

IN THE GRAND COURT OF THE CAYMAN ISLANDS



**CAUSE NOS.
ATT# 135/15,
ATT# 136/15,
ATT# 137/15,
ATT# 138/15,
ATT# 139/15,
ATT# 140/15,
ATT#141/15**

**IN THE MATTER OF VARIOUS APPLICATIONS FOR THE GRANT OF LIMITED
ADMISSION AS AN ATTORNEY-AT-LAW OF THE CAYMAN ISLANDS**

**AND IN THE MATTER OF SECTION 4(1) OF THE LEGAL PRACTITIONERS
LAW (2015 REVISION)**

IN CHAMBERS

BEFORE THE HON. ANTHONY SMELLIE, CHIEF JUSTICE

THE 30TH DAY OF NOVEMBER and 10TH DAY OF DECEMBER 2015

APPEARANCES: Miss Jacqueline Wilson, Solicitor General, amicus curiae

**Mr. William Helfrecht of HSM Chambers on behalf of the 13th –
18th Defendants (“the AWALCos.”) in Cause No. 54 of 2009**

**Mr. Peter Hayden of Mourant Ozannes for Ahmad Hamad
Algozaibi and Brothers Company (“AHAB”), the Plaintiff in
Cause No. 54 of 2009**

JUDGMENT

1. There are seven (7) applications – one by a junior barrister and six by solicitors of varying experience – for temporary or limited admissions to practice as attorneys-at-Law in the Cayman Islands.

2. The applications are made pursuant to section 4(1) and (2) of the Legal Practitioners Law (the “LPL”) which provides in relevant part as follows:

“4. (1) a Judge shall have power to admit to practice as an attorney-at-Law, for the purpose of any specified suit or matter in regard to which the person so admitted has been instructed –

(a) by an attorney-at-law in the Islands...

any person who possesses the prescribed qualification, if such person has come or intends to come to the Islands for the purpose of appearing, acting or advising in that suit or matter, and an application for such admission is made in such manner as the judge may think fit.

(2) A person admitted to practice as an attorney-at-law under subsection (1) shall be entitled to practice for the purpose of the suit or matter concerned but not otherwise.”

3. The applications are presented by Mr. William Helfrecht who is a partner of HSM Chambers, the Cayman Islands firm of attorneys who act for the Joint Official Liquidators (“the JOLs”) of the AWALCos in Cause 54 of 2009 (“the Action”) brought by the Plaintiff, AHAB.
4. Mr. Helfrecht, on behalf of the AWALCos, acknowledged at the outset that this is a highly unusual application.
5. He accepted that Practice Direction 4 of 2012 directs that limited admission of junior counsel, solicitors (or equivalently qualified practitioners) will not be granted save in unusual and special circumstances. This is for the well-recognized policy and practical reasons that the services of attorneys-at-law of equivalent experience will be readily available from amongst the local profession. It follows and Mr. Helfrecht



accepted, that the burden of showing that the requisite circumstances exist, rests upon his clients who bring the applications on behalf of the applicants.

6. Mr. Helfrecht relies on the affidavits of his partners at HSM Chambers Mr. Ian Lambert and Mr. Huw Moses, sworn in aid of these applications. They place great emphasis on the highly unusual and complex nature of the Action and of the many contested hearings it has and will continue to engender until the end of the trial, now set to run over six months from July 2016.
7. At the outset it must be acknowledged that by any measure the Action is substantial, involving as it does allegations of misappropriation by the Second Defendant Mr. Al Sanea of more than USD5 billion from the Money Exchange, the financial division of AHAB. The case against the AWALCos (as it has developed since first instituted in 2009), is that they dishonestly assisted Mr. Al Sanea in his alleged misappropriations and breaches of trust, that they knowingly received the monies misappropriated by him, and that they were parties to a conspiracy with him and others, by reason of which they are liable to pay damages and/or equitable compensation to AHAB. The AWALCos are also said to be directly liable to make restitution and AHAB claims to be entitled to trace hundreds of millions of dollars into the hands of the AWALCos, and to an account for the receipt and use of those monies.
8. The AWALCos in their correspondingly complex defence, deny AHAB's claim. And so, the litigation has indeed become both complex and work-intensive, involving (by way of example) the tracing of significant sums through many bank accounts in various jurisdictions. The Transactional Database for the Action, which comprises a record of all bank statements and accounts disclosed by all the parties (including the many other Al Sanea related corporate defendants in liquidation) and which is



intended to assist the parties in the tracing exercise, contains a monumental amount of data.

9. Despite, moreover, the Action having been on foot since July 2009, AHAB has not yet finalized its pleadings by way of particularizing the manner in which monies are said to have flowed from the Money Exchange to the AWALCos. Only when that is done, can the AWALCos be expected to settle finally, their Defence.
10. By way of still further marking the scope and complexity of the Action, I also note that permission has been granted to serve expert reports in relation to seven distinct issues, including the law of Saudi Arabia, the law of Bahrain, Islamic finance and banking practices.
11. Accordingly, it will be seen from all the foregoing, and I accept, that the resources required to fight litigation on this scale are significant, both in terms of money and personnel.
12. The question here however, is not whether these resources should or will be available to the AWALCos. They already are and have been available to the varying extents required, from the outset of the liquidation of the AWALCos and as the AWALCos later became joined as defendants to AHAB's claim in the Action. There is no suggestion but that the AWALCo JOLs are well funded and AHAB has been required to post significant amounts by way of security for the AWALCos' costs of defending AHAB's claim.
13. The question is rather whether this application for the limited admission of the seven applicants (or any lesser number of them) should be granted in order that their associated costs become recoverable as costs in the Action in the event the



AWALCos succeed. That is the question which can be answered in the affirmative only if the special circumstances required are shown to exist.

14. I am informed that work permits have been obtained for the applicants such that they might, without breaching the Immigration Law, become gainfully employed while working on the case in the Cayman Islands.
15. While the work permits will thus allow them to be present in the Cayman Islands to work on the case and be paid for their services, only by being granted limited admission as is sought, will their respective fees be recoverable as costs in the Action.
16. This is in keeping with Grand Court Rules (“GCR”) O. 60 r.18, which is promulgated pursuant to the statutory jurisdiction vested by section 24 of the Judicature Law. O.62 r.18 (1) provides:

“18. (1) Work done by foreign lawyers may be recovered on taxation under these rules on the standard basis provided that –

(a) the foreign lawyer has been temporarily admitted as an attorney; and

(b) the work was done after he was admitted.”

17. In light of that provision, it is, of course, accepted by the AWALCos, that fees for work already done by the applicants would not be recoverable on taxation, only fees for work done after admission, if these applications succeed.
18. Further, in O.62 r.18, there are provisions which stipulate the basis upon which bills of costs for work done by foreign lawyers are to be submitted and dealt with on taxation and which conclude in O. 18 r.18(7) in these terms:

“The overriding objective is that a paying party should not be required to pay more because the successful party has engaged a



foreign lawyer than he would have been required to pay if the successful party had employed only local attorneys.”

19. In this regard, I note that as Jones J. remarked in *Al Sadik v Investcorp Bank BSC* 2012(2) CILR 33:

“O. 62 r.18 protects the paying party from the financial consequences of his opponent's decision to engage both local attorneys and foreign lawyers, which is inherently likely to result in extra and/or duplicated expense.”

20. To address this concern, I am told by Mr. Helfrecht that the overriding objective of O.62 r.18 would in no wise be infringed in this case because the fee charge out rates for the applicants would, at present rates of charge and currency exchange, be less than the rates charged by their Caymanian counter-parts. The implication being that had Caymanian attorneys been engaged to do the necessary work, the costs would likely have been greater.

21. While this may be the recent state of play in the market (I make no finding one way or the other), there is, however, the other equally significant policy concern already mentioned at paragraph 5 above, going beyond ensuring that litigants are not over-charged and which must also be addressed.

22. In her helpful submissions, the Solicitor General enumerated competing public interest considerations which I regard as appropriate to be taken into account upon an application under sub-section 4(1) and (2) of the LPL. The order in which I address them does not, by itself, suggest relative importance:

- (1) The availability of local lawyers.



(2) The importance of adequate safeguards to protect the growth and development of the local bar and to prevent the outsourcing of legal work save in exceptional cases.

(3) The applying party's (here the AWALCo JOLs') need for adequate legal representation and the nature and complexity of the case.

[In this case, given the complexity and scale of the Action as discussed above, the need for adequate and extensive legal representation is established.]

(4) The expertise and experience of the counsel (or solicitor or equivalent) seeking admission.

(5) Whether their work is being conducted in, or from within, the Cayman Islands; and

(6) Their involvement in the conduct of the litigation.

23. There are well recognized practical reasons for the public interest considerations similarly identified at paragraph 5 and at (1) and (2) above. They include the fact that the many law firms and practitioners within the Islands are usually quite able to provide the kind of professional services needed even for the most complex kinds of civil and commercial litigation. In order to do so, they must commit to the maintenance of extensive resources in terms of personnel and capital while competing among themselves. It must be assumed that their continued ability to do so would be significantly impaired if they had generally to compete with foreign lawyers as well. The routine granting of applications such as these would therefore be injurious to the interests of the local profession.

24. And so, section 4 of the LPL must be construed as intended, among other things, to protect the local profession from undue foreign competition. And this, it must be



emphasized, is not only for the sake of the profession, it is also in the public interest that there is a strong and viable body of legal practitioners available to meet the public's need for legal advice and representation.

25. While the LPL (and the Practice Directions) will regard more liberally a litigants' wish to instruct leading counsel from overseas, recognizing the relatively small and select cadre of silks available in the Islands; a different view must be taken of a desire to bring in junior counsel and solicitors from overseas. As already noted, these latter groups will typically bring with them the kind of experience and expertise which is in ready supply from among the local practitioners and it is for this reason that the LPL, the GCR O.68 costs rules and Practice Direction 4 of 2012, together are construed as imposing a public policy requirement that unusual and special circumstances must be shown before such applications will be granted.
26. Considerations (5) and (6) are very much those contemplated by section 4(1) of the LPL where it pre-conditions the granting of an application only "*if such person has come or intends to come to the Islands for the purpose of appearing, acting or advising in that suit or matter.*"
27. The pre-condition insists upon it being shown to be necessary for the purposes of the effective representation of the party applying for the limited admission, that the foreign lawyer must come to the Cayman Islands for the purpose of representation in the litigation.
28. If not, then what would be contemplated is the foreign lawyer being admitted to practice in the Islands, even while he or she works from overseas.
29. In that scenario the admission would be for one purpose only – the right, if successful in the litigation, to seek recovery of the costs under GR O. 62 R. 18.



30. That plainly is to be deprecated as going contrary to the intention of section 4(1) and contrary to the public policy considerations recognized above.
31. As Justice Foster declared in *In Re Limited Admissions* 2009 CILR 41 at para. 13, it was no doubt with such practices in mind that the specific provisions of O. 62 R. 18, which have no direct equivalent for example, in the United Kingdom, were incorporated into the Grand Court Rules and that it would be “...*(inappropriate) for suitably qualified foreign lawyers to be granted limited admission as Cayman attorneys-at-law simply so that any work in relation to the matter which they will or propose to carry out in their own country may be recoverable on a taxation of costs in litigation in this jurisdiction. This court must be properly satisfied that any application for limited admission complies with the provisions of section 4 and that it is appropriate in all the circumstances to grant such limited admission*”.
32. I agree entirely and approach the present applications with those concerns and the competing public interest considerations identified above, firmly in mind.
33. Each of the seven applications must, of course, be considered on its own merits, even though the overarching objectives of all of them taken as a whole can be determinative, if together they would represent an abrogation of the policy of the LPL.
34. As already mentioned, the applications are premised on the urgent need of the AWALCos to expand their litigation team in preparation for the trial and for the conduct of the trial itself, which is set to run from July 2016 for six months.
35. The historical approach of the AWALCos to the litigation must be considered as it sets the background and context for these applications. This is explained in the detailed affidavit evidence of Messrs. Lambert and Moses, Mr. Lambert being along with Mr. Helfrecht, the only two members of HSM Chambers who are members of



the AWALCos litigation team. Mr. Moses speaks as the managing partner of HSM Chambers.

36. The premise of their argument in support of the applications is that HSM Chambers is a small firm which has no choice but to enlist the assistance of the applicants from overseas if they are to provide the services necessary to represent the AWALCos in this very complex and difficult case.
37. Mr. Helfrecht, Mr. Lambert and their erstwhile associate Mr. David Dinner, represented the AWALCos at the commencement of the action in 2009. Those three gentlemen were then with another local law firm Bodden and Bodden but Messrs. Helfrecht and Lambert moved to join Mr. Moses in establishing HSM Chambers. Mr. Dinner went on to establish his own firm.
38. Although founded with only three attorneys, HSM Chambers has since expanded to thirteen but Mr. Dinner was not replaced in the AWALCos litigation team at HSM nor was any other local attorney engaged for the team. Mr. Helfrecht and Mr. Lambert have remained the only two local attorneys involved.
39. Instead, three foreign lawyers have already been engaged and granted limited admission to act in the case. They are Leading Counsel Mr. Marcus Smith QC and Senior Junior Ms. Bridget Lucas, both of barristers chambers in London and Mr. Stewart Hey of Charles Russell Speechlys LLP (“CRS LLP”), a well-known London firm of solicitors.
40. Exceptionally, Mr. Hey, a solicitor, was granted limited admission to act in this matter. It was explained to this Court, that he was to have overall responsibility for discovery which it was then correctly anticipated, would necessitate a review of millions of documents, taking many months and based on a specialized electronic



document management system. While it was said that Mr. Hey would continue to conduct his work primarily from London, it was also explained that there would be the need for him to make increasingly frequent and longer visits to the Cayman Islands in order to provide advice to the JOLs and support to Mr. Smith QC as a member of the litigation team attending at this Court. This, as Mr. Lambert deposes in his first affidavit, has all proven to be correct.

41. Thus, the AWALCos litigation team which has been actively engaged before this Court has been five in number – two local members of HSM Chambers (Mr. Helfrecht and Mr. Lambert) supporting three foreign lawyers granted limited admission for the purpose of working and appearing in the Action. This has indeed been recognized as a significant case for the AWALCos and the retainer of an experienced team of counsel was already clearly warranted.
42. But it is now clear from the evidence filed in support of these applications, that a number of other lawyers have been working on behalf of the AWALCos in this case from the offices of CRS LLP in London – including the seven applicants who now seek limited admission.
43. Some of them have been so engaged “working closely with Mr. Hey” for varying periods of time, according to Mr. Lambert. In the case of Ms. Charlotte Pender, this has been going as far back as January 2011; the others, for varying periods of time since then. These lawyers now comprise what Mr. Lambert describes as the “Senior Review Team” of varying experience ranging from 12 to 4 years post-qualification experience (“PQE”). They are described as experienced lawyers who have acquired specialized knowledge by virtue of their work on this case and, per Mr. Lambert (at page 67 of his first Affidavit) that the need for experienced lawyers is self-evident as:



“...they need to be able to understand sophisticated legal concepts, think laterally (so as to hone their searches effectively), and be self-starters capable of working out for themselves what needs to be done. They also need to be able to communicate effectively with their counterparts who have been assigned other research tasks, and work collaboratively in so far as there is any overlap between tasks, lessons to be learned from research techniques applied, or information that comes to light that might be relevant to another research task. This is a job for those of associate or senior associate level, or the counsel equivalent.”

44. So the picture that ultimately emerges is that of a litigation team of at least 12 lawyers, (more likely a larger number, given the reference above to *“counterparts who have been assigned other research tasks”*), who have been engaged for the AWALCOs in this case which is to be tried in the Cayman Islands, but only two of whom are Cayman Islands attorneys – Mr. Helfrecht and Mr. Lambert themselves. The potential size and scope of the Action as described earlier in this judgment would have been discernible from the outset, even if the exact nature of the AWALCOs' alleged involvement would not yet have been understood. It would therefore have been reasonably clear to the JOLs and their advisers at HSM Chambers from the outset, that significantly greater legal resources would have been required in Cayman for their effective representation.
45. But the present state of affairs, as the history shows and as I am compelled to conclude, in agreement with Mr. Hayden, has not come about by chance but the result



of a deliberate decision that the management of the AWALCos' case should be based in London.

46. There is no evidence that other suitably qualified Cayman Islands attorneys could not have been engaged by HSM Chambers to work on this case. What there is instead, is an explanation offered by Mr. Moses, citing the involvement of a number of the other leading firms at one stage or the other of the Action, that it would likely not have been possible to find anyone who is not conflicted. And further, that it would not have been feasible to recruit attorneys with this single case in mind, not knowing whether HSM Chambers would be able to keep them on afterwards. In this latter regard, it is said that the expansive demands of the case could not have been anticipated from the engagement which began only as the liquidation proceedings, then much narrower in scope and size.
47. While this may have been true when only the liquidation proceedings were on foot, speaking here as the judge having conduct of the Action, it could no longer have been a reasonable assessment once the AWALCos were joined as defendants. Certainly, not conclusively enough to have justified a decision by the AWALCos not to commit with their local law firm for the engagement of even a single additional lawyer for this case.
48. Recruitment would be even less feasible now, says Mr. Moses, given the limited time frame of the case expected to run for only another year or so.
49. None of this is compelling to my mind, given the quadrupling in size of HSM Chambers since it first became involved in what must certainly be its biggest case but without even a single attorney being recruited for it.



50. As already noted, this would not have been because HSM Chambers itself would not have realized economic benefits from expanding the team and Mr. Moses does not go so far as to suggest that. Other firms in Cayman have recruited for big litigation and in some instances, for this very case as well. And this is further indication that the decision must have been taken that the bulk of the work for this case should remain with CRS LLP in London.
51. Nothing that is proposed now by way of the limited admission of the applicants and the work to be undertaken by them, changes that impression.
52. Mr. Lambert describes a programme by which the applicants will all work in the Cayman Islands but on a rotational basis only.
53. From January to May 2016, at any one time there would be but two of five of the applicants (their identities not yet specified) based in Cayman to assist HSM Chambers in its preparation for the case.
54. The rotation is depicted in a table which shows that these five applicants would rotate so as to spend roughly one-half of their time in the Cayman Islands until the trial concludes.
55. The table does not include Roberta Harvey or Charlotte Pender, two of the more experienced solicitors. According to Mr. Lambert, both Ms. Harvey and Ms. Pender have a senior role in the case. They, he explains, will travel to the Cayman Islands at regular intervals, much as Mr. Hey has done to date, in order to meet with himself or Mr. Helfrecht and assist them in advising the AWALCos JOLs. He continues that:

“...the demands of these Proceedings are now increasing exponentially, and whilst it is difficult to predict precisely who will attend when, one of Ms. Harvey, Ms. Pender and Mr. Hey will need to



come to work here for some time in January in order to oversee the start of the rotation, and periodically thereafter to ensure it is operating effectively. It is also expected that at least one of them will attend each interlocutory hearing going forwards.... There are also likely to be a number of other contentious hearings before trial commences, and one of Ms. Harvey, Ms. Pender or Mr. Hey will attend, depending on who has capacity at the time with all the other work streams that will be going on in preparation for trial. From June 2016 onwards, it is anticipated that attendances in the Cayman Islands will increase further. Mr. Smith QC and Ms. Lucas will need to relocate [to Cayman] and they will require support for their preparation for trial. From June 2016 onwards, therefore, it is anticipated that the manning levels set out in the (rotation) table will continue.

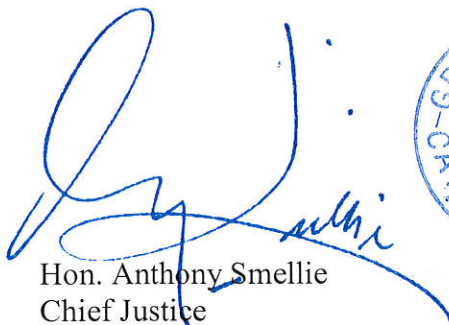
For the duration of the trial, I expect the rotation arrangement to continue with at least two of the Senior Review Team being in the Cayman Islands at any one time in order to provide support to the Counsel Team. Who that might be at any one time will necessarily take into account the issues likely to be before the Court at that time. Those who are responsible for particular issues by this stage will have an extremely detailed understanding and affectively hold the knowledge bank specific to them.... All of the team not in the Cayman Islands at any one time will continue providing support to the Counsel Team but from London until their next rotation starts.”



56. Thus, in elaborate detail, Mr. Lambert describes a system of rotation that would bring each of the seven applicants to work in the Cayman Islands for bi-weekly or shorter stints until the conclusion of the trial in early 2017 but with the rest of their time, the bulk of their work and the economic center of gravity of the case, remaining in London.
57. The grant of their applications for limited admission in such circumstances would, in my view, be contrary to the intention of the LPL which, as already mentioned, requires that the applicant “*has come or intends to come to the Islands for the purpose of appearing, acting or advising in (the) suit or matter*”. The LPL contemplates the real and genuine need for the applicant to be present and working in the Islands for the suit or matter, not the sort of rotational and intermittent presence which could be regarded as aimed primarily if not solely at establishing the minimal presence within the Islands perceived necessary for the purposes of obtaining limited admission.
58. That this is the impression to be taken from the proposed rotation of the applicants, is most compelled by the fact that at any point in time, only two of the seven applicants would be present in the Islands while the other five remain engaged on the case in London.
59. While that state of affairs might reflect the wishes of the AWALCos JOLs, for the reasons explained, it does not satisfy the requirements of the LPL.
60. I am therefore obliged to refuse the applications generally.
61. Being mindful nonetheless of the unusual and complex nature of the task confronting the AWALCos in their defence of AHAB’s claim and of considerations (3) and (4) as proposed by the Solicitor General above, I am obliged to consider whether it would be appropriate to grant any of the applications at all.



62. I accept that there would be a genuine need for two more lawyers to be present here to support the AWALCos Cayman litigation team and in this regard Mr. Helfrecht emphasized that these are not “*all or nothing*” applications. I also accept that at this late stage, it would no longer be feasible to recruit local attorneys for this particular engagement. Although this amounts to presenting this Court with something resembling a *fait accompli*, the present objective is not to sanction the AWALCos for selective observance of the LPL. As litigants their ability to recover their costs if successful should be reasonably accommodated within the ambits of the law.
63. I therefore grant the applications of two of the applicants, leaving it to the AWALCos to determine which two of the seven will come to work in the Cayman Islands for the rest of the duration of the Action.
64. Those two applicants, once identified, will be named in a formal draft order to be submitted for acceptance by me. Once their appointments are formalized in that way, they will be able to enter their names upon the Roll as attorneys granted limited admission to practice in the Islands.



Hon. Anthony Smellie
Chief Justice



December 10, 2015