

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION (ASCJ)**

IN THE MATTER OF THE COMPANIES LAW (2010 REVISION)

**AND IN THE MATTER OF SAAD INVESTMENTS LIMITED
(IN OFFICIAL LIQUIDATION) FSD NO. 0015/2010**

**AND IN THE MATTER OF SINGULARIS HOLDINGS LIMITED
(IN OFFICIAL LIQUIDATION) FSD NO. 0016/2010**

**AND IN THE MATTER OF SAAD INVESTMENTS FINANCE
COMPANY LIMITED (IN OFFICIAL LIQUIDATION) FSD NO. 0041/2010**

**AND IN THE MATTER OF SAAD INVESTMENTS COMPANY
(NO. 2) LIMITED (IN OFFICIAL LIQUIDATION) FSD NO. 0040/2010**

**AND IN THE MATTER OF SAAD INVESTMENTS COMPANY
(NO. 3) LIMITED (IN OFFICIAL LIQUIDATION) FSD NO. 0036/2010**

**AND IN THE MATTER OF SAAD INVESTMENTS COMPANY
(NO. 8) LIMITED (IN OFFICIAL LIQUIDATION) FSD NO. 0037/2010**

**AND IN THE MATTER OF SAAD INVESTMENTS COMPANY
(NO. 9) LIMITED (IN OFFICIAL LIQUIDATION) FSD NO. 0038/2010**

**AND IN THE MATTER OF SAAD INVESTMENTS COMPANY
(NO. 10) LIMITED (IN OFFICIAL LIQUIDATION) FSD NO. 0039/2010**

**AND IN THE MATTER OF SAAD CAYMAN LIMITED
(IN OFFICIAL LIQUIDATION) FSD NO. 0035/2010**

(COLLECTIVELY “THE COMPANIES”)

**IN CHAMBERS
BEFORE THE HON. ANTHONY SMELLIE, CHIEF JUSTICE
THE 23RD and 26TH DAY OF NOVEMBER 2010**

**APPEARANCES: Ms. Shelley White and Ms. Collette Wilkins for the Joint
Official Liquidators of the Company**

RULING

1. The Joint Official Liquidators (“JOLs”) of the Companies seek forms of statutory relief against Mr. Maan Al Sanea in his capacity as a former director of the Companies. They rely on sections 101 and 103 of the Companies Law. The forms of relief sought by the JOLs include orders requiring Mr. Al Sanea (pursuant to section 101) to provide Statements of Affairs in relation to his dealings with the Companies and (pursuant to section 103(3)); to transfer or deliver up to the JOLs certain books and records belonging to the Companies and to submit to an examination by the JOLs in respect of his dealings with the Companies.
2. The Companies are all members of the Saad Group of Companies formed since 1980 by Mr. Al Sanea and are all companies incorporated under the Companies Law of the Cayman Islands.
3. Mr. Al Sanea is the principal defendant in proceedings commenced before this Court (FSD 0054 of 2009) by Ahmad Hamad Algozaibi and Brothers Company (“AHAB”) against Mr. Al Sanea and 42 Cayman Islands registered entities within the Saad Group, including the Companies.
4. The claims being advanced in that action include claims of fraud, conspiracy, breach of fiduciary duty and dishonest assistance and knowing receipt on the part of Mr. Al Sanea and the defendant companies within the Saad Group, including the Companies; relating to events that allegedly occurred before the liquidation of the Companies and leading up to their liquidation. These events relate to Mr. Al Sanea’s and the Saad Group’s alleged dealings with and on behalf of AHAB.

5. From 12 August 2009, a date shortly after their appointment to one of the first of the Companies “SICL”, the JOLs sought the co-operation of Mr. Al Sanea in relation to the provisions of the Statements of Affairs and books and records of the Companies deemed by the JOLs to be critical to their investigations into the affairs of the Companies. To date, Mr. Al Sanea has failed to co-operate and failed to provide copies of any documents, information or other property belonging to the Companies, despite requests made either directly or through his legal advisers in the Cayman Islands. There has been extensive communications with his legal advisers in this regard.
6. As explained further below, Mr. Al Sanea has also consistently evaded personal service at his places of residence and business in Al Khobar, Saudi Arabia. This is, despite his insistence as communicated by his Cayman Islands lawyers, that service upon him must be personal, in keeping with the requirements of the law of Saudi Arabia.
7. From the JOLs’ perspective, this application, and the related applications for leave for substituted service of the resultant orders which they seek under sections 101 and 103 of the Companies Law, have become necessary as a result of Mr. Al Sanea’s recalcitrance and his evasion of service.
8. Having read the first affidavit of Frederick William Taylor (as to his efforts to serve the statutory section 101 Notice upon Mr. Al Sanea in Saudi Arabia) and the sixth affidavit of Hugh Dickson (one of the JOLs); I am satisfied that Mr. Al Sanea deliberately seeks to avoid personal service of the statutory notice and other relevant process. It is clear from Mr. Taylor’s affidavit in particular, that Mr. Al

Sanea would have been aware of Mr. Taylor's presence at his office building at Al Khobar when Mr. Taylor attended there on more than one occasion with the section 101 Notice (and accompanying documents) but was given what can only be described "the run around".

9. This is a brief narrative of what transpired: When told that he could not attend upon Mr. Al Sanea personally without an appointment, Mr. Taylor was given the number to call for an appointment directly but when having left the office building, returned to his hotel and called that number; received no answer. This was the result on each occasion, despite numerous attempts to call that number on that day, the 26th September 2010.
10. The next day, Mr. Taylor began calling the given number again at 9:30 am but was only able to reach Mr. Al Sanea's office at 11:30 am. He was told to return again to the reception area of the office building and that he could leave the documents for Mr. Al Sanea at the mail room. Mr. Taylor replied that he had to deliver the documents to Mr. Al Sanea personally but the person answering the phone in Mr. Al Sanea's office replied that it was not allowed.
11. Mr. Taylor returned as instructed, to the office complex. There after establishing his instructions obtained from Mr. Al Sanea's office with the security staff, he was escorted to the mail room. There his affidavit picks up the narrative as follows:

"Once I arrived at the mail room, I asked the person in charge if I could take the envelope directly to Mr. Al Sanea's office (the security guard was with me), and the mail room person said I

could. So I went out with the guard following me and tried to enter the main building but the guard prohibited me from doing that and took me back to reception office again. The reception person called ext. 7044 and told them what I was trying to do. The guard was directed to take me back to the mailroom and not to allow me to enter the building where the Chairman's office was located. So I returned, with the guard in attendance, to the mail room. I left the envelope with the copies with the person in charge and asked him to sign a receipt, which he refused to do saying it was against the company regulations. He called in his supervisor who confirmed that this was the rule. So I gave them the envelope addressed to Mr. Maan Al Sanea, Chairman Saad Trading and Contracting Company and left the premises."

12. Mr. Taylor's attempts at personal service upon Mr. Al Sanea at his home address at Al Khobar on the 28th September 2010, were just as effectively frustrated.
13. In this respect section 101 of the Companies Law provides:

In subsection (1):

"Where the Court has made a winding up order or appointed a provisional liquidator, the liquidator may require some or all of the persons mentioned in subsection (3) to prepare and submit to him a statement in the prescribed form as to the affairs of the company.

- (2) *The Statement shall be verified by an affidavit sworn by the persons required to submit it and shall show*
 - (a) *particulars of the company's assets and liabilities, including contingent and prospective liabilities;*
 - (b) *the names and addresses of any persons having possession of the company's assets;*

(c) – (g)....

- (3) *The persons referred to in subsection (1) are –*
- (a) *persons who are or have been directors or officers of the company;*
 - (b) *–(c)....;*
-
- (7) *A person who, without reasonable excuse fails to comply with any obligation imposed under this section is guilty of an offence and liable on conviction to a fine of ten thousand dollars.*

14. The Companies Winding Up Rules (“CWR”) Order 6 Rule 1(1) requires that a notice from the JOLs under section 101(1) shall be in CWR Form No. 10 (requiring a relevant person to make a statement of affairs). By Rule 1(2) such a person is deemed a deponent. By Rule 1(4) it is required that Rule 1(1) notices must be served upon the deponent personally, together with the documents prescribed by Rule 1(2) to be served with the Notice (including an explanatory note of the effect of the penal provisions of section 101(7)).
15. It is this requirement of Rule 1(4) for personal service upon Mr. Al Sanea of the Rule 1(1) Notice and the futile attempts at personal service by Mr. Taylor; that compel the JOLs’ present application for orders including leave to serve upon Mr. Al Sanea by substituted service upon his attorneys in the Cayman Islands at the law firm of Appleby.
16. For reasons already explained, grounded upon the affidavits of Mr. Taylor and Mr. Dickson, I am satisfied about the merits of this application. While the statutory intent of section 101 is clear, it is emphatically important to note that the JOLs need to obtain Mr. Al Sanea’s statement of affairs for the proper investigations which need to be carried out by them in the liquidation of the Companies. He has deliberately sought to evade service of the Notice and related

- papers and in so doing could effectively defeat the statutory intent that the JOLs must be allowed to fulfill their duties of office.
17. Regarding CWR Rule 1(4) as imposing a mandatory requirement of personal service upon Mr. Al Sanea irrespective of the manifest impracticability in the present circumstances of such a requirement, would be to apply a meaning to the Rules which would thwart the liquidation process and, ultimately, the administration of justice by the Courts through that process.
 18. No such mandatory meaning could properly be ascribed to rules of court meant to ensure the proper conduct of the liquidation process, which is what the CWR are aimed at achieving.
 19. That said, recourse must therefore, in my view, be had to the inherent jurisdiction of the Court, because the CWR are themselves silent as to the ordering of service of process by way of substituted service.
 20. GCR Order 65 R. 4 provides for substituted service but in light of CWR O 14. 2, GCR Order 65 must be taken as having been disapplied to any proceedings which are governed by the CWR, which these proceedings are.
 21. When viewed as described above, CWR O.6 r. 1(4) does not, however, prevent the invocation of the inherent jurisdiction of the Court to order substituted service and in so doing to fill the lacuna in the rules left by the disapplication of Order 65 r.4 to CWR proceedings.
 22. As a Superior Court of Record, the Court has an inherent power to control its own process and to prevent an abuse of its process. This is a power which exists alongside the rules of Court in force at any particular time: see *Metropolitan*

Bank v Pooling (1885) 10 App. Cas. 210 at 220. It has recently been explained by the Court of Appeal in **HSH v ABN Ambro Civ. Appeals 13, 14, 15 and 16 of 2009 (FSD/6425-428 OF 2009)** that it would be wrong to exercise the inherent jurisdiction of the Court to adopt a different approach and arrive at a different outcome from that which would result from an application of the applicable rules of the Court.

23. There the Court of Appeal also went onto explain however, that a judge remains entitled to invoke the inherent jurisdiction of the Court to control its own process, so long as, in exercising that power, he does not seek to vary the scheme for the winding up of companies laid down by the Winding Up Rules.
24. In invoking the inherent jurisdiction to meet the mischief of the lacuna in the rules that has been glaringly revealed by Mr. Al Sanea's recalcitrance, I do not think it can be said that I would be seeking in any substantive way to vary the scheme for the winding up of companies. Rather, it must be said that the invocation of the inherent jurisdiction here would seek to enhance and ensure the efficacy of that scheme.
25. Moreover, and if only by analogy, the case meets the requirements of Order 65 r. 4 for ordering substituted service. Those requirements have long been held to include circumstances when it was proved impracticable or practically impossible to effect personal service: See **Chile Holdings (Cayman) Limited v Santiago de Chile Hotel Corp. S.A. and Six Others [1997]CILR 319.**
26. I conclude that the JOLs are entitled to orders for substituted service upon Mr. Al Sanea of the CWR Order 6 Rule 1(4) Notice and documents.

27. The same holds true in respect of the substituted service of the order which I now also grant upon the JOLs ex parte application pursuant to section 103, for the examination of Mr. Al Sanea as a relevant person (that is: as a former director of the Companies) and that he transfers or delivers up to the JOLs the books and records belonging to the Companies.
28. Given all that has happened, there is no basis for coming to any different conclusion that efforts at personal services upon Mr. Al Sanea in Saudi Arabia of those orders under section 103 would meet with any success.
29. That conclusion also indicates the view I am obliged to take in this case over any concerns of comity to arise from the avoidance of strict compliance with Saudi Arabian law as to personal service upon its citizens. I would venture to think that a Saudi Court would be most sympathetic to the needs of this Court, in making the orders which I have made, to ensure that its process is not abused by the deliberate machinations of someone in Mr. Al Sanea's position having obviously sought to evade the process of this Court despite having made himself amenable to the jurisdiction of this Court by his dealings with these Cayman Islands Companies.
30. Orders accordingly.

Hon. Anthony Smellie
Chief Justice.

26th November 2010