fine not exceeding level 4 on the standard fine scale;

(b) refer the matter to the Attorney General of Abu Dhabi; or

(c) make such other order as it considers necessary to achieve the ends of justice.

17. It was common ground that the maximum fine allowed under s 96(3)(a) is US\$10,000¹ and it was also common ground that, in a case such as the present, where there are several distinct findings of contempt, s 96(3)(a) should be read as allowing the Court to impose a fine not exceeding that sum in respect of *each* contempt.

18. Counsel for NMCH submitted (and counsel for the Respondents did not submit to the contrary) that section 96(3) should be read disjunctively, in the sense that in respect of each count of contempt, the Court must choose which of the three forms of order it would make – fine, reference to the Attorney General or such other order as the Court considered necessary to achieve the ends of justice. The point not having been controverted I proceed on that footing.

19. Neither side submitted that the last of these powers (to “*make such other order*”) should be used in this case. Rather, the chief area of contest between the parties was whether either (or both) of the other two powers (to fine or refer to the Attorney General) should be exercised. I refer to exercise of *both* powers because NMCH submitted that it was open to refer some of the proved contempts to the Attorney General but impose fines in the remaining instances.

¹ See Commercial Licensing Regulations 2015 (Fines) Rules 2020 r 2.

20. The other legislative provisions that are relevant in these matters are those that deal with allowing and fixing costs – s 49 of the ADGM Courts Regulations, rules 195 to 200 of the *ADGM Court Procedure Rules 2016* (the “**ADGM CPR**”) (especially rules 198 and 199 of the ADGM CPR dealing with the standard basis and the indemnity basis) and Practice Direction 9.

The issues

21. As indicated at the outset, the issues to be decided concern purging the proved contempts and what orders should be made in respect of those contempts. It is necessary to deal first with purging.

The application to purge contempt

22. As I noted in my reasons of 23 February 2023, one week before the commencement of the hearing of NMCH’s contempt applications, Noor and Mr Al-Sayegh admitted that they had breached the 5 October Order and applied to purge their contempt. As I also recorded, Mr Al-Sayegh swore an affidavit in support of that application in which he said that “*having had the benefit of advice from the respondents’ external counsel*”, he now recognised that “*the steps taken to advance [Noor’s] position in the Dubai Court Proceedings after 5 October 2022 were in breach of and inconsistent with the 5 October Order of this Court*”. Mr Al Sayegh also said, in effect, that he, and he alone, was entirely responsible for the actions taken by or on behalf of Noor after the 5 October Order.
23. In this hearing, the Respondents submitted that “*in practical terms*” the application to purge “*amounts in substance to an application that no order be made by way of sanction or alternatively that any sanction be suspended*”. That may suggest that little more need be said about the application to purge beyond what is said in connection with what penalty, if any, should be imposed in respect of the established contempts. Nonetheless, it is desirable to say a little more about whether and how notions of “*purging*” a contempt may apply in a case like the present. As will appear, considering what would purge the contempts I found proved may help identify (and go some way to explaining the significance of) a number of the considerations that the parties submitted bear upon deciding what penalty should be imposed.

Purging – Completed contempts

24. As NMCH rightly submitted, violations of prohibitory orders are complete when they are committed; they cannot be undone. Hence, each of the six breaches of paragraph 1 of the 5 October Order I found had been proved was complete when it was done and cannot be undone.
25. As Wilson LJ said in *CJ v Flintshire County Council*² “*To purge a contempt would ... ordinarily mean to atone for a contempt, eradicate it or cleanse it of its previous ill-effect*”. Hence, as his Lordship went on to say, “*the notion [of purging a contempt] is less easily applied to an act which amounts to the breach of a prohibitory order and which, once done, cannot be undone.*”³ It follows that, in this case, where all of the contempts I have found to be proved are complete and cannot be undone, notions of purging those contempts are “*less easily applied*”. Yet, as I will explain, notions of purging may remain relevant (especially, in this case, to the contraventions of paragraph 3 of the 5 October Order).
26. For the reasons I gave on 23 February 2023, the contempts constituted by failure to comply with paragraph 3 of the 5 October Order were complete when the time fixed by that paragraph had passed. Paragraph 3 of the 5 October Order obliged Noor to apply for and obtain a stay or withdraw or cause to be withdrawn its applications of 28 September 2022, 3 October 2022, and 4 October 2022 in the specified Dubai Courts Commercial Execution and to do that by no later than the time specified in that paragraph of the order. Once that time had passed without Noor taking the steps

² [2010] EWCA Civ 393 [6]

³ [2010] EWCA Civ 393 [6]

that had been commanded, Noor's disobedience to the order (and Mr Al-Sayegh's contempt) was complete. And Noor not taking those steps after the time fixed by the order was not itself a further breach of the order.

27. But notions of purging have a different application to the failure to comply with the mandatory provisions of par 3 of the 5 October Order from their application to the breaches of paragraph 1.

Purging and the failure to do what paragraph 3 commanded

28. Noor and Mr Al-Sayegh submitted that the steps which were required by paragraph 3 of the 5 October Order could not have been taken after the time fixed by that order. I do not accept that proposition. As I have explained, their breach of that order was complete and was not to be treated as "*continuing*" in some relevant sense. But counsel pointed to no practical or legal impediment to Noor taking the steps identified in paragraph 3 after the time fixed by the order. Noor has not.
29. Counsel for Noor and Mr Al-Sayegh submitted that it is "*implicit in the reasoning*" of the Federal Supreme Court that Noor "*is not prohibited from pursuing the enforcement of the Payment Order once the administration of [NMCH] is completed*". Although not put directly in this way, I understood the purpose of the submission to be an attempt to explain or justify why Noor still has not taken the steps which were commanded by paragraph 3 of the 5 October Order.
30. I do not read the translated reasons of the Federal Supreme Court as explicitly or implicitly supporting the proposition that was put by Noor and Mr Al-Sayegh. On its face, the proposition (whatever may be said to be its roots) is wholly contrary to the operation of the scheme of administration prescribed by the *Insolvency Regulations 2015* (now the *Insolvency Regulations 2022*) and to the operation of the Deeds of Company Arrangement which have been made and is directly inconsistent with Noor's lodging a proof of debt. All of those provisions and steps are directed to the final compromising of whatever claims Noor may have had against NMCH before NMCH went into administration and made the relevant Deeds. And even if that is not right, no attempt was made to explain how or why now taking the steps which had been commanded by paragraph 3 of the 5 October Order would stand in the way of the supposed right Noor asserts to continue execution of the Dubai Payment Order after the administrations end and the Deeds of Company Arrangement have run their course.
31. I do not accept that the orders or reasons of the Federal Supreme Court explain or justify why, once Noor admitted that (among other breaches) it had breached paragraph 3 of the 5 October Order, it did not promptly take the steps which paragraph 3 of that order had required to be taken.
32. Its not taking those steps after the time fixed is relevant to its claim that its breach of the order should be treated leniently. Not taking those steps even after the time fixed by paragraph 3 of the 5 October Order and well before the hearing and determination of the issues with which these reasons deal would point directly away from any conclusion that Noor or Mr Al-Sayegh had atoned for or remedied the contempt constituted by their disobedience of the command in paragraph 3 of the 5 October Order.
33. Add to that the several steps I have referred to above under the heading "*Further Steps in the Dubai Courts*" and the conclusion that this contempt (if it could have been purged) has not been purged would be reached even more easily. That last step would be taken regardless of how it was that Noor's onshore lawyers came to take the steps that they did take to revive the then stayed execution process in the Dubai Courts. More particularly, that step would be taken regardless of how the so-called "miscommunication" in instructions from Noor to those lawyers came about. As counsel for the Respondents acknowledged, these steps "*contradicted the position and intention of the Respondents as communicated to [NMCH] and the Court from 6 January 2023 onwards*".

Purging – after punishment has been imposed

34. “*Purging*” is a notion which may find both its origins and most ready application after punishment has been imposed and especially when a contemnor has been committed to prison (whether for a definite term, or as once was the case, until further order). Notions of purging, in the sense of atoning for the contempt, would apply if a contemnor sought release from imprisonment by making one or both of two related points – first that he or she had been sufficiently punished for what was done or second, that having regard to what he or she had since done or had undertaken to do to achieve the practical effect of the order that was contravened, the term already served should be treated as sufficient punishment.
35. But, to state the obvious, this is not a case of that kind. This Court has not committed, and has no power to commit, a contemnor to prison. Indeed, no sanction has yet been imposed on either contemnor. And, there has been (and in the case of six of the counts can be) no offer to achieve any of the practical effects sought by the 5 October Order or remedy the consequences of breach.

Purging – Expressing contrition

36. As was also pointed out in *CJ v Flintshire CC* it may be doubted that expressions of remorse (even if genuine) are without more sufficient to amount to purging a completed contempt.⁴ To find that expressions of remorse were sufficient to atone for contempts that have been committed and cannot be undone would pay no (or at least insufficient) regard to the fundamental public purposes that punishment for contempt must pursue - respect for and obedience to the orders of a Court required by the rule of law.⁵
37. Genuine remorse and contrition may be a necessary condition for finding that contempts have been purged. At least in this case, and probably more generally, it is not sufficient.
38. I consider later the effect of Mr Al-Sayegh’s expressions of regret.

The application to purge as a submission that no sanction be applied

39. As noted above, the Respondents submitted that, “*as a practical matter*” their application to purge should be treated as a submission that no sanction should be imposed or that any sanction be suspended. That is, the application was treated by the Respondents, in effect, as a plea in mitigation. I am content to deal with the matter in the way the Respondents proposed. The extent of the mitigation established here is informed by the considerations I have discussed above. But it follows from adopting the course urged by the Respondents that no order should be made on the application to purge other than that it be dismissed.
40. I turn, therefore, to questions of sanction.

Sanction

41. There was, and can be, no dispute that the Court’s power to deal with contempt is a necessary part of the rule of law. The rule of law requires that Court orders be obeyed. This is at the core of the “*fundamental public purposes*” that punishment for contempt does, and must, pursue.

A Starting point?

42. Counsel for NMCH submitted that it is now well established in English law that “*the attack on the administration of justice which is made when a freezing order is breached usually merits an*

⁴ [2010] EWCA Civ 393 [22] per Wilson LJ (quoting from *Johnson v Grant* 1923 SC 789, 791), [32] per Sedley LJ.

⁵ cf *Johnson v Grant* 1923 SC 789, 791

immediate sentence of imprisonment of some not insubstantial amount".⁶ It was submitted that the same approach has been taken to breaches of anti-suit injunctions.⁷ And, so it was submitted, no different approach should be adopted in a case where the breach was of an anti-execution order.

43. Recognising that this Court has no power to commit a contemnor to prison, Counsel for NMCH submitted that it followed from the cases to which NMCH referred that I should conclude that fining the contemnors in this case would not sufficiently reflect the gravity of the contempts they had committed and that, accordingly, I should refer the matters to the Attorney General of Abu Dhabi. This, it was said, was a course consonant with the course adopted by Justice Wayne Martin in the DIFC Court in the case of *Lateef*⁸. Indeed, it was said, the case for reference was strengthened when it was observed that the DIFC Courts have imposed fines for contempt much larger than US\$10,000.⁹
44. I readily accept that the rule of law depends on, and therefore demands that, court orders are obeyed. I also accept that the breaches of the 5 October Order which I found to be proved are serious breaches. But when considering what has been said in the English courts (which do have power to commit contemnors to prison) about punishing those who break freezing or anti-suit orders it is important to recognise that reference to the Attorney General of Abu Dhabi would entail two consequences. First, it would be for the Attorney General to decide whether to prosecute criminal proceedings, and second, it would then be for the Abu Dhabi Judicial Department to decide what punishment should be imposed if the person the subject of reference were found to have committed a crime by disobeying the order of this Court. The necessary and proper interposition of these two further steps makes any direct translation of what the English Courts have said about imprisonment being the "*usua*" sentence in cases like the present into a proposition that reference to the Attorney General should be treated as the "*starting point*" or "*usua*" sentence in this case a hazardous exercise in translation.
45. Instead, the point which I take to emerge from and be emphasised by the cases relied on is that breaches of the kind with which I am concerned are serious and merit serious punishment.

Aggravating and mitigating circumstances?

46. I accept that, as NMCH submitted, Noor is a large financial services company, Mr Al-Sayegh is a sophisticated and experienced businessman and both the company and Mr Al-Sayegh had access to legal advice about the effect of the 5 October Order.
47. I also accept that the proved contempts risked destabilising the administration of NMCH and its related entities. I am sure that but for the contempt applications, Noor would have continued to prosecute its attempts to execute the Payment Order it had obtained in the Courts of Dubai and that if it had been able to do so, it is very probable that other creditors would have followed suit.
48. Further, and no less importantly, the proved contempts caused the Administrators of NMCH to incur the costs and expenses which have been incurred in prosecuting the contempt applications. Those outlays, unless recouped, will fall ultimately on the unsecured creditors of the companies in administration and subject to the Deeds of Company Arrangement.
49. NMCH submitted in oral argument that I should not accept the Respondents' submission that "*they took prompt steps*" to stop the execution processes when they received advice to do that. In effect,

⁶ Templeton Insurance Ltd v Anthony Thomas, Harbinder Singh Panesar [2013] EWCA Civ 35, [42]

⁷ See eg *Trafigura Pte Ltd v Emirates General Petroleum Corp (EMARAT)* [2010] EWHC 3007 (Comm); *Compania Sud Americana de Vapores SA v Hin_Pro Logistics Ltd* [2013] EWHC 987 (Comm)

⁸ [2022] DIFC ARB 017 and 021/2021

⁹ See eg *Gulf Wings FZE v A A and K Trading Ltd* [2022] DIFC CA 014 which did not disturb the imposition of a US\$ 100,000 fine on a corporation

NMCH submitted that I should find that Noor had been in a position to seek and obtain relevant advice well before Mr Al-Sayegh swore his affidavit of 8 February 2023, and that the proved contempts “*represented the knowing flouting of the 5 October Order*”. The first part of this proposition may be accepted. But the second does not inevitably follow from advice having been available. I asked counsel for NMCH whether these were matters that had not been put squarely to Mr Al-Sayegh when he was cross-examined and I did not understand counsel to submit that they had. This would be reason enough to reject the submission. But there are other reasons to do so.

50. Taken as a whole, Mr Al-Sayegh’s evidence suggested strongly that he believed that the Courts of Dubai had decided Noor was entitled to repayment of its debt and that Noor was entitled to ask the Dubai Courts to execute the Payment Order that had been made, regardless of orders made by this Court. That belief was wrong but I do not doubt that Mr Al-Sayegh held it. And even when cross-examined in the contempt proceedings, Mr Al-Sayegh still seemed to have real difficulty in understanding why the view he had held was wrong. More than once he referred to Noor having judgment in the Dubai Courts as if that were the determinative or only relevant consideration guiding what he could or should have had Noor do. As I said in my reasons of 23 February 2023 “*he said, more than once and with force, he believed that Noor had the right to take these steps because the Dubai Courts had ordered what was then a Dubai company to pay Noor money it owed and that decision had been upheld on appeal in Dubai and then in the Dubai Court of Cassation*”.
51. I am therefore not persuaded that I should find that Mr Al-Sayegh did what he did (and thus Noor did what it did) knowing that it was legally wrong to do so. Mr Al-Sayegh thought (wrongly) that Noor was enforcing legally available rights.
52. No doubt, as NMCH submitted, Noor and Mr Al-Sayegh acted as they did in pursuit of commercial advantage. But observing that a company has acted in pursuit of its own commercial advantage is hardly surprising and in this case is not an aggravating circumstance. What is presently relevant is that what the company and Mr Al-Sayegh did was in breach of the 5 October Order and that their actions brought about the contempt applications with all of the attendant costs and expenses incurred by NMCH.

Contrition?

53. Counsel for NMCH submitted that I should find that Mr Al-Sayegh’s expression of regret and the unreserved apology he offered in paragraph 17 of his affidavit of 8 February 2023 were not genuine. As I have said, Mr Al-Sayegh evidently found it difficult to understand (even difficult to accept) that what he and Noor had done was unlawful. But that must be weighed against the fact that in his affidavit of 8 February 2023 he admitted the contempts alleged and accepted personal responsibility for their occurrence. The applications proceeded to hearing on the basis of those admissions. I am not persuaded that Mr Al-Sayegh’s expression of regret or his apology were not genuine.

Consequences of the contempts

54. As I have said more than once, the breaches of the 5 October Order led directly to NMCH incurring the costs and expenses of prosecuting the contempt applications. Those costs and expenses are not small. The statement of costs filed by NMCH put its costs and expenses at more than US\$1 million.
55. As I have also noted earlier in these reasons, if not recouped, the burden of those costs will fall ultimately on the unsecured creditors of NMCH and its related entities.

Sanctions

56. In deciding whether to order payment of a fine or to order reference to the Attorney General in respect of any or all of the proved contempts, it is relevant to consider whether and to what extent the contemnors have remedied the harm caused by their conduct or will be obliged to do so. In this matter, then, it is important to begin consideration of sanctions by dealing first with what orders should be made for the costs of these proceedings.

Costs?

57. There was no dispute that orders for costs could be made, and could be made on either the standard basis described in rule 198 of the ADGM CPR or the indemnity basis described in rule 199.
58. The Respondents submitted that *“it is appropriate to draw a dividing line between the proceedings and the costs incurred by the parties before 8 February 2023 being the date of Mr Al-Sayegh’s affidavit, and the proceedings and costs after that date”*. It was said that after that date it was known that Noor and Mr Al-Sayegh admitted their contempt and that it was the Respondents’ case that none of the Second or Fourth to Twelfth Respondents was in contempt. So, the argument continued, the application against the other Respondents should not have been pursued.
59. On this basis, the Respondents submitted that they should have their costs from 9 February 2023 *“up to and including the substantive hearing of the Contempt Applications”*. And rather than making competing orders for costs in respect of the period before that date (one in favour of the Second and Fourth to Twelfth Respondents, and the other in favour of NMCH as applicant) the Respondents submitted that there should be no order as to costs in respect of that period. Acceding to this submission would produce the counter-intuitive (and in this case unjust) result that neither Noor nor Mr Al-Sayegh would suffer any order for costs of the proceedings that were brought because they had disobeyed the 5 October Order and were, therefore, in contempt of court.
60. NMCH first commenced contempt proceedings, on 9 December 2022, against only Noor and the Second Respondent, Mr Adel M El Hassan (the legal manager of Noor). One week later, NMCH brought similar applications against Mr Al-Sayegh (the Third Respondent) and against the Fourth to Twelfth Respondents (who were the directors and Chief Executive Officer of Noor). Thereafter, all Respondents were jointly represented and the proceedings continued as if there were a single consolidated application in which there was no divergence between the interests of the Respondents.
61. Joint representation of the Respondents continued after Noor and Mr Al-Sayegh admitted that their conduct was in contempt. In particular, at the hearing I conducted on 14 and 15 February 2023 all Respondents appeared by the same counsel and solicitors.
62. At that hearing, NMCH sought to establish that Respondents other than Noor and Mr Al-Sayegh should be found to have participated in the conduct constituting the contempts that had been admitted. I was not persuaded to make those findings. But there was, in my view, ample reason for NMCH to test the assertion by Mr Al-Sayegh that he and he alone had been responsible for the conduct in issue. All but two of the remaining Respondents were directors of Noor. It was proved that at least some of them were on notice of the content of the 5 October Order (See paragraphs [70]-[71] and [74]).
63. All this being so, NMCH acted reasonably in maintaining the cases it had launched against the directors other than Mr Al-Sayegh and did not act unreasonably in continuing the cases it had brought against the Second and Fourteenth Respondents (Noor’s Legal Manager and its CEO).

64. These conclusions go directly to whether Noor and Mr Al-Sayegh should bear the costs of the entire hearing conducted on 14 and 15 February 2023 and the costs that NMCH incurred in instituting and maintaining its applications against the other Respondents. Once Noor acknowledged that what had been done in its name contravened the 5 October Order, the central issue in the case became whether directors or other office-holders in Noor had assisted Noor to commit those contraventions. Determining what penalty should be imposed on Noor and on Mr Al-Sayegh is much affected by, even depends on, whether their conduct has caused unremedied harm to NMCH (and thus to the body of unsecured creditors).
65. Those Respondents found not to have been party to the contempts are not shown to have incurred any separate costs. If they are to be treated as having succeeded at trial, their success was achieved in the course of the joint representation of all Respondents including Noor and Mr Al-Sayegh. No part of the costs which the Respondents (as a group) incurred in respect of that hearing should be paid by NMCH. Whether, as might be expected, the Respondents' costs of the hearing fall entirely upon Noor or are to be borne to some extent by individual Respondents other than Noor and Mr Al-Sayegh is not revealed. In these circumstances, subject to one qualification, Noor and Mr Al-Sayegh should pay NMCH its costs of and incidental to the contempt applications including the costs of the hearing on 14 and 15 February 2023 and the hearing on 19 June 2023.
66. The qualification I would make is that those costs should not include the costs of the applications for summonses to witness that were the subject of the reasons I gave on 3 February 2023. At the time of refusing those applications I reserved costs. There should be no order as to the costs of and incidental to those applications; those costs should lie where they fall.

Costs - standard basis or indemnity basis?

67. For the reasons I have given above about the effect on NMCH (and its creditors) of the conduct of Noor and Mr Al-Sayegh, I have no doubt that costs should be allowed on the indemnity basis described in rule 199 of the ADGM CPR. The amount of the costs should be agreed or assessed.

Costs –payment on account?

68. NMCH submitted that I should order immediate payment of a substantial part of the costs which it claims. If the final amount due for costs is not agreed but must be assessed, it was suggested that NMCH may stand out of its costs for a long time. I am not at all sure that this fear is well-founded. Nor am I clear whether requiring part payment would encourage or discourage the parties to come quickly to an agreement about the costs to be paid.
69. For the moment I am not persuaded that I should order part payment. But I will reserve liberty to the parties to apply and, if a case can later be made for making a part payment order, application can be made pursuant to that reservation.

Fine or reference

70. Only now is it right to decide what sanction should be imposed. I say “*only now*” because the determination of sanction must take account of the fact that the contemnors will be required to pay a substantial amount for the costs incurred by NMCH as a result of their conduct. As I have said, NMCH says the amount of costs will exceed US\$1 million. The final amount will be settled by agreement or assessment but there seems little doubt that it will be a substantial sum.
71. The costs being as large as they are I consider that fining the contemnors is more appropriate than referring either to the Attorney General for Abu Dhabi. Imposing a fine (and ordering payment of costs) is an immediate and public condemnation of what the contemnors did. Not only that, it is a condemnation that sounds in money - the very subject matter which was at the heart of their contempts.

72. The separate counts of contempt found proved all formed part of a single continuing course of conduct. The contraventions of paragraph 1 of the 5 October Order and the failure to comply with the command of paragraph 3 of that order differ inasmuch as the former were acts of commission and the latter acts of omission. But I do not consider that this provides any sufficient basis to differentiate between the kinds of sanction or outcome that should be ordered in respect of particular breaches. It would not be appropriate to make what counsel called a “mixed” order by which fines are imposed in respect of some counts but other counts are referred to the Attorney General.
73. I refer to imposing a fine being an “*immediate and public condemnation*” because, when I asked what had been the result of the reference to the Attorney General of Dubai Justice Wayne Martin had made in the DIFC Courts in the case of *Lateef*, I was told that the outcome of the reference remained confidential. I was also told by counsel that I should assume that the consequence of reference of these matters to the Attorney General of Abu Dhabi may also remain confidential.
74. I consider that immediate and public condemnation of the contempts that have been found proved will better serve the overarching public purpose of emphasising the importance of the rule of law and the absolute need to obey the orders of this Court. In the circumstances I have described above, that is best achieved by imposing immediate fines to the full extent of the power given to this Court.
75. Each of Noor and Mr Al-Sayegh should pay a fine of US\$10,000 in respect of each count of contempt found proved. That is, each of Noor and Mr Al-Sayegh should pay fines totalling US\$70,000 within 28 days of the date of the order giving effect to this Judgment.
76. In addition (subject to the one qualification I have mentioned) each of Noor and Mr Al-Sayegh should pay NMCH the costs of and incidental to the contempt applications NMCH brought against all twelve Respondents, assessed on the indemnity basis, the amount of those costs to be agreed or, if not agreed, assessed.



Issued by:

Linda Fitz-Alan
Registrar, ADGM Courts
26 June 2023



SCHEDULE 1

No.	Applicant	ADGM Registration No.	ADGM Registered Address
1.	Al Zahra Pvt. Hospital Company LTD (formerly known as Al Zahra Pvt. Hospital Company Limited, with license no. 16506)	000004237	DD #16 - 109 - 007, 16th Floor, Wework Hub71, Al Khatem Tower, Adgm Square, Al Maryah Island, Abu Dhabi, United Arab Emirates
2.	Bait Al Shifaa Pharmacy LTD , including its branch Bait Al Shifaa Pharmacy LLC Dubai Branch- Jafza, with commercial license no. 164999 (formerly known as Bait Al Shifaa Pharmacy (L L C), with license no. 224351)	000004236	DD #16 - 109 - 018, 16th Floor, Wework Hub71, Al Khatem Tower, Adgm Square, Al Maryah Island, United Arab Emirates
3.	Eve Fertility Center LTD (formerly known as Eve Fertility Center L.L.C, with license no. 539107)	000004206	DD #16 - 109 - 031, 16th Floor, Wework Hub71, Al Khatem Tower, Adgm Square, Al Maryah Island, United Arab Emirates
4.	Fakih IVF Fertility Center LTD , including its branches Fakih IVF Fertility Center LLC – Branch 3, with license no. CN-1360709-3, and Fakih IVF Fertility Center LLC – Branch 4 with license no. CN-1360709-4 (formerly known as Fakih IVF Fertility Center L.L.C., with license no. CN-1360709)	000004224	DD #16 - 109 - 015, 16th Floor, Wework Hub71, Al Khatem Tower, Adgm Square, Al Maryah Island, United Arab Emirates
5.	Fakih IVF LTD (formerly known as Fakih IVF L.L.C, with license no. 666849)	000004220	DD #16 - 109 - 014, 16th Floor, Wework Hub71, Al Khatem Tower, Adgm Square, Al Maryah Island, United Arab Emirates
6.	Grand Hamad Pharmacy LTD (formerly known as Grand Hamad Pharmacy LLC, with license no. 607766)	000004238	DD #16 - 109 - 034, 16th Floor, WeWork Hub71, Al Khatem Tower, Adgm Square, Al Maryah Island, United Arab Emirates
7.	Hamad Pharmacy LTD (formerly known as Hamad Pharmacy L.L.C, with license no. 118795)	000004209	DD #16 - 109 - 032, 16th Floor, WeWork Hub71, Al Khatem Tower, Adgm Square, Al Maryah Island, United Arab Emirates



No.	Applicant	ADGM Registration No.	ADGM Registered Address
8.	N M C Provita International Medical Center LTD , including its branches N M C Provita International Medical Centre L.L.C. – Branch 1, with license no. CN-1027356-1, Provita International Medical Centre L.L.C. – Branch 2, with license no. CN-1027356-2, and N M C Provita International Medical Centre L.L.C. – Branch 3, with license no. CN-1027356-3 (formerly known as N M C Provita International Medical Center L.L.C., with license no. CN-1194307)	000004240	DD #16 - 109 - 008, 16th Floor, Wework Hub71, Al Khatem Tower, Adgm Square, Al Maryah Island, United Arab Emirates
9.	N M C Royal Hospital LTD , including its branches NMC Clinic (BR of NMC Royal Hospital LLC), with license no. 814785, NMC Polyclinic Branch of NMC Hospital LLC, with license no. 163880, NMC DIC Clinic and Pharmacy (BR of NMC Royal Hospital LLC), with license no. 860025, and NMC Hospital (BR of NMC Royal LLC), with license no. 878386 (formerly known as N M C Royal Hospital L.L.C, with license no. 710432)	000004225	DD #16 - 109 - 006, 16th Floor, Wework Hub71, Al Khatem Tower, Adgm Square, Al Maryah Island, Abu Dhabi, United Arab Emirates
10.	N M C Royal Hospital LTD (formerly known as N M C Royal Hospital L.L.C., with license no. CN-2015786)	000004245	DD #16 - 109 - 009, 16th Floor, Wework Hub71, Al Khatem Tower, Adgm Square, Al Maryah Island, United Arab Emirates
11.	N M C Royal Medical Centre LTD , including its branches NMC Royal Medical Centre LLC – Branch (Shahama), with license no. CN-2912685, and NMC Royal Medical Centre LLC –Branch (Karama), with license no. CN-2895125, and NMC Royal Medical Centre LLC –Branch 1 (Abu Dhabi), with license no. CN-2150457-1 (formerly known as N M C Royal Medical Centre L.L.C., with license no. CN-2150457)	000004197	DD #16 - 109 - 022, 16th Floor, Wework Hub71, Al Khatem Tower, Adgm Square, Al Maryah Island, United Arab Emirates



No.	Applicant	ADGM Registration No.	ADGM Registered Address
12.	N M C Specialty Hospital LTD (formerly known as NMC Specialty Hospital - LLC, with license no. CN-1026386)	000004217	DD #16 - 109 - 005, 16th Floor, Wework Hub71, Al Khatem Tower, Adgm Square, Al Maryah Island, United Arab Emirates
13.	NMC Healthcare LTD (formerly known as N.M.C Health Care (L.L.C), with license no. 610400)	000004210	DD #16 - 109 - 001, 16th Floor, Wework Hub71, Al Khatem Tower, Adgm Square, Al Maryah Island, United Arab Emirates
14.	N.M.C Specialty Hospital LTD (formerly known as N. M. C Specialty Hospital (L.L.C), with license no. 562359)	000004241	DD #16 - 109 - 003, 16th Floor, Wework Hub71, Al Khatem Tower, Adgm Square, Al Maryah Island, United Arab Emirates
15.	New Medical Centre LTD (formerly known as New Medical Centre L.L.C, with license no. 127562)	000004214	DD #16 - 109 - 011, 16th Floor, WeWork Hub 71, Al Khatem Tower, Adgm Square, Al Maryah Island, United Arab Emirates
16.	New Medical Centre LTD , including trading in Ras Al Khaimah as NMC Royal Dental Centre under license no. 38678, NMC Royal Medical Centre, under license no. 21518 and NMC Royal Pharmacy, under license no. 21669 and its branches New Medical Centre Ajman LLC-BR, with license no. 95454 and New Medical Centre L.L.C – Branch of Abu Dhabi 2, with license no. CN-1831682 (formerly known as New Medical Centre L L C, with license no. 25954)	000004216	DD #16 - 109 - 016, 16th Floor, WeWork Hub71, Al Khatem Tower, Adgm Square, Al Maryah Island, United Arab Emirates
17.	New Medical Centre Pharmacy LTD (formerly known as New Medical Centre Pharmacy - L.L.C – AIain – NMC, with license no. CN-1135313)	000004253	DD #16 - 109 - 019, 16th Floor, Wework Hub71, Al Khatem Tower, Adgm Square, Al Maryah Island, United Arab Emirates



No.	Applicant	ADGM Registration No.	ADGM Registered Address
18.	New Medical Centre Pharmacy LTD , including its branches New Medical Centre Pharmacy/Branch, with license no. 96634, and New Medical Centre Pharmacy LLC NMC Branch 1, with license no. 766270 (formerly known as New Medical Centre Pharmacy LLC– N.M.C, with license no. 608411)	000004255	DD #16 - 109 - 026, 16th Floor, Wework Hub71, Al Khatem Tower, Adgm Square, Al Maryah Island, United Arab Emirates
19.	New Medical Centre Specialty Hospital LTD (formerly known as New Medical Centre Specialty Hospital LLC, with license no. CN-1135806)	000004228	DD #16 - 109 - 010, 16th Floor, Wework Hub71, Al Khatem Tower, Adgm Square, Al Maryah Island, United Arab Emirates
20.	New Medical Centre Trading LTD , including its branches New Medical Centre Trading LLC Branch 1, with license no. CN-1027356-1, New Medical Centre Trading LLC Branch 2, with license no. CN-1027356-2, and New Medical Centre Trading LLC Branch 3, with license no. CN-1027356-3 (formerly known as New Medical Centre Trading L.L.C, with license no. CN-1027356)	000004218	DD #16 - 118 - 022, 16th Floor, Wework Hub71, Al Khatem Tower, Adgm Square, Al Maryah Island, United Arab Emirates
21.	New Pharmacy Company LTD , including its branches New Pharmacy Company WLL – Branch 1, with license no. CN-1029364-1, New Pharmacy Company WLL – Branch 2, with license no. CN-1029364-2, New Pharmacy Company WLL – Branch 4, with license no. CN-1029364-4, New Pharmacy Company WLL – Branch 6, with license no. CN-1029364-6, New Pharmacy Company WLL – Branch 7, with license no. CN-1029364-7, New Pharmacy Company WLL – Branch – (Shahama), with license no. CN-2936047, New Pharmacy Company WLL – Branch 9, with license no. CN-2832792-9, (formerly known as New Pharmacy Company W L L, with license no. CN-1029364)	000004230	DD #16 - 109 - 004, 16th Floor, WeWork Hub71, Al Khatem Tower, Adgm Square, Al Maryah Island, United Arab Emirates



No.	Applicant	ADGM Registration No.	ADGM Registered Address
22.	New Sunny Medical Centre LTD (formerly known as New Sunny Medical Centre LLC; N.M.C Medical Center L.L.C Shj. BR 2, with license no. 556959)	000004202	DD #16 - 109 - 027, 16th Floor, Wework Hub71, Al Khatem Tower, Adgm Square, Al Maryah Island, United Arab Emirates
23.	NMC Holding LTD (formerly known as NMC Holding L.L.C., with license no. CN-1210596)	000004211	DD #16 - 109 - 002, 16th Floor, Wework Hub71, Al Khatem Tower, Adgm Square, Al Maryah Island, United Arab Emirates
24.	NMC Royal Family Medical Centre LTD (formerly known as NMC Royal Family Medical Centre L.L.C., with license no. CN-1491505)	000004243	DD #16 - 109 - 035, 16th Floor, Wework Hub71, Al Khatem Tower, Adgm Square, Al Maryah Island, United Arab Emirates
25.	NMC Royal Women's Hospital LTD , including its branch Cooper Health Clinic 1 – Dubai Branch, with license no. 689748 (formerly known as NMC Royal Womens Hospital LL.C., with license no. CN-1532709)	000004235	DD #16 - 109 - 021, 16th Floor, Wework Hub71, Al Khatem Tower, Adgm Square, Al Maryah Island, United Arab Emirates
26.	NMC Trading LTD , including its branches NMC Trading LLC Branch-DXB, with license no. 637024, NMC Trading LLC (Branch) – DXB, with license no. 755519, NMC Trading LLC Branch-Ajman, with license no. 57474, NMC Trading LLC RAK Branch, with license no. 32957, and NMC Trading LLC (Branch)-Fujairah, with license no. 14167. (formerly known as NMC Trading L L C, with license no. 207104)	000004233	DD #16 - 118 - 023, 16th Floor, Wework Hub71, Al Khatem Tower, Adgm Square, Al Maryah Island, United Arab Emirates
27.	Reliance Information Technology LTD (formerly known as Reliance Information Technology.LLC, with license no. CN-1031535)	000004234	DD #16 - 109 - 020, 16th Floor, Wework Hub71, Al Khatem Tower, Adgm Square, Al Maryah Island, United Arab Emirates
28.	Sharjah Pharmacy LTD (formerly known as Sharjah Pharmacy L.L.C, with license no. 14966)	000004239	DD #16 - 109 - 033, 16th Floor, WeWork71, Al Khatem Tower, Adgm Square, Al Maryah Island, United Arab Emirates



No.	Applicant	ADGM Registration No.	ADGM Registered Address
29.	Sunny Al Buhairah Medical Centre LTD (formerly known as N.M.C MEDICAL CENTER L.L.C SHJ.BR and Sunny Al Buhairah Medical Centre LLC, with license no. 558052)	000004199	DD #16 - 109 - 025, 16th Floor, WeWork Hub71, Al Khatem Tower, Adgm Square, Al Maryah Island, United Arab Emirates
30.	Sunny Al Nahda Medical Centre LTD (formerly known as N.M.C MEDICAL CENTER L.L.C SHJ.BR 4 and Sunny Al Nahda Medical Centre LLC, with license no. 572409)	000004232	DD #16 - 109 - 013, 16th Floor, WeWork Hub71, Al Khatem Tower, Adgm Square, Al Maryah Island, United Arab Emirates
31.	Sunny Dental Centre LTD (formerly known as N.M.C Dental Centre L.L.C and Sunny Dental Centre LLC, with license no. 571311)	000004198	DD #16 - 109 - 023, 16th Floor, Al Khatem Tower, Adgm Square, Al Maryah Island, United Arab Emirates
32.	Sunny Halwan Speciality Medical Centre LTD (formerly known as Sunny Halwan Speciality Medical Centre LLC, with license no. 747560)	000004204	DD #16 - 109 - 029, 16th Floor, WeWork Hub71, Al Khatem Tower, Adgm Square, Al Maryah Island, United Arab Emirates
33.	Sunny Maysloon Speciality Medical Centre LTD (formerly known as Sunny Maysloon Speciality Medical Centre L.L.C, with license no. 751420)	000004205	DD #16 - 109 - 030, 16th Floor, Wework Hub71, Al Khatem Tower, Adgm Square, Al Maryah Island, United Arab Emirates
34.	Sunny Medical Centre LTD (formerly known as N.M.C MEDICAL CENTER L.L.C SHJ.BR)	000004231	DD #16 - 109 - 012, 16th Floor, WeWork Hub71, Al Khatem Tower, Adgm Square, Al Maryah Island, United Arab Emirates
35.	Sunny Sharqan Medical Centre LTD (formerly known as Sunny Sharqan Medical Centre L.L.C, with license no. 744404)	000004203	DD #16 - 109 - 028, 16th Floor, Wework Hub71, Al Khatem Tower, Adgm Square, Al Maryah Island, United Arab Emirates
36.	Sunny Specialty Medical Centre LTD (formerly known as N.M.C MEDICAL CENTER L.L.C SHJ.BR 3 and SUNNY SPECIALITY MEDICAL CENTRE LL.C., with license no. 545893)	000004200	DD #16 - 109 - 024, 16th Floor, WeWork Hub71, Al Khatem Tower, Adgm Square, Al Maryah Island, United Arab Emirates