IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 54 OF 2009

BETWEEN **AHMAD HAMAD ALGOSAIBI AND BROTHERS COMPANY**

PLAINTIFF

AND **SAAD INVESTMENTS COMPANY LIMITED**

MAAN AL-SANEA AND OTHERS

DEFENDANTS

IN CHAMBERS
THE 8TH AND 15TH DAY OF FEBRUARY 2011
BEFORE THE HON. ANTHONY SMELLIE, CHIEF JUSTICE

APPEARANCES: **Mr. Shaun Folpp of Ogier for the Receivers**

Mr. Jan Golaszewski and Mr. Basdeo of Maples and Calder for the 3rd, 9th to 12th and 20th Defendants ("the Maples Defendants")

Mr. George Keightley of Mourant for the plaintiff Ahmad Hamad Algosaibi and Brothers Company ("AHAB")

Ms. Shelly White of Walkers for the 1st-2nd; 4th - 8th, 30th - 33rd and 35th -37th defendants ("the SICL Liquidators")

Mr. Ian Lambert of Bodden & Bodden for the 13th -19th defendants ("the AWAL defendants")

Mr. David Herbert of Harneys for the 34th defendant ("SIFCO #5")

RULING

1. The question is whether I should approve the receivers' fees charged by them in respect of the several companies placed into their receivership by the order of

Henderson J. on 24th July 2009 (as varied by his further order of 4th September 2009). These companies have subsequently been placed into liquidation and so the receivers have been replaced by liquidators.

2. The receivers' fees contain two components, those of the receivers themselves and those of their attorneys for which the receivers are contractually liable. I am satisfied as to the reasonableness – both as to quantum and apportionment as between the different companies – of the fees.

3. On settled principles of the case law, receivers are entitled to recover their fees as a first charge over the assets of the respective companies of their receivership. See ***Capewell v Revenue and Customs Commissioners*** **[2007] 2 All ER 270 UKHL**

4. Nothing presented by the circumstances here would justify a departure from that settled principle.

5. The fact that no causes of action have been pleaded against some of these defendant companies (the "NCADs") does not, to my mind, give rise to circumstances justifying departure from the settled principle. The arguments on behalf of the NCADs by Mr. Golaszewski that the Plaintiff, as the party who sought their appointment, should pay the receivers' fees, is contrary to the settled principles. This is clear from the following passage from ***Capewell*** (at para 21); citing with approval the earlier case of ***Boehm v Goodall***:

> *"It has always been a basic principle of receivership that the receiver is entitled to be indemnified in respect of his costs and expenses, and his remuneration if he is entitled to be remunerated, out of the assets in his hands as receiver. Warrington J. stated the principle in a well-known passage*

in Boehm v Goodall [1911] 1 Ch 155 at 161, [1908-10] All ER 485 at 487:

> *"Such a receiver and manager [that is one appointed by the court] is not the agent of the parties, he is not a trustee for them, and they cannot control him. He may, as far as they are concerned, incur expenses or liabilities without their having a say in the matter. I think it is of the utmost importance that receivers and managers in this position should know that they must look for their indemnity to the assets which are under the control of the Court. The Court itself cannot indemnify receivers, but it can, and will, do so out of the assets, so far as they extend, for expenses properly incurred; but it cannot go further. It would be an extreme hardship in most cases to parties to an action if they were to be held personally liable for expenses incurred by receivers and managers over which they have no control."*

6. The assets of all companies remain restrained by the Worldwide Freezing Order which was granted as a part of the Order of 24th July 2009 (the "WFO"). These assets may yet turn out to be amenable to the enforcement of any judgment that may be obtained by the plaintiff AHAB against Mr. Al Sanea or against his related companies (including the NCADs); and this is so whether or not causes of actions have been pleaded directly against them. If in the end their assets are to be free from attachment, then the NCADs may seek to recover any losses arising

from the impact of the WFO and the receivership orders which were made pursuant to the WFO. This could be done among other things, by recourse to AHAB's undertaking in damages given as a requirement of the WFO and which has been fortified by order of the Court by a secured sum of $2 million.

7. Some of the defendant companies, including the NCADs, also express concern about the apportionment and allocation of the receivers' fees and expenses as among the companies in receivership. In accepting as expressed above that the apportionments and allocations are fair and reasonable, I have also accepted the receivers methodology by which they arrived at them.

8. Moreover, as I have explained in the hearing and it is accepted by AHAB – as asserted and agreed also by the other parties – and I now confirm: - where fees are allocated to companies which do not have assets to cover them, those fees may not be recovered from the assets of other companies in receivership. The apportionment and allocations lie as against the companies to the extent that there are assets to meet them.

9. The entitlement to fees is several in respect of each company.

10. To the extent then that the deed of indemnity provided to the receivers by AHAB who moved for their appointment would cover fees not recoverable from a company; the receivers may be able to have recourse to that indemnity. That, however, remains a matter of contract as between AHAB and the receivers. The companies are not entitled to call upon the receivers to look to AHAB under the indemnity for recovery of the receiver's fees. On the authority of the cases cited above, where and to the extent that there are assets within the respective

companies, the receivers can be paid and are entitled to insist upon their lien against those assets to meet their fees.

11. I am asked by some of the companies (now acting through their respective liquidators) to order the receivers to pay the costs of the companies thrown away as the result of this matter having been adjourned on the 3rd September 2010. This is argued on the basis that that adjournment – and the resultant wasted costs – would have been avoided had the receivers then provided sufficient information to allow the Court to have then arrived at the decision reached today.

12. I do not agree. While it follows from my order of 3rd September 2010 – issued upon the adjournment and directing the receivers to provide further information – that the receivers had had provided less than what the Court required; I do not regard their position in that regard to have been so unreasonable as to justify condemning them in the costs of any of the defendants.

13. In his arguments in opposition to the receivers in this regard, Mr. Golaszewski placed heavy reliance upon the words of Ferris J. from his oft-cited judgment in ***Mirror Group Newspaper plc v Maxwell and others (No. 2) (1998) 1 BCLC 638 at 648 f-h:***

> *["Fiduciary"] – office holders [including receivers] must expect to give full particulars in order to justify the amount of any claim for remuneration. If they seek to be remunerated upon, or partly upon, the basis of time spent in the performance of their duties, they must do significantly more than list the total number of hours spent by them or other fee-earning members of their staff and multiply this total by a sum*

claimed to be the charging rate of the individual whose time was spent. They must explain the nature of each main task undertaken, the considerations which led them to embark upon that task and, if the task proved more difficult or expensive to perform than at first expected, to persevere in it.

The time spent needs to be linked to this explanation, so that it can be seen what time was devoted to each task. The amount of detail which needs to be provided will, however, be proportionate to the case."

14. There is nothing about this dictum of Ferris J. with which exception can be taken. Indeed, it is now well established in the practice of this Court and as more recently expressed in the local case law and rules of Court, that office holders (liquidators in particular) must provide the detailed explanation envisaged by Ferris J. in seeking to justify their fees. It was with these principles in mind that I adjourned the matter on 3rd September 2010.

15. The level of information then provided I am told by the receivers, was that which they regarded as appropriate, (having regard to the relative costs of extracting, compiling and presenting information). What they at first provided was thought to be commercially proportionate to the application at hand. They disavow any intention to be unco-operative. As officers of the court, I accept their explanation. It is apparent from the information that was provided – line item bills and detailed time sheets – that they had given the matter consideration and had taken a professional judgment as to what they needed to provide. The defendants have

failed ultimately, in their objection to the receivers' fees. It would be inappropriate in all the circumstances to require the receivers to pay their costs.

16. In the event here, the receivers, in all the circumstances, have been entirely successful. As they are entitled to their own costs of getting court approval from the estates, I may not visit the receivers' costs upon the other parties either, although it is difficult to ignore the fact that these arguments before the court over the fees and costs will have added not insignificantly to the overall costs of the receiverships.

17. In the result, I make no order as to costs.

Hon. Anthony Smellie
Chief Justice

GRAND COURT CAYMAN ISLANDS

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