

**IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS**

**CICA 15 of 2010  
CICA 20 of 2010  
CICA 21 of 2010**

**BEFORE**

**The Rt Hon Sir John Chadwick, President**

**The Hon Ian Forte, Justice of Appeal**

**The Hon Elliott Mottley, Justice of Appeal**

**ON APPEAL FROM THE GRAND COURT  
FINANCIAL SERVICES DIVISION  
(FSD 54 of 2009)**

**BETWEEN**

**AHMAD HAMAD ALGOSAIBI AND BROTHERS COMPANY**

**Plaintiff**

**-and-**

**(1) SAAD INVESTMENTS COMPANY LIMITED**

**(2) MAAN AL SANEHA  
and others**

**Defendants**

**Mr Ewan McQuater QC and Mr David Quest** instructed by Mourant  
Ozannes for Ahmad Algosaibi and Brothers Company

**Appleby** for Mr Al Sanea

**Mr Stephen Phillips QC** instructed by Maples and Calder for the third,  
ninth to twelfth and twentieth defendants

Handed down: 7 February 2011

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**JUDGMENT**

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**Sir John Chadwick, President:**

1. By applications made by notices of motion filed on 21 December 2011 the second named defendant to these proceedings, Mr Al Sanea, seeks leave to appeal to Her

Majesty in Council from paragraph 1 (in part) of the Order made by this Court on 8 December 2010; and he and the third, ninth to twelfth and twentieth defendants (“the Maples defendants”) seek leave to appeal from paragraph 3 of that Order.

2. Mr Al Sanea and the proposed respondent, Ahmad Hamad Algozaibi and Brothers Company (“AHAB”), have agreed that his application be considered by the Court on the papers and without an oral hearing. At the invitation of the Court those parties have made their submissions in writing. The Maples defendants also ask that their application be determined without an oral hearing; but AHAB have not agreed to that course, expressing the view, in a letter dated 31 January 2011, that it would be more appropriate for that application to await the outcome of Mr Al Sanea’s application. Nevertheless, written submissions have been filed on behalf of the Maples defendants. For the reasons set out in this judgment, the Court has taken the view that both applications should be dismissed.
3. It is common ground that the power of this Court to grant leave to appeal to the Judicial Committee of the Privy Council from the Order of 8 December 2010 is conferred, and circumscribed, by article 3(2)(a) of the Cayman Islands (Appeals to the Privy Council) Order 1984 (SI 1984/1151). Leave may be granted by this Court where “in the opinion of the Court the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to Her Majesty in Council”.
4. With that in mind, the Court has sought to identify, in the written submissions lodged on behalf of the applicants, the question or questions to be raised by the proposed appeals which are said to be of “great general or public importance”. We think those questions emerge from paragraphs 15 to 19 and 31 and 32 of the Mr Al Sanea’s written submissions. The former relate to the applicant’s challenge to this Court’s decision to allow AHAB’s appeal from the temporary “case management” stay imposed by the Chief Justice: the latter to this Court’s decision to refuse Mr Al Sanea leave to appeal from the Chief Justice’s refusal to set aside the leave to serve the proceedings on him out of the jurisdiction or to stay proceedings against him on *forum non conveniens* grounds. The Maples

defendants adopt Mr Al Sanea's submissions in relation to the case management stay: they make no separate submissions of their own.

*The decision to allow AHAB's appeal from the temporary case management stay*

5. At paragraph 15 of Mr Al Sanea's written submissions, reference is made to "the growing recognition that the courts should be willing to be flexible in order to achieve efficient and fair justice". We do not think that that proposition is in doubt. But Mr Al Sanea goes on to submit that "the abrupt halt to that sensible development which has been imposed by the Judgment [of this Court] raises an issue of considerable and general procedural importance".
6. The issue of general procedural importance which our decision to allow AHAB's appeal is said to raise (we think) is whether "the only available approach is an all or nothing one on the basis that the only alternatives are to grant or refuse leave to serve out": paragraph 14 of Mr Al Sanea's written submissions. But, as AHAB has submitted at paragraph 16 of its written submissions: "The Court did not rule out the grant of a case management stay, it simply held that in the present case the lack of any real advantage made a stay inappropriate". We are not persuaded that there is anything in our judgment of 1 December 2010 which can properly be said to bring to an "abrupt halt" the development of the law in relation to the imposition (in an appropriate case) of a stay of proceedings on case management grounds; or to give rise to the need for the Judicial Committee to consider whether, as a matter of principle, there is no escape from what the applicant describes as an "all or nothing" approach. That is not the approach which the Court adopted in its judgment.
7. At paragraph 19 of Mr Al Sanea's written submissions it is said that "the proper approach to case management stays is of great importance in the present case". The point is made, correctly, that if (contrary to the finding of this Court) the Chief Justice did not apply the wrong test there was no basis for this Court to interfere with his decision, in the exercise of his discretion, to impose a temporary case management stay. Again, we do not think that those propositions are in

doubt. The issue is whether this Court was correct to hold that the Chief Justice had failed to direct himself in accordance with the proper test.

8. In that context it seems to be accepted by the applicants that, if (as this Court held) the proper test is to be derived from the judgment of Mr Justice Moore-Bick in *Reichhold Norway v Goldman Sachs* [1999] CLC 486 as affirmed by the Court of Appeal of England and Wales at [2000] 2 All ER 679, the Chief Justice did not direct himself correctly as to the principles which should guide his decision whether or not to impose a temporary case management stay. It is said (at paragraph 17 of Mr Al Sanea's written submissions) that the test to be derived from that judgment is wrong in law (notwithstanding that it was expressly adopted by the Court of Appeal of England and Wales); and that it should not be followed in the Cayman Islands. But, as AHAB points out (at paragraphs 15 and 16 of its written submissions), the approach in *Reichhold* has been followed consistently by the English Courts; and there is nothing in the authorities or in the other material put before this Court to suggest that it should not be treated as settled law. We are not persuaded that there is a need to invite the Judicial Committee to consider whether that test should be applied in the Cayman Islands.
9. At paragraph 20 of Mr Al Sanea's written submissions extensive criticism is made (in ten sub-paragraphs) of this Court's reasoning in the present case. Whether or not that criticism is well-founded, we are not persuaded that it can properly be said to raise any question of "great general or public importance" within article 3(2)(a) of the 1984 Order.

*Service out of the jurisdiction or a stay on forum non conveniens grounds*

10. The underlying issue in this context, as it seems to us, is whether this Court was correct to conclude (at paragraph 75 of the judgment of 1 December 2010) that the Chief Justice's decision to impose a case management stay was not so integral to the reasoning which led him to hold that this was a proper case for service on Mr Al Sanea out of the jurisdiction that, if he were wrong to impose a case management stay, the reasoning in relation to service out must be flawed. It was this Court's conclusion that, on analysis of the Chief Justice's judgment, the

reasoning which led him to conclude that this was a proper case for service out of the jurisdiction was independent of his decision to impose a case management stay that led this Court to take the view that, on well settled principles, there was no basis on which it could or should interfere with his decision that the Cayman Islands was the jurisdiction in which the claims in these proceedings could be appropriately tried in the interests of all the parties and for the ends of justice.

11. We are not persuaded that that underlying issue can properly be said to be of great general or public importance. It involves no question of principle: rather, it turns on an analysis of the specific reasoning in the particular judgment given by the Chief Justice in this case. This Court did not decide whether or not it would have been open to the Chief Justice to reach the conclusion that he did as to jurisdiction on the basis (and only on the basis) that he could and would impose a case management stay. It did not decide that question because it was satisfied that that question did not arise in this case.
12. Given the Court's conclusion that the reasoning which led the Chief Justice to hold that the Cayman Islands was the jurisdiction in which the claims in these proceedings could be appropriately tried in the interests of all the parties and for the ends of justice was not driven by his decision to impose a case management stay, there was no basis on which it could be said that the Chief Justice had erred in law in deciding that the leave to serve the proceedings on Mr Al Sanea out of the jurisdiction should not be set aside and that there should be no stay on *forum non conveniens* grounds. We are not persuaded that the decision of this Court that, in those circumstances, there was no real prospect of that Mr Al Sanea could succeed on his appeal against the Chief Justice's order raises any issue of great general or public importance.

*“or otherwise”*

13. We are conscious that the power of this Court to grant leave to appeal to the Judicial Committee can be exercised where, in the opinion of the Court, the question involved in the proposed appeal is one that, by reason of its great general or public importance “or otherwise” ought to be submitted to Her Majesty in

Council. Clearly, therefore, there can be cases where, notwithstanding that the proposed appeal would raise no question of general or public importance, leave to appeal may be granted. But we are not persuaded that this is such a case. In particular, we are not persuaded that the importance to Mr Al Sanea (which we do not doubt) of a decision that the claims made against him in the proceedings should be tried in the Cayman Islands is a sufficient reason for this Court to grant leave to appeal in circumstances where (as we have held) there is no question of general or public importance on which the decision of the Judicial Committee is needed.

*An interim stay*

14. By paragraph 2 of the notice of motion filed on 21 December 2010 Mr Al Sanea seeks a stay of the order made by this Court on 8 December 2010 “should leave to appeal be granted”. In the written submissions lodged on his behalf, Mr Al Sanea goes further: he seeks an order that (if this Court refuses leave to appeal to the Judicial Committee) the order of 8 December 2010 should be stayed – “or at the least time for service by Mr Al Sanea of a further acknowledgement of service and a Defence should be extended” – to permit a petition for special leave to the Judicial Committee and (if special leave is granted) to allow the appeal itself to take place. That application is made in circumstances where, at a directions hearing on 13 January 2011, the Chief Justice extended time for Mr Al Sanea’s defence until 8 February 2010.
15. In support of that application it is said that, if no stay of execution or further extension of time is granted, Mr Al Sanea is at risk, if he fails to file a defence, that AHAB will seek to enter a default judgment against him; and at risk, if he does file a defence, that he will be held to have submitted to the jurisdiction of the Cayman Islands courts.
16. In response to that application AHAB has indicated (at paragraph 30 of its written submissions) that it is prepared to undertake (a) that it will not contend that, by filing a defence in the proceedings, Mr Al Sanea will be precluded from pursuing a petition for special leave or, if special leave is granted, from pursuing his

proposed appeal to the Judicial Committee on the jurisdictional issues and (b) that, if his appeal to the Judicial Committee on the jurisdictional issues were to succeed, it would not oppose an application to withdraw his defence and would not contend that (by filing the defence) Mr Al Sanea had submitted to the jurisdiction of the Cayman Island courts.

17. In those circumstances we think it unnecessary to decide whether (absent such an undertaking) this Court would have had power to stay execution of the order of 8 December 2010; or whether (if there were power to do so) a stay of execution following refusal of leave to appeal to the Judicial Committee from a decision to refuse leave to appeal to this Court would be appropriate. We are satisfied that refusal of a stay of execution will lead to no injustice if the undertaking which we have set out is given by AHAB. Whether or not there should be a further extension of time for the filing of the defence seems to us to be a matter for the Grand Court (at least in the first instance).

*Costs*

18. By paragraph 3 of the notice of motion Mr Al Sanea invites the Court to make provision of the costs of the application. Neither party has submitted that the costs should not follow the event. Subject to any further written submissions (on the incidence of costs only) that the parties wish to make in the light of this judgment, we will make an order to that effect: that is to say, we will dismiss the application for leave to appeal, dismiss the application for a stay of execution (on terms that AHAB gives the undertaking to which we have referred) and direct that the costs of and incidental to his applications be paid by Me Al Sanea, such costs to be assessed if not agreed. We are not minded to make any order for costs in relation to the application of the Maples defendants.

**Justice Chadwick P**

**Justice Forte JA**  
I agree.

**Justice Mottley JA**  
I also agree.

