

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

27-3-12



CAUSE NO. FSD 54 OF 2009

IN THE MATTER OF THE COMPANIES LAW (2009 REVISION)
AND IN THE MATTER OF SAAD INVESTMENTS COMPANY LIMITED

AND 16 OTHER LIQUIDATIONS

BETWEEN AHMAD HAMAD ALGOSAIBI
AND BROTHERS ("AHAB") COMPANY

PLAINTIFF

AND SAAD INVESTMENTS COMPANY
("SICL") LIMITED

MAAN AL-SANEA AND OTHERS

DEFENDANTS

IN CHAMBERS
THE 14TH FEBRUARY 2012
BEFORE THE HON. ANTHONY SMELLIE, CHIEF JUSTICE

Appearances: Mr. Quest, Mr. Hayden and Mr. Keightley for AHAB (with them
Mr. Simon Charlton of Deloitte)
Mr. Helfrecht of Bodden & Bodden for the AWALCos – the 13th – 19th
Defendants
Ms. Colette Wilkins of Walkers for the GT Liquidators of SICL
Mr. Herbert for of Harneys for Kinetic Liquidators – 34th Defendant
SIFCo #5
Mr. Flannagan of Nelson & Co. for Standard Chartered Bank
Mr. Stephen Alexander of Maples & Calder for the Maples Defendants

RULING

1. AHAB's present application for an interim award of damages against Mr. Al Sanea proceeds on the basis that liability as established against him, does not depend upon liability having to be established as against any of the other

defendants, the companies of Mr. Al Sanea in liquidation. AHAB relies upon Grand Court Rules (“GCR”) Order 29 rules 10 and 11.

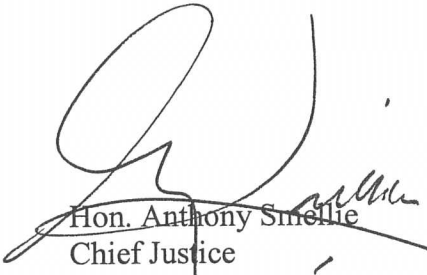
2. AHAB says through Mr. Quest, that the arithmetic exercise of assessment of damages for the purposes of an interim award can proceed on the basis that Mr. Al Sanea’s liability for breach of fiduciary duty and fraud is deemed established. Thus, the misappropriation of AHAB’s money by Mr. Al Sanea enabled by that breach of duty and fraud and now deemed proven by the default judgment, can be identified and quantified. AHAB would rely on the forensic accounting evidence of Mr. Simon Charlton for these purposes. Further, says AHAB, there can be no risk of prejudice to the Defendants in Liquidation if it turns out at trial that they were not involved in the alleged conspiracy with Mr. Al Sanea to defraud AHAB. No recovery is sought from them now but only from Mr. al Sanea by virtue of the default judgment.
3. The problem nonetheless raised by the Defendants in Liquidation is whether there would be a risk of inconsistent verdicts. This risk is said to be presented by the fact that their defences to AHAB’s claims depend upon their denial, not only of any conspiracy with Mr. Al Sanea, but also upon their denial that he committed the alleged breaches of fiduciary duty and fraud. That defence is crucial to their position because if it succeeds, not only would they not be liable for conspiracy but also because monies received by them from and through Mr. Al Sanea, would not be tainted by the alleged breach of fiduciary duty or fraud. So, despite the fact that Mr. Al Sanea’s liability is by the default judgment against him deemed to be proven; there is a risk of inconsistent verdicts were the Defendants in Liquidation to prove at trial that he was not liable.

4. Such concerns about inconsistent verdicts are said by Ms. Wilkins to lay at the root of GCR O. 37 rule 3. This rule mandates that where a trial proceeds against other defendants, the damages under the judgment already obtained against another defendant shall be assessed at the trial, unless the Court otherwise orders.
5. This Rule presents me with some difficulty now. Its rationale is not explained in the rule itself or, as far as I am able to ascertain, in the case law.
6. It may well be that the rule is aimed at avoiding unfair consequences such as could arise from a premature assessment and award of damages as against a particular defendant in respect of whom a default judgment was earlier obtained in the same action.
7. Such a thing could happen, for instance, in the context of a personal injury claim against more than one defendant and where liability and damage are to be apportioned or where contributory negligence on the part of the plaintiff could be found. Whether or not the Rule is aimed at avoiding the kind of inconsistent verdict said to be apprehended by the Defendants in Liquidation here, will itself be a matter for resolution.
8. One of the issues they will have to face as I can anticipate, will be why it is they should deny AHAB's immediate enforcement of its judgment against assets identifiable as Mr. Al Sanea's, when they have themselves brought no claim against him.
9. All that said and whatever may be its objectives, while AHAB has not sought an order under GCR O. 37 rule 3 to allow the assessment of damages on the interim basis to proceed, on a plain reading of the rule AHAB requires such an order and,

as matters stand, I am simply not in a position to say whether or not such an order should be made.

10. Given the complex nature of this action, and the magnitude of the claim for damages against Mr. Al Sanea, it would be inappropriate for me to make an order under O. 29. r. 1 in favour of AHAB without hearing from the other defendants. That is; especially as to how it is perceived by them that an interim award could result in inconsistent outcomes at trial as against them, as to both their liability for damages and the quantum of the damages.
11. I am also concerned about whether as the judge who is likely to try the action as against the other defendants (and at the same time SICL's counterclaim against AHAB); I should be hearing and deciding now on the evidence as to the quantum of damages, although that would be as against Mr. Al Sanea only.
12. I do not think that I have heard enough today to allow me to decide that issue either.
13. The outcome then is that the application by the Defendants in Liquidation for the adjournment must be granted with direction for the hearing of their objections to AHAB's application for an interim assessment and award of damages.
14. The direction I give is that AHAB should specify what evidence it will seek to rely upon by way of assessing the damages directly attributed to Mr. Al Sanea's breach of fiduciary duty and fraud. This is evidence which it says would entitle it to receive an interim award irrespective of the outcome at trial of its claim as against the other Defendants in Liquidation.

15. The Defendants in Liquidation in turn shall serve their evidence to show why a determination of an interim award based on Mr. Al Sanea's deemed liability could necessarily or reasonably be expected to result in inconsistent outcomes at trial.
16. This is all aimed at allowing the Court to make a determination pursuant to GCR O. 37 r. 3.
17. When that determination is made, depending on what it is, the Court will then direct whether another judge should hear AHAB's application for an interim award.
18. AHAB's evidence to be filed within seven days.
19. The Defendants in Liquidation to file their evidence within two weeks of receiving AHAB's evidence. Skeleton arguments to be exchanged no later than seven days before the resumed hearing.
20. Costs of today reserved.


Hon. Anthony Smellie
Chief Justice

March 27 2012

