AHAB V SICL AND OTHERS

SUMMARY OF FINDINGS

Knowledge and Authority

1. The pivotal issue in this case is whether the AHAB Partners knew of and expressly or implicitly authorized the enormous borrowings from banks which were obtained by fraudulent means through the Money Exchange and the Bahraini Financial Businesses.[1]

2. The resolution of this pivotal issue is heavily influenced by the findings as to the extent of the Partners' knowledge of and involvement with the means by which the Money Exchange perpetrated the fraud against the banks; namely, by the dissemination to the banks of falsified financial statements. The methodology used for the falsification of the financial statements was elaborate and sophisticated and, over the course of several years, became institutionalized within the Money Exchange. [2]

3. From near the time of the re-establishment of the Money Exchange in July 1981 until its collapse in May 2009, the financial statements deliberately and grossly understated the extent of the borrowings and so the true extent of the AHAB indebtedness to the banks and its status as a borrower. By presenting them to the banks, the false financial statements became the central instrumentality of the fraud. [3]

4. AHAB's case on knowledge and authority ultimately became that while there was involvement by the Partners with the falsified financial statements and knowledge to some extent of the borrowings, this developed and operated only until circa 30 September 2000, when Abdulaziz suffered his stroke. Thereafter, the practice of false accounting which Abdulaziz had put in place (without admission by AHAB of fraudulent intent), and allowed Al Sanea to implement, had ceased. That so far as successive Partners were aware, the extent of the borrowings had been curtailed, by

---

1 Section 1, paragraph 1.
2 Section 1, paragraph 2.
3 Section 1, paragraph 3

means of what came to be described as the "New for Old" policy – the policy said to have been imposed upon Maan Al Sanea by Suleiman. The purported aim of the New for Old policy was to ensure that the borrowings did not increase beyond SAR 7.8bn (US$2.3bn). [4]

5. The Money Exchange (orchestrated in conjunction with the Bahraini Financial Businesses) had been used to perpetrate one of the largest Ponzi schemes in history, with later borrowing used to repay earlier borrowing, while also providing funds for the ever-increasing indebtedness of the Money Exchange.[5]

6. Over the years following the alleged implementation of the "New for Old" policy until the collapse of the Money Exchange in May 2009, some US$126 billion was raised by the Money Exchange (including through the Bahraini Financial Businesses) by way of fraudulent borrowing, from at least 118 different banks around the world. From January 2000 to May 2009, the total flow of cash through the Money Exchange was over US$330 billion. The total amount of the unrepaid borrowings at the time of the collapse, as at end May 2009, was SAR 34.6 bn (US$9.2 bn).[6]

7. I am satisfied that the knowledge and authority of the AHAB Partners is overwhelmingly and conclusively proven.[7] The Court has no doubt that each of Abdulaziz, Suleiman, Yousef and Saud knew of and expressly authorized the issuance of fraudulent financial statements and knew of the fraud on AHAB's lending banks. On the basis of his late involvement at the final stages of the crisis leading to the collapse of the Money Exchange, the evidence of Dawood's involvement is also revealing of his state of knowledge.[8]

8. During Abdulaziz's time, the fraudulent practices of the Money Exchange were institutionalised for the purposes of defrauding the banks. He was knowingly aware of this and was the primary architect of the practices. Not only was Abdulaziz

---

4 Section 1, paragraph 7.
5 Section 1, paragraph 11.
6 Section 1, paragraph 9.
7 Introduction, paragraph 3.
8 Section 1, paragraph 71.

responsible as Chairman for the adoption of the fraudulent accounting practices, he also was fully aware of their meaning and effect, as is abundantly clear especially from the many exchanges he had with El Ayouty on the subject. [9]

9. During Abdulaziz's life time, Suleiman and Yousef were also knowingly aware of the fraudulent practices and they continued the practices after his time. There is clear evidence of Suleiman's knowledge of the fraud being perpetrated through the Money Exchange. [10]

10. The documentation clearly reveals that Yousef had knowledge of the fraudulent accounting practices and an intimate understanding of the El Ayouty Audit Packs and their significance. [11] Yousef was aware of the activities of the Money Exchange and of the extent of the borrowing and of the Al Sanea indebtedness.[12] Yousef received and understood in 1999, the ramifications of the Audit Pack for 1998 which prompted his complaint to Abdulaziz. In light of his mistrust of Al Sanea, it is inconceivable that he thereafter took no steps to monitor the state of that indebtedness for which, along with that of the Money Exchange itself as a whole, he was personally liable.[13] Yousef was party to and so was aware of, the adoption of the fraudulent accounting practices and the issuance of the misleading financial statements to the banks.[14] Yousef received updates after 2003 from El Ayouty regarding the Al Sanea indebtedness and the Money Exchange borrowing; and from Omar Saad, regarding the value of the shareholdings. He must have been aware therefore, that the Money Exchange had woefully insufficient capital and generated no income with which to redeem the bank loans.[15] Despite knowing these things, apart from his personally motivated agitations with Abdulaziz and Suleiman before December 2000, Yousef took no steps to restrain the activities of the Money Exchange. He must therefore be regarded as knowing and approving of (or at least acquiescing in) those activities.[16]

---

9 Section 1, Conclusion, paragraph 1.
10 Section 1, Conclusion, paragraph 2.
11 Section 1, paragraph 359.
12 Section 1, paragraph 445.
13 Section 1, paragraph 446.
14 Section 1, paragraph 447.
15 Section 1, paragraph 448.
16 Section 1, paragraph 449.

11. There is ample evidence of Saud's involvement throughout the years following November 2000, with the procurement of resolutions confirming the continuation of the false accounting practices, such that it is implausible to think that Saud would not have understood their meaning and implications.[17] It is an inescapable inference that, by April 2001, Saud was fully conversant with the El Ayouty Audit Packs and reports, with the comments or criticisms they contained and that his evidence to the contrary was dishonest.[18]

12. Saud's Calculations are a clear revelation of his knowledge of the extent of the borrowing and the Al Sanea indebtedness as reported in Attachments 8 and 9 of the 2001 El Ayouty Audit Pack. Saud claims to have undertaken his Calculations at Suleiman's request and admitted to having brought them to Suleiman's attention. From no later than that occasion, Saud would have known that the Audit Packs and reports were the reliable source of information as to the state of affairs at the Money Exchange. The evidence reveals that Saud was fully aware of the fraudulent practices and of the financial position of the Money Exchange throughout the period 2000 to 2009. His assertions to the contrary are rejected as deliberately untruthful. [19]

13. Saud lied about his knowledge of the borrowings and the Al Sanea indebtedness: (a) in his statement in the London Proceedings in order to present a false impression of the state of his knowledge of the Money Exchange's indebtedness; and (b) in his witness statements and evidence in this Court in attempting to explain his evidence in the London proceedings and especially, the crucial revelations of Saud's Calculations.[20]

14. Saud was consistently involved, not just in monitoring the financial position of the Money Exchange, but in the significant decisions taken by the Money Exchange.[21]

---

17 Section 1, paragraph 457.
18 Section 1, paragraph 500.
19 Section 1, Conclusion, paragraph 2.
20 Section 1, paragraph 548.
21 Section 1, Conclusion, paragraph 3

15. Saud knew of and authorised Maan Al Sanea's activities.[22] Saud was as fully aware of Maan Al Sanea's activities and the borrowing of the Money Exchange, as he needed to have become, in order to have intervened to put an end to those activities. Saud's and AHAB's failure to intervene lead to the unavoidable conclusion that they connived in Maan Al Sanea's continued use of the Money Exchange to obtain fraudulent lending from the banks.[23]

16. In the maintenance of its case of lack of knowledge and involvement in the fraud upon the banks, AHAB has sought to distance itself from the Bahraini Financial Businesses, laying the blame for their operations solely and squarely upon Maan Al Sanea. The reality disclosed by the evidence is very different and shows that the AHAB Partners, including more latterly Suleiman and Saud, were very much aware of the establishment of the Financial Businesses and approved of their use for the procurement of billions of dollars of borrowing.[24]

17. Dawood's evidence strikes the Court as a false and convenient narrative aimed at avoiding the fact that his involvement, as a partner of AHAB, fixes AHAB with his knowledge of the massive borrowing[25] which he transacted, not only on behalf of the Money Exchange but also on behalf of the Bahraini Financial Businesses, in early 2009.[26]

<u>Relative Benefits received by AHAB/AHAB Partners and Maan Al Sanea through the Money Exchange</u>

18. The obvious explanation for AHAB's complicity is the pursuit by the AHAB Partners, beginning in the 1980s with Abdulaziz and carried on ever since, of the strategy – through the instrumentality of the Money Exchange under the management of Al Sanea – to use borrowing in order to acquire and hold investments, comprising the strategic equity investments in banks and other institutions, together with land

---

22 Section 1, Conclusion, paragraph 4; Section 1, paragraph 552.
23 Section 1, paragraph 552.
24 Section, paragraphs 757 and 758.
25 Over SAR10 billion.
26 Section 1, paragraph 805.

holdings. At the same time, because of AHAB's failure to inject capital or to pay down the borrowings of the Money Exchange - whether by liquidating the equity investments or otherwise but instead "capitalizing" interest liabilities - the strategy also required the constant taking of further borrowing to repay earlier borrowing.[27]

19. The *quid pro quo* was that Maan Al Sanea was allowed to deploy a similar strategy for his own purposes as well - all resulting in the spiralling vortex of indebtedness which inevitably overwhelmed the Money Exchange.[28]

20. The meticulous record of the Al Sanea indebtedness crucially reveals the intention as between himself and AHAB, contrary to AHAB's case of lack of knowledge and authority, that his indebtedness was all expected to be repaid. [29]

21. The inevitable conclusion is that there was no fraud perpetrated upon AHAB. The fraud was perpetrated by AHAB and Maan Al Sanea acting in concert against the banks, to obtain borrowing which would certainly not have been provided had the banks known the true financial position of the Money Exchange.[30]

22. Contrary to the misleading impression AHAB sought to give, and despite the inescapable inferences that they have failed to make full disclosure of assets, this Court is compelled to the conclusion that AHAB and/or the AHAB Partners have received enormous benefits from the Money Exchange.[31]

AHAB's "New for Old" case

23. "New for Old" is pleaded by AHAB as a policy that Suleiman - sometime after Abdulaziz's stroke on 30 September 2000 - implemented to restrict borrowing by

---

27 Section 1, paragraphs 10 and 12.
28 Section 1, paragraph 11.
29 Section 2, paragraph 14.
30 Section 2, paragraph 15.
31 Section 2, paragraph 175.

Maan Al Sanea through the Money Exchange to only such loans as had been taken before the time of its implementation.[32]

24. Without "new for old", there could be no basis for a finding that there was at any time placed upon Maan Al Sanea's authority to borrow, any restriction such as to have rendered his actions unauthorized and, unless unauthorized, any basis for the claim that he had defrauded AHAB.[33]

25. "New for Old" is a recent invention, raised in a desperate attempt to salvage AHAB's falsified case.[34] There is no objective evidence to prove its existence. "New for old" is not supported by the documents.[35] AHAB's case on "new for old" is so difficult to pin down, and no witness is able to provide a coherent account of it because it never happened.[36] "New for Old" never existed.[37]

The Forgery Allegations

26. AHAB's case pivots around the allegation that Maan Al Sanea, in his fraud upon AHAB, engaged in forgery "*on an industrial scale*" and relies on the presence of "matched" signatures and apparently manipulated documents recovered from among the records of the Money Exchange, AHAB H.O. and the other Financial Businesses.[38]

27. The forgery allegations are shown to have been made on a random illogical basis without any reasonable foundation for a finding that the questioned documents and signatures were deployed by Maan Al Sanea without the knowledge and authority of AHAB Partners.[39]

---

32 Section 3, paragraph 1.
33 Section 3, paragraph 6.
34 Section 3, paragraph 11.
35 Section 3, paragraph 188.
36 Section 3, paragraph 189.
37 Section 3, paragraph 190.
38 Section 4, paragraph 1.
39 Section 4, paragraph 243.

28. The documents purportedly signed by Abdulaziz after he had his stroke were certainly not signed by him. However, it was the Algosaibi family who saw the need to pretend to the world that Abdulaziz was still able to run AHAB, and it will have been the family, no doubt including Al Sanea, who arranged to put Abdulaziz's signatures onto documents during that period.[40]

29. In the case of Suleiman, AHAB has failed to show matched signatures on all (or even a significant majority) of increased facilities. There are matched signatures on numerous renewals. On AHAB's "New for Old" case, there was never any need for Al Sanea to forge a signature on a renewal.[41]

30. There are documents in the Forgery Schedule undeniably signed by Yousef, Saud and Dawood. Those documents should not be there as there is no basis for an allegation of forgery.[42]

31. In the case of Dawood, he signed his signature over 130 times on bank documents for over SAR 10 billion, following an agreement between him and Saud that he should do so during the final months leading to the collapse of the Money Exchange. Little wonder then that even while they appear on the Forgery Schedule, far from alleging that his signatures at this crucial time of reckoning for AHAB were forged, Dawood feigned ignorance and amnesia.[43]

32. The fact that AHAB made pleaded allegations of forgery in relation not only to Suleiman's but also to Dawood's, Saud's and Yousef's signatures, speaks volumes about AHAB's willingness to make such allegations, even where there is no evidence to support them.[44]

<u>The Manipulation of Documents</u>

---

40 Section 4, paragraph 244.
41 Section 4, paragraph 250.
42 Section 4, paragraph 245.
43 Section 4, paragraph 247.
44 Section 4, paragraph 249.

33. AHAB's manipulation case, based on 16 sets of bank facility documents, emerged very late in the day.[45] AHAB suggested that the significance of these documents was that they showed that *"Mr. Al Sanea fabricated or manipulated facility and related documents which were presented to Suleiman for signing, with the aim of deceiving Suleiman and creating the impression of Mr. Al Sanea's compliance with the policy imposed upon him by Suleiman in 2002 that new lending should only replace old lending so that the Money Exchange's overall borrowing levels did not increase …"*.[46]

34. AHAB's case became *some* borrowing was authorised under "New for Old"; *some* facility documents were forged; and *some* documents were manipulated by Al Sanea in order to deceive Suleiman into thinking that the existing and new facility agreements (respectively "Old Facility" and "New Facility" agreements) were for the same amount when they were not.[47]

35. The 16 sets of documents cannot bear the weight of inference that AHAB wishes to place upon them. It is not possible to infer from the existence of these 16 sets of documents (or 10 transactions) either the existence of the "New for Old" Policy, or its evasion. In the case of these documents, there is no clear inference that can be drawn in AHAB's favour.[48]

36. Whatever the reason for the alteration of the 16 sets of documents might have been at the time, the documents show (from those for higher amounts being found at AHAB HO) that AHAB was aware of the increasing facilities. That is inconsistent with any concept of "New for Old", and with the evidence of AHAB's own witnesses.[49]

<u>Al Sanea indebtedness to the Money Exchange</u>

---

45 Section 5, paragraph 1.
46 Section 5, paragraph 2.
47 Section 5, paragraph 4.
48 Section 5, paragraph 69.
49 Section 5, paragraph 70.

37. The Algosaibis were willing to allow the massive personal borrowing of Al Sanea to go unchecked because it was the *quid pro quo* for his willingness also to use the Money Exchange to procure fraudulent borrowing on behalf of the AHAB Partners themselves.[50] The Algosaibis allowed Maan Al Sanea to use the Money Exchange to borrow because they also benefitted.[51] Abdulaziz acting on behalf of AHAB Partners, guaranteed Al Sanea's borrowing (see further below).

38. Withdrawals by Maan Al Sanea were not "misappropriations" but loans which were expected to be repaid. Ledger 03 recorded an ongoing facility for Al Sanea to borrow funds. This was a facility that was granted to Maan Al Sanea by Abdulaziz and was never revoked.[52]

39. Al Sanea's net indebtedness to the Money Exchange was debt, it was understood by the Algosaibis as debt and it was accounted for as debt.[53] Mr. Al Sanea was entitled to procure funds on behalf of the Money Exchange and to borrow those funds provided they were properly accounted for.[54]

40. In addition, the amounts guaranteed by Abdulaziz were not exclusively Al Sanea "*indebtedness*" but were also costs of borrowing attributable to the SAMBA shares held in Al Sanea's name on behalf of AHAB.[55]

41. The Algosaibis assumed that Mr. Al Sanea would be able to pay back his debt (at least as much of it as was genuinely his). He was thought to be one of the wealthiest men in the world. What they had not reckoned on and what shocked them in May 2009, when the global financial crisis erupted, was that he would be unable to do so. The reality is that they had made a bad credit decision.[56]

<u>AHAB's proprietary tracing and personal claims under Cayman and Foreign Law</u>

---

50 Section 6, paragraph 1.
51 Section 6, paragraph 22.
52 Section 6, paragraph 5.
53 Section 6, paragraph 6.
54 Section 6, paragraph 7.
55 Section 6, paragraph 36.
56 Section 6, paragraph 8.

42. AHAB's claims are primarily claims by AHAB in the asserted position of beneficiary seeking to assert and vindicate continuing beneficial interests in property (or in property representing that property), which it claims has been misappropriated in breach of trust, by way of breach of fiduciary duties. AHAB's claims are thus not being pursued only against the allegedly dishonest fiduciary himself but against the Defendant companies in liquidation, into whose hands it is said that the misappropriated property has come. Thus understood, AHAB's claims are primarily proprietary in nature seeking to recover what is its property (or the traceable substitutes) from the Defendants. In order to succeed, AHAB must therefore have met the requirements of the proprietary remedies which it seeks.[57]

43. There is no basis for AHAB's proprietary claims against the Defendants. Those claims are premised fundamentally, upon there having been fraudulent breaches of fiduciary duties owed by Al Sanea to AHAB in his allegedly undisclosed abuse of the Money Exchange to defraud AHAB. Having at all times been privy to and authorized Al Sanea's activities, AHAB has failed to prove that fundamental premise of its case.[58]

44. AHAB seeks to assert as against the Defendants, a liability to account on the basis of their dishonest involvement with Al Sanea and knowing receipt of the proceeds of his fraud against AHAB. The Defendants are said to have participated with Al Sanea in the creation of a "maelstrom" and to have been involved with him in the "cross-firing" of transactions in order to obfuscate the operation of the alleged fraud. Thus branded as constructive trustees, the Defendants would become subject to the reversal of the burden of proof and impressed with a duty to account, which was AHAB's ultimate attempt at overcoming the evidential obstacles facing its proprietary claims. Here too however, the case law nonetheless requires that AHAB must first prove the antecedent breach of trust by Al Sanea, before it might rely on this line of cases

---

57 Section 7, paragraph 2.
58 Section 7, paragraph 5.

towards the "*reversal of the burden of proof*" for which it contends. AHAB has failed to do so.[59]

45. AHAB also had to prove that its money reached the Defendants before it would have been entitled to this reversal of the burden of proof, and so being entitled to call upon the Defendants "*to fill in the evidential gaps*". For proof of this crucial element of its case, AHAB sought primarily to rely upon the evidence of Mr. Neil Hargreaves[60] who was asked to identify transfers by Al Sanea from the Money Exchange to the Defendants by way of the so-called "Money Out Schemes" (cheques, letters of credit and electronic transfers). In his report, Mr. Hargreaves immediately recognized that "*The apparent use by MAS of the Money Exchange as a general source of funding for the various MAS-related companies (particularly STCC), and the extent of mixing and churning of funds makes the exercise of tracing difficult*".[61]

STCC

46. STCC, as the Saudi head office of the Saad Group, was the hub of its wheel. The vast majority of transfers out of the Money Exchange alleged to have gone to the Saad Group went to STCC. There was also a very large flow of funds the other way, to the Money Exchange from STCC.[62]

47. Not only did STCC hold very large portfolios of assets but itself had also incurred large amounts of debt from many banks. Given this source of wealth and funding raised independently of funding obtained by STCC through the Money Exchange; without disclosure of its internal financial records and bank accounts, it was not possible in the trial to identify and trace (in the traditional sense of chains of linked of transactions) through STCC to the Defendants, funding which originated with the Money Exchange.[63] AHAB did not join STCC as a defendant to these proceedings

---

59 Section 7, paragraph 27.
60 A Deloitte accountant, and see paragraph 48.
61 Section 7, paragraph 28.
62 Section 7, paragraph 29.
63 Section 7, paragraph 30.

and so STCC remained beyond the reach of possible orders for disclosure of its records.

Mr Hargreaves

48. Despite the absence of transactions linked to the Defendants, Mr. Hargreaves relied upon what he identified as "patterns" of movement of sums of money which, having left the Money Exchange accounts to STCC, there then followed movements (many of which were not contemporaneous), in the accounts of some of the Defendants which he opined gives rise to the inferences that all of those transactions are linked. Typically what this meant was that money was shown to leave the Money Exchange primarily to STCC (by one means or another of the Money Out Schemes) and certain sums were shown to have been later paid by STCC to AWAL Bank and on to the AWALCOs or on to SICL or Singularis.[64]

49. What Mr Hargreaves' evidence amounted to was that the "patterns" he observed may be relied upon for the drawing of inferences that they represented money originally transferred from the Money Exchange to STCC.[65] Mr. Hargreaves' "patterns" was not a sound basis for the drawing of such inferences, let alone in this context, as proof of a proprietary tracing claim.[66]

The rules of tracing

50. Even if AHAB had been able to establish the antecedent breach of trust by Al Sanea (which it has not), it would still have had to prove (whether by application of the FIFO process, the LIFO process or by inference) the necessary transactional links invariably required by the case law, between its funds taken from the Money Exchange and the accounts of the Defendants. That requirement was not satisfied by AHAB.[67]

---

64 Section 7, paragraphs 31 and 32.
65 Section 7, paragraph 35.
66 Section 7, paragraph 36.
67 Section 7, paragraph 50.

51. For every proprietary tracing claim, two premises must be established (1) the antecedent breach of trust or fiduciary duty (2) the identification of the traced asset or its traceable proceeds in the possession of the defendant.[68]

52. In this case, while there were myriad and complex transactions going back and forth between the Money Exchange and Saad entities, there were apparent commercial reasons for the transactions (albeit that they appear to have been designed mainly to facilitate Al Sanea's and his Saad companies' business objectives). There is no factual basis for concluding that he used these transactions merely as "an overarching and coordinated campaign to divert AHAB's assets" or as "cross-firing" to create a "maelstrom" to obfuscate fraudulent activity. The transactions appear to have been invariably and accurately recorded for accounting purposes within the ledgers and Deal Management System (DMS) of the Money Exchange and, to the extent the records of the Saad entities are available, within their records as well.[69]

53. There is no substitute for proof of the transactional links, even if it is accepted that they need not have been sequential. Recognizing this problem, AHAB resorted, impermissibly, to a claim for equitable accounting for reversal of the burden of proof.[70]

54. In the case of a "maelstrom" in every case there will be the minimal requirement of the proof of a deliberate attempt to create a "*co-ordinated scheme calculated to hinder any attempt to trace*" relevant funds before the burden of proof will be reversed. Such circumstances have not been proven by AHAB in this case.[71]

Saudi Law

55. The proper law governing AHAB's equitable claims is the law of Saudi Arabia.[72]

---

68 Section 7, paragraph 51.
69 Section 7, paragraph 52.
70 Section 7, paragraph 53.
71 Section 7, paragraph 59.
72 Section 7, paragraph 79.

56. The Court having accepted this principle as being applicable here and that Saudi law does not admit of a proprietary claim against intangibles (dayn), means that AHAB could not satisfy the conflict of laws rules in respect of its receipt- based or proprietary claims for knowing receipt, dishonest or unjust enrichment / restitution in any event.[73]

57. Whether regarded as proprietary or personal, AHAB's claims against the Defendants all depended on AHAB being able to trace its funds into the hands of the Defendants here in Cayman. Both as a matter of Saudi and Cayman law, no such claim was tenable. That finding by itself precludes such claims.[74]

58. In Saudi law there is no hard and fast strict rule of joint and several liability for harm and damage at large for conspiracy (which itself is not recognised as a distinct tort).[75] The Court accepts the submissions of the Defendants that in the circumstances of this case a Saudi Judge would apportion liability between joint tortfeasors (i.e. "for what" they are liable) on an actual "receipts" basis. As a consequence of the "double actionability" rule, the liability of the GT Defendants under the law of the Cayman Islands is also restricted to actual receipts (if any).[76]

Swiss Law

59. As to claims made by AHAB in respect of intangible assets held by SICL in Switzerland subject to a "mini - bankruptcy proceeding" there (worth some US$225 million)[77] AHAB could have had no proprietary right to these assets claiming against SICL, irrespective of how it frames the claim.[78]

The so-called "Money Out Schemes" and AHAB's ability to trace its money into the hands of the GT Defendants

---

73 Section 7, paragraph 80.
74 Section 7, paragraph 82.
75 Section 7, paragraph 91.
76 Section 7, paragraphs 91 and 92.
77 Section 7, paragraph 67.
78 Section 7, paragraph 68.

60. AHAB's case depends upon three things: (a) bank borrowing being unauthorised, (b) forgery, and (c) the unauthorised bank borrowings being misappropriated, or stolen, by Al Sanea. To be fraudulent all three things have to have been unknown to the Algosaibis. In relation to the unauthorised bank borrowings being misappropriated, that depends upon the so called 'money out schemes'.[79]

61. The transfers out as well as the borrowings are all recorded in the books and records of the Money Exchange, most notably in Ledger 3. AHAB's claim depends upon that state of affairs having been kept secret from the AHAB Partners. AHAB's claim of ignorance and non-authorization is false. The Deloitte Investigation which proceeded on the basis of the veracity of AHAB's claim was fundamentally flawed and renders unreliable the subsequent evidence of Mr. Charlton[80], and that of Mr. Hatton[81] and Mr. Hargreaves, all of whom relied in their statements upon the findings of the Deloitte Investigation.[82]

The US$165 million

62. Mr. Hargreaves has accepted that other than in the case of a number of transfers totalling US$165 million, he has failed to trace or follow the payment of any funds directly from the Money Exchange to the GT Defendants. The evidence reveals that these transfers were made for commercial purposes allowed by AHAB as between the Money Exchange and the GT Defendants. AHAB's proprietary claim in relation to them is unsustainable.[83]

Other payments

63. As no payments other than the transfers totalling US$165 million have been traced, the claims against the GT Defendants have failed.[84]

---

79 Section 7A, paragraph 1.
80 CEO of AHAB. Formerly a Deloitte accountant.
81 A Deloitte accountant.
82 Section 7A, paragraph 2.
83 Section 7A, paragraph 7.
84 Section 7A, paragraph 7.

Reverse burden of proof

64. The duty of a constructive trustee to account does not arise where there was no receipt of monies in relation to which a constructive trust could arise. It follows that there is no duty on the Defendants to account unless AHAB establishes receipt. As AHAB cannot establish receipt, AHAB's assertion that a reversed burden of proof applies to the Defendants because of their duty to account is also misconceived.[85]

Cheques

65. None of the cheques totalling US$2,185million were made payable to any GT Defendant. That uncontroverted position is the end of AHAB's claim against the GT Defendants based on the cheques.[86]

Letters of Credit

66. There were no direct payments from the LCs listed by AHAB in Schedules 4 and 4a to the GT Defendants.[87] The LCs enabled the Money Exchange, primarily through TIBC, to drawdown under its facilities with its banks.[88] The LCs were a mechanism for fully utilising the LC sub-facilities and a means of getting that part of the facilities from the Banks.[89] To the extent that the LCs were fake, that was to defraud the banks.[90] The LCs listed in Schedule 4a have either been accounted for as a debt owed by Al Sanea/ Saad entities to the Money Exchange or reimbursed.[91] The Money Exchange received the benefit of either a debt owed to it from STCC on its financial accounts or it received the funds reimbursed from STCC.[92]

Generic Transfers

---

85 Section 7A, paragraph 8.
86 Section 7A, paragraphs 79 and 80.
87 Section 7A, paragraph 87.
88 Section 7A, paragraph 90.
89 Section 7A, paragraph 93.
90 Section 7A, paragraph 93.
91 Section 7A, paragraph 122.
92 Section 7A, paragraph 124.

67. AHAB's case is that every transfer that has a generic description in the GT Defendants' bank statements should be treated as a transfer to them by the Money Exchange. The total amount of such transfers is US$37,488,846,644. AHAB is attempting to prove misappropriations totalling US$37,488,846,644 by virtue of its lack of evidence of where money has come from. That is over SAR 140 billion, more than four times the total value of AHAB's claim. This is a ridiculous allegation. It only demonstrates the hopelessness of AHAB's attempts to trace with any degree of specificity, monies going to the Defendants from the Money Exchange as distinct from other sources.[93] No claim arises out of the 'generic transfers'. An allegation of theft in relation to US$37,488,846,644 in a context where there were ongoing complex commercial transactions between the Money Exchange, SICL, Singularis and their respective external funding banks, based merely upon the existence of generic transfers is unsustainable.[94]

"Specific Patterns"

68. AHAB has constructed a novel, and on analysis hopeless, tracing claim based upon a "specific pattern" that might link money purportedly coming out of the Money Exchange to certain capital contributions. There is no principle of "specific pattern" tracing as a matter of law.[95]

69. Mr. Hargreaves' "specific pattern" is simply that: (a) Al Sanea increased capital by cancelling his loans to SICL and Singularis; and (b) it occurred at the same time money was being 'extracted' from the Money Exchange. It is the coincidence between the money out of the Money Exchange and the increased capital by cancelled loans in Al Sanea's companies that Mr. Hargreaves relies on.[96] "Specific patterns" or what may be a coincidence, does not warrant the Court finding an irrebuttable inference

93 Section 7A, paragraph 144.
94 Section 7A, paragraph 181.
95 Section 7A, paragraph 210.
96 Section 7A, paragraph 213.

that the money paid out of the Money Exchange can be traced or followed into the money that capitalised SICL or Singularis.[97]

STCC

70. STCC is a potential ultimate repository of the alleged misappropriations. There is evidence of transfers of the allegedly misappropriated funds from the Money Exchange, directly to STCC, in relation to electronic transfers, cheques and LCs. But there are also third party sources from which payments out from STCC might have been made. A tracing claim by the Money Exchange through STCC is therefore unsustainable.[98]

71. The Court cannot safely reach any conclusions about whether monies that originated from the Money Exchange, either came out of STCC and went to SICL, Singularis or any other Defendant, or stayed in STCC.[99]

AHAB's Tracing Claim: The AwalCos

72. AHAB's tracing claim against the AWALCOs is also based upon Mr. Hargreaves "patterns" approach. Mr. Hargreaves "tracing exercise" does not meet the requirements of the law for the proof of AHAB's proprietary claims against the AWALCOs.[100]

73. The AWALCOs did not receive any monies directly from the Money Exchange. It follows that in order to prove its claims against the AWALCos which are all receipts based claims, AHAB must show that monies which went to the AWALCos came – at least indirectly, from the Money Exchange.[101]

---

97 Section 7A, paragraph 235.
98 Section 7A, paragraph 257.
99 Section 7A, paragraph 255.
100 Section 7B, paragraph 3.
101 Section 7B, paragraph 5.

74. Mr. Hargreaves' starting point for his tracing exercise was with funding flowing from Awal Bank into the AWALCOs. He does not purport to begin with funding flowing from the Money Exchange to the AWALCOs because there were none. Instead he seeks to show, by reference to the coincidence of amounts and timing of roll over of deposits, that there are links between some of the funding from Awal Bank and funding which flowed contemporaneously from the Money Exchange.[102]

75. As AHAB has been unable to establish its primary allegations of fraud, AHAB's tracing claim against the AwalCos, which would have depended upon Mr. Hargreaves' "patterns", is rejected.[103]

Tracing and other claims against SIFCO5

76. AHAB's attempts to trace its funds into SIFCO5 are unparticularised and unprincipled. It has failed to establish that any funds represent the traceable proceeds of funds from the Money Exchange reached SIFCO5. It has further failed to articulate any discernible cause of action against SIFCO5 in respect of those alleged funds.[104]

Tracing

77. AHAB's proprietary claim against SIFCO5 depends upon showing that SIFCO5 received property that belonged to AHAB.[105] AHAB's position is therefore entirely dependent upon inference, viz: upon its establishing that there was a "co-ordinated" scheme calculated to hinder any attempt to follow the funds paid out to Mr Al Sanea.[106] No evidence has been produced by AHAB to support the suggestion that payments to SIFCO5 were part of a co-ordinated scheme to divert AHAB's money away from AHAB to the Defendants through many and various transactions.[107]

---

102 Section 7B, paragraph 7.
103 Section 7B, paragraph 36.
104 Section 7C, paragraph 40.
105 Section 7C, paragraph 2.
106 Section 7C, paragraph 2.
107 Section 7C, paragraph 2.

78. AHAB argued that the Defendants owe a duty to account as the recipients of misappropriated funds and that the Defendants have the burden of proving where the misappropriated monies went. This was without merit.[108]

79. Mr Hargreaves was unable to say which assets had been acquired with funds that were misappropriated. This by itself puts an end to AHAB's claim against SIFCO5.[109]

80. AHAB has deliberately failed to investigate its tracing claim for fear that the results of that investigation would demonstrate that it had no such claim against SIFCO5.[110]

81. Even if AHAB had otherwise been able to trace monies/assets into the hand of SIFCO5, that exercise would be barred through the application of the bona fide purchase defence. In substance, the real purchaser of the assets held by SIFCO5 was Barclays.[111]

Attribution of knowledge

82. AHAB contends for an assumption that, because of his position as director in respect of each of the Defendants, it is to be assumed that Mr Al Sanea was the "*directing mind and will*" of each Defendant company and so that his knowledge of his alleged fraud against AHAB is to be attributed to each of the Defendants to ground each Defendant's liability in AHAB's receipts-based and assistance-based claims.[112]

83. The principles of attribution are the principles by which the knowledge and state of mind of individuals are attributed to companies in the management of which they are involved or on whose behalf they act. The ordinary rule of attribution is that the acts and states of mind of those who are the company's agents including depending on context, the directing minds, will be attributed to the company. But there is no assumption that the knowledge of a director who is a director of different companies,

---

108 Section 7C, paragraphs 2.
109 Section 7C, paragraph 4.
110 Section 7C, paragraph 4.
111 Section 7C, paragraph 4.
112 Section 7C, paragraph 11.

will be attributed to all his companies.[113] AHAB has failed to establish that Al Sanea's knowledge of a fraud against AHAB can be imputed to SIFCO5.[114]

Receipts based claims

84. Each of the dishonest assistance claim, the conspiracy claim and the unjust enrichment claim rests upon the allegation that SIFCO5 received money or assets that represent the proceeds of funds misappropriated from the Money Exchange. Accordingly, if the tracing claim fails, so must all of these claims.[115]

Dishonest Assistance

85. The mere receipt of funds, absent more, is insufficient to constitute "assistance" for the purposes of the tort of dishonest assistance. None of SIFCO5's '*acts'* provided any assistance to Mr Al Sanea in his alleged breaches of fiduciary duty – such acts would have occurred in any event, and would in no manner have been dependent upon and/or derived any assistance from the incorporation of SIFCO5 or its acts as an asset-holding vehicle during its lifetime. It is equally nonsensical to suggest that any such assistance was dishonest.[116]

Conspiracy

86. The tort of conspiracy requires an agreement between the conspirators. AHAB has failed to identify any agreement between SIFCO5 and Maan Al Sanea to "*act as a repository*" for any proceeds of the alleged fraud upon AHAB.[117]

Unjust enrichment

113 Section 7C, paragraph 24.
114 Section 7C, paragraph 24.
115 Section 7C, paragraph 32.
116 Section 7C, paragraphs 34 and 35.
117 Section 7C, paragraphs 37 and 38.

87. This claim fails on the basis that AHAB has not proven the alleged fraud nor been able to show receipts of the proceeds of fraud.[118]

The Illegality Defence

88. In the event it is ultimately decided that AHAB should prevail on the factual basis of its case, in particular that "new for old" really existed and was actually sought to be implemented by Suleiman, the outcome could be very different. AHAB may then be regarded, subject to meeting the requirements of the rules of tracing, to trace into the assets of the Defendants on the basis of its proprietary claims and arguably also on the basis of its knowing assistance and unjust enrichment claims against the Defendants in person, casting them in the mould of constructive trustees.[119]

89. It is therefore of potential importance that the findings of the Court on the illegality defence are declared. The illegality defence is entitled to succeed, not only on the basis of AHAB's continuous complicity in the fraud from beginning to end but even in the event "new for old" was real, because of AHAB's indisputable involvement through Abdulaziz until October 2000, in what had already become a massive fraud on the banks and one which AHAB must have known would be continued, even if curtailed, in order to give effect to "new for old" itself. In other words, the "new for old" policy itself involved the continued dissemination to the banks of falsified accounts, in order to induce the banks to continue to lend at least as much as was required to prevent the collapse of the Money Exchange and other Financial Businesses.[120]

90. There can be no doubt as to the gravity of the fraud perpetrated by AHAB. This was a fraud carried out, with increasing sophistication, from as early as 1981. The total sums borrowed pursuant to AHAB's fraud numbered in the hundreds of billions of dollars. In short, this was an enormous, long-standing Ponzi scheme which defrauded

---

118 Section 7C, paragraph 39.
119 Section 7D, paragraph 2.
120 Section 7D, paragraph 4.

more than a hundred banks.[121] Every single dollar or riyal that ever flowed into the Money Exchange was obtained dishonestly through fraudulently obtained borrowing.[122] The total borrowing that flowed into the Money Exchange after 2000 was US$330bn. Moreover, given that Deloittes did not calculate the value of the transactions going through the Money Exchange prior to 2000, the total amount of dishonestly obtained borrowing was clearly far higher than US$330bn. The Money Exchange was, from its very inception, a criminal enterprise. It remained so throughout its existence.[123]

91. The fraud on the banks was the raison d'etre of the Money Exchange. The purpose of the Money Exchange was to acquire a portfolio of investments with borrowings that would not appear on AHAB's books.[124] The fraud on the lending banks was the central premise of the way in which the Money Exchange was operated. Without the fraud it would have been unable to borrow in the manner that it did. Defrauding the lending banks was in the Money Exchange's DNA.[125]

92. The Court holds that AHAB's claim ought to have been barred in any event, through the application of the Court's policy that it will not enforce an illegal arrangement and/or because AHAB lacks clean hands and so is not entitled to invoke the equitable remedies.[126]

Locus Poenitentiae

93. In effect AHAB's response comes down to that AHAB is deserving of being afforded a locus poenitentiae for having corrected the error of its ways after Abulaziz's time. Moreover, AHAB says that even during Abdulaziz's time, there is no clear evidence

---

121 Section 7D, paragraph 59.
122 Section 7D, paragraph 61.
123 Section 7D, paragraph 62.
124 Section 7D, paragraph 69.
125 Section 7D, paragraph 70.
126 Section 7D, paragraph 75(4).

that he knew that his conduct in falsifying the accounts and sending them to the banks was criminal.[127]

94. There was no possibility of AHAB establishing a locus poenitentiae in the face of its conduct during Abdulaziz's time and its admitted continuing involvement in the use of fraudulent accounts to obtain loans from the banks, even if only, as AHAB (in my view dishonestly) claims, to sustain the "new for old" policy.[128]

95. There can be no suggestion of repentance because AHAB has failed to make any attempt at penitence long after the fraud took place.[129] The effects of the fraud were entirely irreversible. The loans obtained by the Money Exchange have been paid off many times with the proceeds of other dishonestly borrowed funds. Even if the Partners had sought to withdraw from their illegality, they would not have been able to do so and the JDEK proceedings do nothing to unravel the years of robbing one creditor to pay off another.[130] Through their acquisition of loans and shares AHAB obtained considerable benefits from the Money Exchange which they have never returned.[131] AHAB, through its proposals before the JDEK, does not intend to return the proceeds of the fraudulently acquired borrowing as it is intended that the Partners will hold on to both their personal assets and a great deal of their substantial business empire.[132] Far from seeking to make amends for their unlawful conduct, AHAB has continued to benefit from it and shows no signs of returning those benefits.[133]

The GTDs Counterclaims

96. The GT Liquidators' counterclaims against AHAB are for a total of about US$5.9 billion.[134]

---

127 Section 7D, paragraph 11.
128 Section 7D, paragraph 12.
129 Section 7D, paragraph 151.
130 Section 7D, paragraph 152.
131 Section 7D, paragraph 153.
132 Section 7D, paragraph 154
133 Section 7D, paragraph 155.
134 Section 8, paragraph 1.

97. The GT Liquidators rely upon certain accounting entries in the records of SICL and Singularis and upon certain land transactional documents as proof of the respective liabilities alleged to be owed by the Money Exchange. Many of these accounting entries and land transactional documents proved also at best to be inconclusive and in some instances utterly unreliable sources of evidence. [135]

98. The evidence relied upon in proof of the counterclaim is unsafe and unreliable. It arises, like the rest of the evidence in this byzantine case, against the background and out of the cauldron of fraud that has been shown to characterise the existence and operation, not only of the Money Exchange and other Financial Businesses but also the existence and operation of SICL and Singularis in the manner of their use by Maan Al Sanea to foster the growth of his wealth by defrauding others. So complex and massive had the Ponzi scheme of borrowing through the Financial Businesses and Al Sanea's Saad entities become, that no court could be expected to rely merely upon accounting records from within them as proof of these multi-billion dollar counterclaims, unsupported by the evidence of a single witness who would speak to the correctness of the accounts or provenance of the purported liabilities.[136]

99. These concerns are amply demonstrated by the full and frank (albeit as I have decided, ill-founded) arguments of the GT Liquidators themselves on the counter-claim, and all the more so when read with the counter-arguments of AHAB.[137]

100. While the internal accounts of SICL purport to show entries for the liabilities, there are no matching entries within the accounts of the Money Exchange to reflect them as one would expect and as would be essential to a claim based upon the existence of such accounting entries and counter- entries.[138]

101. In relation to cash claimed as due to SICL from AHAB based upon alleged profits made by SICL on 20 forward FX trades between SICL and the Money Exchange, the

---

135 Section 8, paragraph 4.
136 Section 8, paragraph 5.
137 Section 8, paragraph 6.
138 Section 8, paragraph 7.

undisputable evidence is that these were "rigged" to guarantee a profit to SICL. Money was not transferred to SICL based upon these sham transactions but the records generated allowed SICL to record the transactions in its accounts to reflect enormous profit, further enabling SICL to falsify its accounts in its campaign of fraud against its lenders.[139]

102. While Al Sanea used the Money Exchange and other Financial Businesses with the certain knowledge and authority of the AHAB Partners to defraud the banks, as part of the *quid pro quo* of that nefarious arrangement, he was also given free reign to use the Money Exchange to support his own Saad Group's activities, even where, as it has been shown, that involved his separate campaign of fraud against the outside world. If this meant that using the Money Exchange to "cook the books" of SICL and SHL suited his ends, the Court does not doubt that the AHAB Partners saw no need to inquire into or interfere with such activities.[140]

103. The counterclaims are based upon entries found in SICL's and Singularis's accounts which do not appear in the Money Exchange's ledgers. The Money Exchange's ledgers and DMS contained accurate accounts of its activities. What is in question here is the accuracy of the SICL and Singularis accounts.[141]

104. The liability of the Money Exchange did not really exist. The generation of such sham activity, like the fictitious use of LC transactions through TIBC, was not meant during the operation of the Money Exchange to defraud AHAB but to enable Al Sanea to continue to defraud AHAB's bankers and to wage his own campaign of fraud against the outside world.[142]

105. Al Sanea fraudulently instigated the counterclaims as they relate to the SICL and Singularis Promissory notes.[143]

---

139 Section 8, paragraph 8.
140 Section 8, paragraph 11.
141 Section 8, paragraph 12.
142 Section 8, paragraph 13.
143 Section 8, paragraph 14.

106. While the Court has rejected and dismissed the counterclaim and in doing so accepts that Al Sanea as its partial instigator would seek to defraud AHAB, this conclusion does not suggest an acceptance on the Court's part that his running of the Money Exchange prior to its collapse in May 2009 involved a fraud by him upon AHAB. That issue is separately and conclusively dealt with by the overwhelming evidence of the AHAB's Partners' knowledge and authorisation of his activities at the Money Exchange (and to a lesser but no less significant extent, at the other Financial Businesses).[144]

107. The counterclaims are refused and dismissed and their costs will follow the event.[145]

144 Section 8, paragraph 181.
145 Section 8, paragraph 182.