



**IN THE GRAND COURT OF THE CAYMAN ISLANDS**

**FINANCIAL SERVICES DIVISION**

**CAUSE NO. FSD 203 OF 2020 (NSJ)**

**IN THE MATTER OF SECTIONS OF THE COMPANIES LAW (2020  
REVISION)**

**BETWEEN**

**ABDULHAMEED DHIA JAFAR**

**Plaintiff**

**AND**

**(1) ABRAAJ HOLDINGS (IN OFFICIAL LIQUIDATION)**

**(2) GHF GENERAL PARTNER LIMITED,**

**(3) THE GHF GROUP LIMITED**

**(4) ABRAAJ GENERAL PARTNER VIII LIMITED**

**Defendants**

**RULING ON THE GHF PARTIES' APPLICATION FOR PERMISSION TO AMEND  
THEIR RE-AMENDED DEFENCE**

## Introduction

1. I set out below my ruling on the GHF Parties' application for permission to amend their Re-Amended Defence made by their summons dated 7 September 2023.
2. The GHF Parties have served a draft Re-Re-Amended Defence (the **RRAD**) and the Plaintiff has accepted a number of the proposed amendments. I deal with the proposed amendments set out in the RRAD which remain in dispute.

## Paragraph 29A

3. The proposed amendment reads as follows: *“It is averred that Badr Jafar was involved in negotiating the (alleged) First Loan and the (alleged) Second Loan on Mr Jafar’s behalf and as such Badr Jafar was acting as Mr Jafar’s agent in respect of such negotiations.”*
4. The Plaintiff says that these allegations are sweeping and insufficiently particularised. There is no particularisation of what is meant by the vague plea that Badr Jafar was *“involved in negotiating”* and there is no particularisation of the basis upon which it is asserted that Badr Jafar was Mr Jafar’s agent.
5. The GHF Parties have in response supplied further particulars as follows: *“[i]t can be inferred from Badr Jafar’s involvement in the negotiations for the (alleged) First Loan and the (alleged) Second Loan and from the fact that Badr Jafar agreed certain terms of the (alleged) Third Loan, that Mr Jafar expressly or impliedly conferred authority on Badr Jafar to act as his agent.”* They say that there is nothing unclear or incomplete about the allegation that Badr Jafar acted as his father’s agent in the course of the negotiations. Agency is a well-known legal concept and the factual premise and context in which it is said Badr Jafar was acting as agent is clearly defined. The Plaintiff can ascertain whether, on his case, his son was or was not his agent in respect of the relevant negotiations and/or whether he wishes to admit, not admit or deny the pleaded allegation. They say that the Plaintiff appears to be asking for is for the GHF Parties to set out the evidential basis

on which it is said that Badr Jafar was acting as the Plaintiff's agent and that is impermissible.

6. I agree with and accept the submissions of the GHF Parties on this issue. It seems to me that the GHF Parties have adequately particularise their case. Leave to make this amendment is granted.

**Paragraph 70(2)(a)(ii)**

7. The GHF Parties seek to amend paragraph 70(2)(a)(ii) so that it reads (with the proposed amendments underlined) "*Mr Jafar served as a member of AH's board of directors from 11 November 2006 until 5 October 2010, during which period (according to the AH JOLs) the alleged misgovernance and mismanagement of AH and AIML was ongoing (having allegedly commenced as early as 2008)...*"
8. Once again, the Plaintiff argues that this amendment is insufficiently particularised. The Plaintiff says that further particulars are needed to enable him to know the case he has to meet. It is unclear whether the GHF Parties rely in support of this plea on any matters other than the fact of the Plaintiff's directorship and the basis on which it is said that the Plaintiff knew, or must have known, that the overarching message was false "*because he was a director of AH*" is not set out.
9. The GHF Parties say that the plea is adequately particularised and that the Plaintiff is able to understand the case he has to meet. The reference to "*misgovernance and mismanagement*" is obviously shorthand for the alleged co-mingling and misuse of funds by Mr Naqvi and others which is pleaded and referred to in the evidence and in the co-mingling report prepared by the JOLs which makes it clear that such co-mingling, lack of segregation, misuse, was occurring from 2008 through to 2018, during the period when the Plaintiff was on the board.

10. It seems to me that the proposed amended pleading is ambiguous and needs to be clarified. If the GHF Parties aver that the Plaintiff did not rely on the Overarching Message because *he knew* of the alleged misgovernance and mismanagement by virtue of his acting as a director of AH during the relevant period the pleading should say so. As presently drafted there is a new reference to the misgovernance and mismanagement taking place while the Plaintiff was a director of AH but not an averment that he knew about it or how he did so. I note that in paragraph 70(2)(a)(iii) the GHF Parties refer to the Plaintiff's position as a director of Abraaj Capital and conclude by saying that they "*reserve the right to plead to Mr Jafar's knowledge of the said movement of funds as a result of his directorship of Abraaj Capital.*" There is here a reservation of the right to plead that the Plaintiff had knowledge of the relevant facts and matters by reason of being a director. If, as appears to be the case, the GHF Parties wish in paragraph 70(2)(a)(iii) to aver, as a fact, that the Plaintiff had knowledge of the alleged misgovernance and mismanagement of AH and AIML as a result of acting as (and presumably information received) as a director of AH in the relevant period they should state this. They should also to the extent possible give at least some particulars of the information which the Plaintiff is alleged to have received in his capacity as a director which is said to have given him knowledge of the misgovernance and mismanagement .
11. Therefore leave to make this proposed amendment is granted subject to the GHF Parties further amending this sub-paragraph in the manner I have explained.

**Paragraph 70(2)(a)(iv)**

12. The proposed amendment states that "*As of 21 December 2017, Badr Jafar knew that the (alleged) Third Loan was to be made and was made for the purpose of "window dressing". Paragraph 49A(5) above is herein repeated. Badr Jafar's knowledge is to be imputed to Mr Jafar in circumstances where Badr Jafar acted as Mr Jafar's agent in negotiating the (alleged) Third Loan.*"

13. The Plaintiff objects to this amendment on the basis that the GHF Parties' plea that Badr Jafar's knowledge is to be imputed to the Plaintiff is bound to fail. He argues that the authorities clearly establish that an agent's knowledge of the falsity of a misrepresentation cannot be imputed to the principal so as to defeat a claim in deceit. He cited the judgment of Jacobs J in *Vald. Nielsen Holding A/S and Newwatch Limited v Victor Baldorino & Ors* [2019] EWHC 1926 (Comm) at [158], which in turn relied on the judgment of Scrutton J in *Wells v Smith* [1914] 3 K.B. 722 at 725. The Plaintiff also cited Clerk & Lindsell on Torts (24<sup>th</sup> ed, 2023) at 17-41 where it is said, in the chapter on deceit, that "*Nor can the representor escape liability on the ground that knowledge of the truth must be imputed to the representee; as for example, where the representee's agent knew of the true facts.*"
  
14. The GHF Parties argued that *Wells v Smith* was distinguishable on the basis that in that case the agent was operating in fraud of the principal. They cited the judgment of Sir Nicolas Browne-Wilkinson V-C in *Strover v Harrington* [1988] Ch. 390 at page 408 C-D where he said that (underlining added) "*Wells v. Smith .... was a case in which the defendant made a fraudulent statement to the plaintiff's agent, who communicated it to the plaintiff. The crucial fact was that the plaintiff's agent himself knew the fact to be untrue, and was himself a party to the defendant's fraud. It is not surprising that the court held that the knowledge of the true facts by the fraudulent agent of the plaintiff could not be imputed to the plaintiff. That case seems to me a 100 miles away from the case we have here, since it would be impossible to impute a fraudulent agent's knowledge to his principal.*" The GHF Parties noted that *Strover v Harrington* was discussed in a footnote (200) to paragraph 17-41 in Clerk & Lindsell, which stated, after referring to *Wells v. Smith*, that "*See, however, Strover v Harrington ..., where the agents were purchaser's solicitors who by implication had actual authority to receive all relevant information on their client's behalf. Wells v Smith was distinguished as a case where the claimant's agent himself was a party to the defendant's fraud. Sed quaere.*" The GHF Parties argued that the point of law in issue was unclear and in dispute and should be dealt with and resolved at the trial. Leave to make the amendment should therefore be permitted.

15. I shall grant leave to make the amendment. I accept that it would be inappropriate for me to rule on the legal issue in dispute at the PTR (when there has not been an opportunity for full citation of authority and argument) and decide that it was clear that the plea in the amendment was bound to fail. I would, however, note this. It certainly appears at least arguable that a defendant cannot simply rely on an agent's knowledge of the falsity of the statement made and must go further and for example may need to aver and prove that the agent acquired the relevant knowledge in the course of acting as agent and/or had a duty to pass on the relevant information. In the absence of a relevant pleading alleging the facts supporting such additional matters the claim may fail.

**Paragraph 77(4A)**

16. By this amendment, the GHF Parties deny that the Plaintiff was “an *“impoverished party”* insofar as the Bank of Sharjah was, and remains, exposed in respect of the (alleged) First Loan in the sum of US\$45 million and/or in circumstances where Mr Jafar’s wife and/or Crescent Petroleum provided the requisite security in respect of the (alleged) Second Loan and the (alleged) Third Loan”.
17. The Plaintiff objects to this proposed amendment on the basis that he is unable to understand the case he has to meet. He says that, despite being asked to do so, the GHF Parties have refused to explain by reference to UAE law the basis on which it is contended that Mr Jafar was not an impoverished party.
16. The GHF Parties say that the pleading is clear. They are pleading the fact that while the Plaintiff may have suffered some loss he has not suffered a loss to the extent that he claims. He may be an *“impoverished party”* but for a smaller sum than he has claimed. In other words, since he is not the sole party with a financial exposure under the loans (for the reasons identified in this sub-paragraph) his loss is less and reduced.
18. I agree. The GHF Parties rely on the pleaded arrangements with the Bank of Sharjah, the Plaintiff’s wife and Crescent Petroleum as having reduced the Plaintiff’s financial exposure

and therefore as having reduced the extent to which he has suffered a loss (or been impoverished). Leave to make this amendment is granted.

**Paragraphs 78(1A) and 102(3)(a) and 102(3)(b)**

19. By these proposed amendments, the GHF Parties seek to deny that the Plaintiff suffered loss and/or that they were enriched at his expense “insofar as the Bank of Sharjah was, and remains, exposed in respect of the (alleged) First Loan in the sum of US\$45 million and/or in circumstances where Mr Jafar’s wife and/or Crescent Petroleum provided the requisite security in respect of the (alleged) Second Loan and the (alleged) Third Loan”.
20. The Plaintiff says that the amendment does not set out (and therefore the GHF Parties need to explain) the basis on which it is said that the Plaintiff did not suffer the loss and/or that the GHF Parties were not enriched at his expense by virtue of the matters referred to. In the absence of proper particulars, the Plaintiff does not know whether this proposed re-re-amendment is such as would require him to adduce further evidence.
21. Once again, the GHF Parties say that the pleading is clear, for the same reason was given in relation to paragraph 77(4A).
22. I agree. Leave to make these amendment is granted.

I will ask the parties to seek to agree the appropriate order (including the order as to costs) and to file a draft for my approval.



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**The Hon. Mr Justice Segal**  
**Judge of the Grand Court, Cayman Islands**  
**13 October 2023**