

**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
HOLDEN AT GEORGE TOWN, GRAND CAYMAN**

**CAUSE NO. 359 OF 2009**

**BETWEEN: AHMAD HAMAD ALGOSAIBI AND  
AND BROTHERS COMPANY PLAINTIFF**

**AND:**

- 1) SAAD INVESTMENTS COMPANY LIMITED**
- (2) MAAN AL SANEA**
- (3) AWAL TRUST COMPANY LIMITED (AS TRUSTEE OF THE SAAD STAR TRUST)**
- (4) BARCLAYS PRIVATE BANK AND TRUST (CAYMAN) LTD (AS TRUSTEE OF THE SAAD SETTLEMENT)**
- (5) SAADGROUP LIMITED**
- (6) GOLDEN BELT 2 LIMITED**
- (7) GOLDEN BELT 3 LIMITED**
- (8) SINGULARIS HOLDINGS LIMITED**
- (9) SINGULARIS HOLDINGS (NO 2) LIMITED**
- (10) SINGULARIS HOLDINGS (NO 3) LIMITED**
- (11) SINGULARIS HOLDINGS (NO 4) LIMITED**
- (12) SINGULARIS HOLDINGS (NO 5) LIMITED**
- (13) AWAL FEEDER 1 FUND**
- (14) AWAL FINANCE COMPANY LIMITED**
- (15) AWAL FINANCE COMPANY (NO 2) LIMITED**
- (16) AWAL FINANCE COMPANY (NO 3) LIMITED**
- (17) AWAL FINANCE COMPANY (NO 4) LIMITED**
- (18) AWAL FINANCE COMPANY (NO 5) LIMITED**
- (19) AWAL FINANCE COMPANY (NO 6) LIMITED**
- (20) SAAD AIR LIMITED**
- (21) SAAD AIR (A340-600) LIMITED**
- (22) SAAD AIR (A320) LIMITED**
- (23) SAAD AIR (A320 NO 2) LIMITED**
- (24) SAAD AIR (A320 NO 3) LIMITED**
- (25) SAAD AIR (A320 NO 4) LIMITED**
- (26) SAAD AIR (A320 NO 5) LIMITED**
- (27) SAAD AIR (A380) LIMITED**
- (28) SAAD INTERNATIONAL BANK LIMITED**
- (29) SAAD ADVISORY HOLDINGS LIMITED**
- (30) SAAD CAYMAN LIMITED**
- (31) SAAD INVESTMENTS FINANCE COMPANY LIMITED**
- (32) SAAD INVESTMENTS FINANCE COMPANY (NO 2) LIMITED**
- (33) SAAD INVESTMENTS FINANCE COMPANY (NO 3) LIMITED**
- (34) SAAD INVESTMENTS FINANCE COMPANY (NO 5) LIMITED**
- (35) SAAD INVESTMENTS FINANCE COMPANY (NO 8) LIMITED**
- (36) SAAD INVESTMENTS FINANCE COMPANY (NO 9) LIMITED**

- (37) SAAD INVESTMENTS FINANCE COMPANY (NO 10) LIMITED**
- (38) SAADGROUP FINANCE COMPANY LIMITED**
- (39) SAADGROUP FINANCE COMPANY (NO 2) LIMITED**
- (40) SAADGROUP FINANCE COMPANY (NO 3) LIMITED**
- (41) SAADGROUP FINANCE COMPANY (NO 4) LIMITED**
- (42) SAADGROUP FINANCE COMPANY (NO 5) LIMITED**
- (43) SAADGROUP FINANCIAL SERVICES COMPANY LIMITED**

## **DEFENDANTS**

Appearances: Mr. Ewan McQuater QC and Mr David Quest, instructed by Mr. Peter Hayden & Mr. George Keightley of Mourant for the Plaintiff

Mr. Thomas Beazley QC instructed by Appleby for the 2nd Defendant

Before: Hon. Justice Anderson (Ag)

Heard: 15 and 16 December 2009

- 1) This is an application by the plaintiff (“AHAB”) seeking declarations against the 2<sup>nd</sup> Defendant (Mr. Al Sanea) and certain other defendants (the “Maples Defendants”) in relation to certain conduct which AHAB alleges contravenes the Worldwide Freezing Order (WFO) of Henderson J made on July 24 2009 whereby he ordered the assets of the 2<sup>nd</sup> Defendant and several companies (companies owned directly or indirectly by the 2<sup>nd</sup> Defendant) frozen up to a limit of Nine Billion Two Hundred Million United States dollars (US\$ 9.2 billion)
- 2) The basis of the application by the Plaintiff is the purported breaches of the WFO by the 2<sup>nd</sup> Defendant and other defendants in this case. That WFO had been granted in circumstances of allegations by the Plaintiff that the 2<sup>nd</sup> Defendant who had been the person almost exclusively responsible for one of the divisions of the Plaintiff partnership, “The Money Exchange”, had in the course of those operations, defrauded the Plaintiff of funds in excess of Nine Billion United States Dollars (US\$9,000,000,000.00) The Plaintiff has filed an action seeking to recover the allegedly defrauded sums and has set out in its statement of claim particulars of the alleged fraud by the 2<sup>nd</sup> Defendant. It further alleges that proceeds of the frauds were

channeled into or through the other defendant companies, of which the 2<sup>nd</sup> Defendant was (directly or indirectly) the main or only shareholder.

3) AHAB's application seeks declarations from this court in the following terms that:

1. The 2<sup>nd</sup> Defendant is in breach of the provisions of paragraph 9 of the Order of Mr. Justice Henderson made on 24 July 2009 (the "Order") and is thereby in contempt of the Grand Court in that he has wrongfully:
  - (i) caused or permitted the disposal by the 1<sup>st</sup> Defendant of an asset in the sum of US\$60,203,936.59;
  - (ii) caused or permitted the disposal by the 34<sup>th</sup> Defendant of assets in the sum of US\$102,000;
  - (iii) dealt with his assets by voting his shares in the 8<sup>th</sup> Defendant to appoint voluntary liquidators;
  - (iv) disposed of his assets by transferring land in Bahrain to a third party as set out in the affidavit of Elham Ali Hassan;
  - (v) liquidated and/or disposed of shares held in Saudi American Bank and transferred the proceeds to third parties.
2. The 2<sup>nd</sup> Defendant is in breach of the provisions of paragraph 14 of the Order in that he has failed to inform the Plaintiff's attorneys of all his worldwide assets exceeding US\$10,000 in accordance with the terms of that paragraph and is thereby in contempt of the Grand Court;
3. The 2<sup>nd</sup> Defendant is in breach of the provisions of paragraph 16 of the Order in that he has failed to swear and serve an affidavit setting out details of his worldwide assets falling within paragraph 14 and is thereby in contempt of the Grand Court;
4. The 2<sup>nd</sup> Defendant is in breach of the provisions of paragraph 17 of the Order in that he has failed to inform the Plaintiff's attorneys of all transfers of monies or assets falling within that paragraph and is thereby in contempt of the Grand Court;

5. The 2<sup>nd</sup> Defendant is in breach of the provisions of paragraph 19 of the Order in that he has failed to swear and serve an affidavit setting out details of all monies and assets transferred to him falling within paragraph 17 of the Order and is thereby in contempt of the Grand Court;
6. The 2<sup>nd</sup> Defendant is in breach of the provisions of paragraph 21 of the Order in that he has failed to tell the Plaintiff where money used to pay for legal advice and representation has come from and is to come from and is thereby in contempt of the Grand Court.

And (in the event that these breaches and/or contempts are not rectified or purged by the hearing of this application), for orders that the Court:

7. Do impose on the 2<sup>nd</sup> Defendant such sanctions by way of fine, sequestration of assets or otherwise as the Court thinks fit;  
and/or
8. Do require the 2<sup>nd</sup> Defendant to provide such security for his good conduct as the Court thinks fit;

And for an Order that:

9. The 2<sup>nd</sup> Defendant do return to the Plaintiff all documents, books and records, belonging to the Plaintiff (as referred to in the letter from Appleby dated 23 September 2009 and identified in schedule A to the 6<sup>th</sup> Affidavit of George Keighley), together with any further documents books and records belonging to the Plaintiff that are in the possession, custody or control of the 2<sup>nd</sup> Defendant and in the meantime (and prior to such delivery up) do preserve all such documents.

4) On July 24, 2009, Henderson J granted an application for a Worldwide Freezing Order (WFO) against Maan Al Sanea and certain other defendants. The order of the learned judge, so far as is material for the consideration of the application before this Court, was made against the 1<sup>st</sup> to 43<sup>rd</sup> defendants. It prohibited “disposal of assets worldwide” and also provided for the “collateral relief set out in the of the draft order” which was attached. It froze an amount of \$9.2 billion, and restrained the defendants from removing “from the Cayman Islands any of their assets which are in the Cayman Islands up to the value of the amount frozen”. They also could not “in any way dispose of, deal with or diminish the value of any of their assets whether they are in or outside the Cayman Islands up to the amount frozen”. In particular, in paragraphs 14, 15, 16 17 19 and 21, it provided as follows:

Each Defendant must, within 10 working days after the service of this Order upon him and to the best of his ability, inform the Plaintiff’s attorneys of all its worldwide assets exceeding \$10,000.00 in value, whether in his own name or not and whether solely or jointly owned giving the value, location and details of such assets. (Para 14)

If any provision of this information is likely to incriminate the Defendant, he may be entitled to refuse to provide it, but is recommended to take legal advice before refusing to provide the information. Wrongful refusal to provide the information is contempt of court and may render the Defendant liable to be imprisoned, fined or have his assets seized. (Para 15)

Each Defendant must, within 21 days after service of the Order upon him, swear and serve on the Plaintiff’s attorneys an affidavit setting out the above information (Para 16)

Each Defendant must, within 21 working days after service of the Order upon him, and to the best of his ability, inform the Plaintiff’s attorneys of all or any monies or assets which have been transferred to him or to it or to any person or entity under his control from the Plaintiff since January 2004, whether such transfer was made directly or indirectly or was made by loan or otherwise, stating in each case (i) the date and amount of any such transfer or the asset transferred; (ii) the location, bank account, account holder, and account into which any sums were received; (iii) what has become of such monies or assets; and (iv) identifying all the assets which are now represented by the monies or assets transferred from the Plaintiff, giving their location and value (Para 17)

Each Defendant must, within 28 days after the service of this order upon him, swear and serve on the Plaintiff's attorneys an affidavit setting out the above information. (Para 19)

This Order does not prohibit any defendant from spending a reasonable sum on legal advice and representation. But before spending any money the defendant must tell the Plaintiff's attorneys where the money is to come from. (Para 21)

A Defendant may agree with the Plaintiff's attorneys that the above spending limits should be increased or that this Order should be varied in any other respect, but any agreement must be in writing. (Para 23)

- 5) The question which this court must consider is whether the defendant Al Sanea or, indeed, any other defendant, has breached the terms, or any of them, of Henderson J's order aforesaid. The allegations of specific breaches are dealt with below. However, counsel for the plaintiff made the preliminary observation that the defendant had issued two (2) applications, one challenging the jurisdiction of the Grand Court in these Islands, to deal with the matters herein at all, and the second questioning the validity of the purported service of the various documents upon him. These he wished to deal with at the outset.
- 6) He submitted that neither of these approaches by Al Sanea compromises the ability of this court to grant the declarations sought. In any event, the court had given permission to serve Al Sanea out of the jurisdiction (See Henderson J's order of July 28, 2009) while the method of substituted service had been mandated by this court by its order of August 24, 2009. Notwithstanding these applications, neither of which in any event has been heard, it was the submission of plaintiff's counsel that it was trite law that orders of the court must be obeyed unless and until they are set aside or overturned. This remains true even where the order is wrong. See **Hadkinson v Hadkinson** per Romer L.J. quoting Lord Cottenham L.C. in **Chuck v Cremer** (1846) Cooper Temp Cott 205, 338.

A party who knows of an order, whether null or void, regular or irregular, cannot be permitted to disobey it. .... It would be most dangerous to hold

that the suitors or their solicitors could themselves judge whether an order was null or void – whether it was regular or irregular. That they should come to the court and not take upon themselves to determine such a question: that the course of a party knowing of an order which was null and irregular and who might be affected by it was plain. He should apply to the court that it might be discharged. As long as it existed, it must not be disobeyed.

- 7) It was further submitted that this injunction applied with particular force to freezing orders. (See Gee, *Commercial Injunctions*, 5<sup>th</sup> Edition 19-055) including associated asset disclosure orders. It is recognized that the freezing order is an imposition on a defendant's ability to deal with his assets at least until the defendant has had a chance to respond to the allegations of the plaintiff. However, if this were not the case, the effect of the order may be rendered nugatory. Equally, the order for disclosure is an important part of this 'nuclear' arsenal, for it forces the defendant to provide the information, without which the order would be useless. In that regard it is instructive to recall the dictum of Steyn L.J. (as he then was) in **Grupo Torras SA v Sheikh Fahad Mohammed Al-Sabah** [1996] Lloyds Report 7, that the worldwide freezing order would be a 'relatively toothless procedure' if exceptional circumstances were required before a respondent was compelled to give disclosure pending an application to set it aside.
- 8) In **Motorola Credit Corporation v Uzan** [2002] All ER (D) 223 (Jun), the England and Wales Court of Appeal considered whether a party who was subject to a worldwide freezing injunction, initially made without notice, should be required to provide information about his assets before an *inter partes* hearing to determine whether the injunction should be continued. The judge at first instance refused to suspend the order for disclosure pending the inter partes hearing to discharge and his order was appealed.
- 9) It was held that while there may be circumstances in which an order for disclosure may be suspended, the first instance judge's exercise of his discretion to refuse to suspend that order in the instant case, would not be disturbed. Indeed, the court held that a discretion to suspend in such circumstances would rarely be exercised. Lord Woolf CJ noted in that case: "Normally when making worldwide freezing orders it will be appropriate to make a disclosure order as well." It may also be noted that the

majority of the Court of Appeal, (Waller L.J. and Lord Woolf CJ, Sedley L.J. dissenting) formed the view that this was not a case in which it should interfere with the exercise of the judge's discretion as a freezing order cannot be effective without disclosure of assets. Motorola had a strong case that a fraud had been committed and that dissipation was a serious risk; the defendants had no good excuse for not complying with the order of the US court and they could have arranged for security to be given, but had offered none.

10) The issues of jurisdiction and validity of service are not directly issues which are to be decided in the instant proceedings. However, counsel for the plaintiff has made submissions which purport to establish that both the jurisdiction of the court and the validity of service are beyond doubt. It is not my purpose at this point to make any ruling on those issues although I will comment in relation to the defendant's counsel's submissions on the question of the standard of proof in relation to service later. Suffice to say that it is the plaintiff's counsel's submission that the jurisdiction of this court has been established. In that regard, counsel points to the fact that Henderson J. had granted leave to serve the 2<sup>nd</sup> Defendant out of the jurisdiction. That leave, pursuant to Grand Court Rules Order 11 r 1 (1) (c), was based upon the learned judge's view that the 2<sup>nd</sup> Defendant was a "necessary and proper party" to the claims against Saad Investment Company limited (SICL) and Singularis. It was submitted that there can be little doubt that he is such given the facts set out in paragraphs 46.1 to 46.10 of the plaintiff's submissions.

11) With respect to the issue of service, plaintiff's counsel also submitted that service had been proper. It was pointed out that where a defendant is outside of the jurisdiction, service must be made (a) personally; or (b) by a method permitted under the law of the foreign country, or (c) by such method as the court may direct under GCR O 65 r 4 by way of substituted service. That rule is in the following terms.

- 1 If, in the case of any document which by virtue of any provision of these rules is required to be served personally on any person, it appears to the court that it is impracticable for any reason to serve

- that document personally on that person, the Court may make an order for substituted service of that document.
- 2 An application for an order for substituted service may be made by an affidavit stating the facts upon which the application is founded.
  - 3 Substituted service of a document, in relation to which an order is made under this rule, is effected by taking such steps as the Court may direct to bring the document to the notice of the person being served.

12) It was conceded that service may not be by way of a method which is contrary to the law of the foreign country. Certainly, it would not be possible to use a method of service which was specifically contrary to the law of the country in which service was to be effected. Rather, it was submitted that as long as service was valid under the law of these Islands, it did not have to be specifically valid under the law of the foreign country. (See **Velox International Investments v Peirano Facio** [2003] CILR 30).

In that case, in relation to service in Uruguay, Edwards J said:

... The defendants' submission is that the service effected by Hector Ferreira was not in compliance with the orders for service outside the jurisdiction, nor with O.11, r.5(2) of the Grand Court Rules, which provides in part: "Nothing in . . . any order . . . of the Court made by virtue of [this rule] shall authorise . . . the doing of anything in a country in which service is to be effected which is contrary to the law of that country."

The case cited in the notes to 1 Civil Procedure Autumn 2002, para. 6.24.2, at 174, regarding O.11, r.5(2), is **Ferrarini S.p.A. v. Magnol Shipping Co. Inc. (The Sky One)**. In that case, Staughton, J. in the Commercial Court made two primary findings: First, that under O.11, r.6(3) service could be effected by private means provided that nothing was done in the country where service was to be effected that was contrary to the law of that country; and secondly, that because private service of an English High Court writ would, in Swiss law, be a criminal offence, it could not have been authorized by the ex parte order for service out made under O.11, r.5(2).

The essence of the opinion of Eduardo Vescovi is that— "mere delivery of simple copies of . . . a complaint . . . does not comply with the requirements . . . which allow it to be considered a summons . . . leading to the conclusion,

without prejudice, that the summons is absolutely null in relation to Uruguayan law.”

I interpret this to mean that service as effected by Hector Ferreira would not be recognized as valid under Uruguayan law. That is far from saying it was a criminal offence under Uruguayan law for Hector Ferreira to effect service as he did. The opinion does not state that private service in Uruguay constitutes a criminal offence in that country. Nor is there any other evidence that is so. This case is therefore distinguishable from The Sky One on that basis.

I find that the orders for service out of the jurisdiction in Causes No. 670 and 672 did not “authorize or require the doing of anything” in Uruguay “which is contrary to the law of that country” in the sense found in The Sky One. Private service is not effective under the law of Uruguay according to the evidence, but it is not a criminal offence in Uruguay to effect private service of foreign process, as it was found to be in Switzerland in The Sky One.

- 13) Based upon that dicta, it was submitted that service was valid as it had been effected pursuant to the terms of the Order for Substituted Service made by this court on August 24, 2009 and the method of service was not “contrary to the law of” Saudi Arabia.

**Contempt (1): Removal of US\$60m from SICL to Saad Hospital in Saudi Arabia**

- 14) The first act in respect of which the plaintiff complains is of the transfer of US\$60 million from SICL to Saad Hospital in Saudi Arabia. The plaintiff further complains that Mr. Al Sanea also caused to be effected three smaller transfers totalling US\$305,000 from SICL and SIFCo No 5 to Saad Hospital in breach of the WFO. Given the relatively small amounts involved here, the plaintiff does not make a big issue in terms of the quantum but notes that these sums have similarly not been returned and the same considerations with regard to the transfer of the \$60 million would also apply. It was the Plaintiff’s evidence that on July 28, 2009, after the WFO had been ordered by the court, at about 2:30 p.m. Saudi time, Al-Sanea personally gave instruction to transfer the funds in question to Saad Specialist Hospital Company and the money has not been returned.

15) According to the plaintiff's case, Maples, then the attorneys for SICL, Saad Group and Singularis, (whose offices were operated from Maples' offices at the time the WFO was made), received a copy of the WFO at about 5:00 p.m. on July 27, 2009. There is evidence that the information was sent to the "representatives of SICL" at about 10:40 p.m. on the same evening. Although Maples do not identify the "representatives of SICL" who were informed, there is also some evidence that Mr Al Sanea is the sole beneficial owner of SICL and chairman of its board (the other executive directors being his wife and daughter). It was the conclusion of Henderson J that Al Sanea controlled the company. Plaintiff's attorneys submitted that it is inconceivable that news of a US\$9.2 billion WFO would not have been immediately passed on to Mr. Al Sanea, particularly as he was also a respondent to the WFO in a personal capacity and very serious and far-ranging allegations of fraud had been made. The irresistible inference, it was submitted, was that he must have known of the WFO before he instructed the transfer and that he ordered it in defiance of the Order of this Court.

16) Mr. AL Sanea does not deny making the transfer but does, however, deny knowing of the WFO. He says that he only became aware of it after he had ordered the transfer of the funds. According to him, the transfer represented money owed to him by SICL and was made for his benefit. However, while he says that he did not own Saad Hospital at the time of the WFO or the transfer, he does not explain why he would have arranged a payment to a company which he did not own. Nor is there any explanation as to why SICL owed him the money other than saying that he had previously discharged a liability of SICL from his personal funds

17) In addition to the facts averred by Mr. Al Sanea as above, he also stated that in any event his net worth is at least \$12.4 billion and so the depletion of his resources by \$60 million would not reduce his assets below the amount required to be frozen under the terms of the WFO. The response of the plaintiff's attorneys is that even if Mr. Al Sanea is correct, funds which had been transferred at the instance of Mr. Al Sanea was money belonging to SICL, a defendant also subject to the WFO, and there is no question that SICL did not have resources in excess of the amount ordered frozen. It is also clear a person who assists a person subject to a freezing order to contravene

that order, is himself guilty of contempt of the court's order. SICL would, on these submissions, also be in breach of the order and guilty of contempt.

18) It was the submission of Mr. Beazley for Mr. Al Sanea that the court should refuse to grant the declaration sought as it had not been proven to the relevant criminal standard – beyond a reasonable doubt – that the defendant had in fact received service of the WFO before he had made the transfer in issue.

**Contempt # 2 - Voting of Singularis into voluntary liquidation**

19) The second act of which the plaintiff complains and in respect of which it seeks a declaration that there has been a breach of the order of this court is the alleged voting of the shares of Singularis into voluntary liquidation. From the material available to the plaintiff it appears that one of Mr. Al Sanea's largest disclosed assets is his shares in this company. He was the 100% owner of the shares in this company which, according to Mr. Al Sanea, was shown by its financial statements for the period up to December 31, 2008, to have had a value of \$3.5 billion dollars.

20) Not only is Mr. Al Sanea the sole shareholder of the Singularis shares, the company itself was a defendant and the subject of the order made by Henderson J. Notwithstanding those facts, on August 20, 2009, after it was aware of the order of Henderson J. and, on the plaintiff's submission, in defiant breach thereof, Al Sanea voted the company into voluntary liquidation. This behaviour, submitted the plaintiff, represented a clear "dealing with" the assets again flagrant breach of the order of the learned judge. It should be further noted that at the time of the putting into liquidation Singularis had not complied with the order for disclosure of its assets, made by Henderson J. It was further pointed out that, the liquidators would not be able to provide the disclosure by the company required by the order as a "substantial volume of books and records" had been removed from the company before the liquidators could have access to them by persons purportedly acting on behalf of Mr. Al Sanea. The removal was apparently premised upon the need to copy and properly

archive the documentation thereby removed, but the liquidators had complained that the documents had not been returned.

21) Mr. Al Sanea also sought to explain his decision to place the company in voluntary liquidation on the basis that the advice received from his advisers suggested that the company was likely to become insolvent if it were not already so. At the same time, he also stated that he did not know that placing the company in liquidation was in breach of the WFO. Counsel for the plaintiff points out that the allegation of potential insolvency seems inconsistent with the reported value of the company at \$3.5 billion at December 31, 2008 as well as the promissory note recently produced by the defendant claiming that the company was owed in excess of \$4 billion by AHAB.

22) The plaintiff's counsel submitted that the defendant Mr. Al Sanea has given no, or no reasonable explanation as to why there has been a failure to disclose as directed by the WFO or why he has failed to return books and documents which had been removed by him or on his instructions. It should also be noted that the liquidators of SICL also make the same complaint against Mr. Al Sanea about the removal and the non-return of records. Counsel makes the point that the liquidators had obtained and made available audited financial statements for Singularis for the period November 30, 2006 to April 30, 2008 which indicated that Singularis owned a very large portfolio of equities in investments in financial institutions in the UK (US\$6.6bn) and France (US\$3.8bn). According to plaintiff's counsel, the UK equities would appear to have been a very large block of shares in HSBC in respect of which Singularis had filed a transfer form dated 30 December 2008 disclosing that it held, through various nominees in England and Jersey, a 2.97% shareholding in HSBC. It had also reported cash placed with various banks and financial institutions, with a total balance of US\$9.7 billion. The existence of these assets, however, could not be determined in the absence of what seemed to be a calculated strategy by the defendant, Al Sanea, to prevent the information from being made available.

23) Based upon the foregoing, counsel submits that the court should make orders requiring the defendant to provide:

- details of the shares held in Singularis's equity portfolios as at 31 December 2008, 24 July 2009 (the date of the WFO) and the present date;
- details of any dispositions of those shares on or after 31 December 2008, including details of the counterparties, and the amount and destination of any consideration received by Singularis;
- details of the deposits and placements held by Singularis as at 31 December 2008, 24 July 2009 and the present date, including details of the bank and the amount and terms of the deposit and bank statements for the relevant accounts as at those dates;
- details of any moneys paid by Singularis to any third party on or after 31 December 2008, identifying the recipient and the purpose of the transfer.

**Contempt # 3 - Failure to disclose assets**

24) The third area in relation to which the plaintiffs sought a declaration that the defendant, Mr. Al Sanea, was in contempt of the court being in breach of its order, was in the failure to provide the disclosure of assets required pursuant to the WFO. The WFO had mandated disclosure to be effected "within ten (10) days of service of the WFO"; that is, by September 19, 2009. The evidence adduced by the plaintiff was to the effect that up to December 2, 2009, no disclosure had been made in response to the WFO. Counsel pointed out that in an affirmation filed in England on October 1, 2009, Mr. Al Sanea had stated that despite his challenge to the jurisdiction of the Cayman Court and to the validity of service of the documents emanating therefrom upon him, he had, nevertheless, begun to make disclosure of assets. There was, however, no evidence of any such disclosure by the defendant as at that time. Indeed, as counsel pointed out, it was not until October 6, 2009 that there had been the filing of the application to challenge jurisdiction. Counsel noted that, interestingly, Mr. Al Sanea had purported to provide asset disclosure in the English proceedings by letter on or around October 19, 2009, while at the same time continuing to ignore the WFO issued by this court.

25) It would appear that, prompted by this application for a declaration of contempt, Mr. Al Sanea had now belatedly determined that he should provide a declaration in these courts. The declaration which has now been provided is almost co-terminous with that presented in the English proceedings, save for a valuable wine collection worth \$750,000.00, the existence of which had been unearthed by the plaintiff and is now included in the list of assets.

26) Mr. McQuater also pointed out that despite the apparent deference to the orders of the English court and the concomitant ignoring of the court of these Islands, Mr. Al Sanea has neither explained the reason for nor apologized for the delay in filing the declaration. Nor, it was submitted, is it any excuse to say that AHAB had got the information it sought by virtue of the English orders. The requirement that orders of the court be obeyed is not to be ignored. Finally with respect to disclosure, it was submitted that in any event, the purported disclosure by Mr. Al Sanea was still deficient in so far as the position in Singularis was concerned. Moreover, Mr. Al Sanea has also given no information with respect to his alleged interest in STCC a Saudi partnership in which he is stated to have a ninety per cent (90%) interest worth some \$8.9 billion.

**Contempt # 4 - Failure to disclose transfers**

27) The fourth area where the plaintiff alleges that there has been a breach of the order is in Mr. Al Sanea's failure to disclose transfers which had been made to him or to entities under his control, from AHAB. The only disclosure made by Mr. Al Sanea is in relation to the 43 cheques already listed in the plaintiff's statement of claim. This had, in any event, already had formed part of the plaintiff's evidence in its application for the WFO. Again, while there had been an attempt to comply with a similar provision in the English order, any attempt at compliance with the Cayman order had only come belatedly after the contempt application had been filed.

28) It was counsel's submission that Mr. Al Sanea cannot say that he does not have any further information on the payments/transfers allegedly made as he would have been

the one to authorize the respective payments. Indeed, he has not even responded in respect of the list of cheques in the Plaintiff's statement of claim, one hundred and fifteen of which, totaling over \$32 million, relate to transfers in 2009 alone. Nor has Mr. Al Sanea even commented upon the allegations contained in the statement of claim of massive payments by way of letters of credit to the Money Exchange. The plaintiff's counsel also refers to a transfer from AHAB to Awal Bank of \$191 million which took place on May 3, 2009 and which is mentioned in the statement of claim but not even mentioned by Mr. Al Sanea.

29) In light of the foregoing, it was the submission of counsel that there had been a clear breach of the order to disclose the transfers and the plaintiff was entitled to the declaration sought in this regard. Further, it was submitted that "a full and proper response to the WFO disclosure provisions is required, in order to comply with its provisions and for Mr. Al Sanea to purge his contempt".

#### **Contempt # 5 - Disposal of Samba shares**

30) Although this formed one of the areas where the plaintiff asserted that there had been a contempt of court, it did not appear to me that the plaintiff was pursuing this as the evidence of any transfer of the shares in question seemed limited to some unconfirmed press report that Mr. Al Sanea had disposed of some his shares in the aforesaid bank.

#### **Contempt (6): Transfer of Bahrain properties**

31) The plaintiff's counsel submitted that there was evidence from Bahraini court records that on or about September 9, 2009, Mr. Al Sanea had transferred some seven properties he had previously owned in Bahrain to his daughter. This date, of course, was after the granting of the WFO and manifestly in breach of its terms. According to Mr. Al Sanea, he had made a gift of the said properties to his daughter and in order to do this, had given a notarized power of attorney, subject to Saudi law, to his Bahraini lawyer, Mr. Al Mardi, on January 6, 2009; that the transfer had thereby been effected and was thereafter irreversible. It was pointed out by counsel for the plaintiff

that there was no evidence that Mr. Al Mardi was a Saudi lawyer, while the document upon which reliance is placed, is alleged to be governed by Saudi law.

32) As is submitted by the plaintiff's counsel, however, the document which purports to be that by virtue of which the properties were transferred, does not in fact speak of "transfers" of the properties. Nor does it speak to when the transfer was to have been effected. In those circumstances, he asks this court to note that the plaintiff has an opinion from a Saudi Arabian lawyer who asserts that the situation under Saudi law is similar to that in the Common Law jurisdictions in that a power of attorney normally allows the attorney to do certain things but is not normally effective to effect the transaction itself. Moreover, it was his opinion that under Saudi law, the transfer was revocable at least up until the transfer was effected, and in the case of a gift from father to daughter, even after it had been consummated unless there had been a further disposal, as I understand it, something akin to a transfer to a bona fide purchaser for value without notice.

33) In light of the foregoing submissions it was submitted that the 2<sup>nd</sup> defendant was clearly in breach of the order of this court and that the plaintiff was entitled to the reliefs sought in the applications. It was conceded that some of the usual punishments for contempt were not available in the instant case, as Mr. Al Sanea's companies in the Cayman Islands were mostly now in liquidation and he no longer appeared to have control over any assets here. Nevertheless, it was the submission of the Plaintiff that the Court could take certain measures which could provide sanctions for contempt or it could make orders ancillary to the WFO with a view to limiting or correcting the prejudice caused by Mr. Al Sanea's contempts.

34) With respect to the other applications, the situation may be summarized as follows. Although the Plaintiff did not make extensive submissions on the issue of the 2<sup>nd</sup> Defendant's payment of legal fees without advising the Plaintiff of the source of the funds, this was also clearly an area which seemed to reinforce the doubts which the Plaintiff had concerning the 2<sup>nd</sup> Defendant's motives and non-disclosure, as well as the

apparent intention to disobey the WFO. It was a matter to which Mr. Beazley would make reference in his submissions.

### **DEFENDANT'S SUBMISSIONS**

35) Mr. Beazley, Q.C. for Mr. Al Sanea rejects the allegations of the plaintiff. He submits that there is no basis for a finding that Mr. Al Sanea is in contempt of any orders of this court as set out in the WFO granted by Henderson J. on July 24, 2009. In summary, he responds to the allegations as particularized in the plaintiff's complaints and as set out above in the following terms, rejecting in each case that a factual basis exists for a finding of contempt.

1. The transfer of the US\$60 million, on Mr. Al Sanea's instructions, from SICL to Saad Specialist Hospital Company in Saudi Arabia, was carried out before he became aware of the WFO. Moreover, in any event, the transfer did not reduce the value of the 2<sup>nd</sup> defendant's assets below the figure of US\$9.2 billion, which was the amount frozen by the order.
2. Voting of the shares in Singularis to place the company in liquidation was not a "dealing" with his assets since it appeared to Mr. Al Sanea that it was an appropriate way to protect the company in circumstances where it lacked substantial liquid assets. In any event it did not alter the value of Mr. Al Sanea's shares and the value of his unencumbered assets remained above the threshold set in the WFO.
3. The transfer of real property in Bahrain to his daughter was complete and irrevocable from January 2009. In any event, his unencumbered assets continued to be above the limit frozen by the Cayman WFO.
4. The application in respect of the transfers of Samba shares was inadequate as it lacked particularity. (In so far as this particular allegation is concerned, I do not propose to expend any time on this aspect of the application as counsel for the Plaintiff seemed to have conceded that there was not the quality of evidence to support pursuing this, a submission with which I agree. The allegation was based largely on unsubstantiated newspaper reports.)

5. Counsel for Mr. Al Sanea also denies that any liability can arise under the Cayman Islands WFO in relation to non-disclosure. This is because he was never under any obligation to make such disclosure, not having been served with the order under Caymanian or Saudi law. Further, it was impossible to have complied with the Cayman order in the time set by the Cayman Court. Notwithstanding this, the 2<sup>nd</sup> defendant has complied with the disclosure order made in the English proceedings and that disclosure, which the plaintiff seems willing to accept for the purposes of these proceedings, has now been made in the Cayman Islands.
6. The 2<sup>nd</sup> defendant's counsel also rejects the proposition that Mr. Al Sanea should be required to disclose the source of the payment of his legal fees. It is sufficient in his submission, for Mr. Al Sanea to say that his legal fees are being paid by a Third Party. Further, there was no basis upon which he should be required to "deliver up documents", something now being sought by the plaintiff although it was not previously claimed in the Writ filed or elsewhere. It was submitted that this should be a matter for Saudi authorities or courts. Further, the exercise by this court of quasi criminal contempt proceedings is an impermissible interference with the sovereignty of the Kingdom of Saudi Arabia.

36) The 2<sup>nd</sup> defendant's counsel makes a general assertion at the commencement of his submissions that the Court of these Islands is not the proper forum for the adjudication of the matters at issue, and that the plaintiff has brought the action here because it has failed to prevail in the proceedings it brought in Saudi Arabia. I do not propose to deal with this submission as it is the subject of an application to be heard here shortly. It was the position of the 2<sup>nd</sup> defendant that the Cayman Freezing Order was obtained by "grave misrepresentations and highly material non-disclosure on the part of the plaintiff" which has no valid claim against the 2<sup>nd</sup> defendant. Again, I point out that I do not believe that this Court needs to make a determination on those issues here, as they will form the subject matter of separate applications, depending on the outcome of the applications on jurisdiction and validity of service.

37) In so far as the response of the counsel for the 2<sup>nd</sup> defendant, Mr. Al Sanea is concerned, I note that the skeleton arguments which have been provided deal with a number of different issues. Among the issues dealt with was the question of the time allocation for argument in the application. That matter is now behind us and I do not propose to say anything further on it except to suggest that all counsel were given, in the event, within the time allocated, sufficient time to make their submissions. The submissions in the skeleton, point out that in paragraphs 9 – 18 there is provided an outline and summary of the 2<sup>nd</sup> Defendant's case regarding the allegations of contempt that were made against him. Paragraphs 19 – 43 of the skeleton then deal with the wider claims made in the action and address some of the issues as to conduct of the plaintiff from the point of view of the 2<sup>nd</sup> Defendant. Those submissions purport to show how this court had been misled and details what is described as “the unacceptable tactical nature of the plaintiff's conduct of which the application is apart”. The next section of the submissions, paragraphs 44 - 72, deal with the relevant law relating to contempt and it will come as no surprise that it is in that area that my ruling in this application will be focused. Among the issues dealt with in paragraphs 73 – 112 of the skeleton are Mr. Al Sanea's application to vary the Cayman Freezing Order so that it reflects the amendments made by the Commercial Judge in the English proceedings although, as counsel for the 2<sup>nd</sup> Defendant suggests, it appears that some of those amendments are now conceded by the plaintiff.

38) The underlying response to the applications for the declarations that the 2<sup>nd</sup> Defendant is in contempt because he is in breach of the orders of this court as set out in the Freezing Order of Henderson J of July 24, 2009 is that the plaintiff must prove that there has been a breach of the order sufficient to give rise to a finding of contempt and that proof must be to the criminal standard beyond a reasonable doubt. That in this regard, the Court should not have granted the WFO as the matter should not even be in these Courts and there was material non-disclosure and that service of neither the WFO nor the contempt application has been proven to the standard required. That is a substratum which underlies all of the 2<sup>nd</sup> Defendant's submissions in relation to

these applications which I now have to consider. In any event, even if there was a breach, it was technical and not intentional and does not amount to contempt.

39) I have in the foregoing part of this ruling set out the arguments made by the plaintiff in relation to the specific heads in respect of which orders are sought from this court. I shall in this part of the ruling set out the defendant's responses and then in the subsequent section deal with what I understand the law to be as it relates to this application.

40) The first category of alleged contempt complained of by the plaintiff is in relation to the transfer of over sixty million dollars (US\$60,000,000.00) by the first defendant, Saad Investment Company Limited to Saad Specialist Hospital Company and by the 34<sup>th</sup> Defendant SIFC No. 5 of over one hundred thousand dollars (US\$100,000,00) as being in breach of the order of Henderson J. Mr. Beazley, counsel for the 2<sup>nd</sup> Defendant submits that at the time that Mr. Al Sanea authorized these transfers and at the time they were executed he had not been informed by anyone of the making of the Cayman freezing order let alone of its terms. He said that whilst the relevant corporate defendants may have been informed, and there is clear evidence that they were, and that they were also served on July 27, it is his submission that the 2<sup>nd</sup> Defendant was not personally informed of the WFO, or for that matter, notice of the Cayman proceedings until after 7 p.m. Saudi Arabian time on the 28<sup>th</sup> July by which time he had authorized the transfer in question.

41) The second submission in relation to these transfers is that in any event they were not in breach of the WFO since they did not reduce the value of the unencumbered asset of the 2<sup>nd</sup> defendant below the amount of US dollar 9.2 billion frozen by the WFO. Further it was submitted that any transferred sums were outside of the Cayman Islands and that no assets were transferred out of the Cayman Islands. It was the further submission of Mr. Beazley that the WFO could not mean and could not sensibly be taken to have meant, that none of the various corporate defendants could make any transfer unless that corporate defendant itself had unencumbered assets of

more than the frozen amount. He said that it doesn't make any difference here however, because Mr. Al Sanea had no knowledge of the orders.

42) In furtherance of the submission he said it is difficult precisely to value Mr. Al Sanea's assets and that this is not surprising "given the detrimental effect of the WFO as well as the series of other proceedings" brought against him by the plaintiff. However, he submitted that on a conservative basis, the unencumbered assets of Mr. Al Sanea at all times exceeded 12.3 billion U.S. dollars (being as high 24 billion at times) which is more than 3 billion dollars more than the limit of the amount ordered frozen by the terms of the WFO.

43) Insofar as the evidence is concerned, he submits that the plaintiff has not provided any evidence which contradicts the proposition that Mr. Al Sanea's assets are well in excess of the amount of the freezing order and that accordingly, any transfer or disposal of assets did not compromise or contradict the terms of the freezing order. In paragraph 9.3 of the 2<sup>nd</sup> Defendant's submissions, there is a put forward a suggestion which I think it is necessary to deal with right away. It is suggested by Mr. Beazley, that in any event the transfer by Mr. Al Sanea or at his authorization of the sixty million dollars (US\$60,000,000.00) was not a transfer "out of his control" but simply a transfer to another company which he did not then own but was to hold the funds for his account. It is suggested that those funds remained his assets. This is clearly contradictory as if the company to which the funds are transferred are not under his control it is difficult to understand how it could be said not to have been a transfer "out of his control".

44) The further submission of Mr. Beazley in relation to this is that in any event if there was a breach of the order, which of course is denied, on the part of Mr. Al Sanea, the breach was "unintentional or technical" and should not be characterized as contempt.

45) With respect to the category of the alleged contempt which deals with Mr. Al Sanea's voting of the shares of Singularis Holdings Limited into voluntary liquidation it was

submitted that, the voting of the shares did not constitute a “dealing” within the meaning of the expression as used in the Cayman Worldwide Freezing Order. It is averred that Mr. Al Sanea voted to appoint a liquidator because it appeared to him to be the correct course of action to take in the circumstances including the obligations faced by SHL and its lack of liquid assets. There are submissions concerning the role of the liquidator in such circumstances and the submission is put forward that merely putting the matter into the hands of the liquidator was in fact protecting the assets rather than dealing with the assets. It is also suggested that the term “dealing” was not defined in the Cayman Freezing Order to include such voting and even if it might have been held to have done so, it was unambiguous and unclear. In any event it is submitted that even if all those submissions are wrong, that the breach, if there is any breach, was not intentional on the part of Mr. Al Sanea and that it was purely technical and should not be characterized as contempt.

46) The third category of contempt alleged is that of a failure to disclose transfers from AHAB to 2<sup>nd</sup> Defendant or any company under his control. It seems clear that 2<sup>nd</sup> Defendant is not denying that he has failed to deliver the information specifically required by the freezing order of Henderson J. He suggests that this was impossible of performance and as such is not contempt. There was just not enough time to deal with the requested information given all that Mr. Al Sanea was going through in Saudi Arabia and elsewhere, but does not provide any explanation for doing nothing until the contempt proceedings had been started.

47) The fourth category of alleged contempt to which counsel responds is in relation to the failure to inform the attorneys for the plaintiffs of certain information and to swear and verify that information within specified periods of time after service of the Cayman Freezing Order on the defendants. It was submitted that the short answer to this allegation is that the plaintiff does not state in his summons when it alleges that the Cayman Freezing Order was served and thus the date by which it alleges that the information should have been given and verified. Accordingly, the summons is defective. In any event, Mr. Al Seana denies that he was ever served with the Cayman

Worldwide Freezing Order and accordingly was never under any obligation to provide the information required. As part of the objection under this head, the defendant avers that there has been no personal service on Mr. Al Seana because the Saudi methods for such service were and are available and was not followed by the plaintiff who elected not to adopt them. He is, of course, challenging the right of this court to make the substituted service order of the 24<sup>th</sup> August and in any event denies that there has been any effective substituted service. Even if those averments are incorrect, it was submitted that the failure to disclose is not a matter which should be the subject of a holding for contempt.

48) The fifth item of contempt raised by the plaintiff to which the defendant responds is the alleged disposal of shares in the Saudi American Bank (SAMBA) which it is alleged also involved the transfer of the proceedings of the shares of those to third parties. It is my understanding that the plaintiff was prepared to concede that there was insufficient evidence to pursue this particular item of contempt, if such it is, and I will therefore not spend time on discussing the response of Mr. Beazley to the plaintiff's submission in relation to this item of the application.

49) The sixth item of alleged contempt dealt with and submitted upon by the plaintiff related to the transfer of several items of real estate in Bahrain. The submission on the part of Mr. Al Sanea is that the transfers to his daughter were not revocable and that the transfer had taken place months before the imposition of the freezing order. It was his submission that this was confirmed by the evidence of the Bahraini lawyer, Dr. Al Mardi, who it was said, had personal knowledge of the facts and the relevant law. In any event, the transfer according to Mr. Beazley did not reduce the value of Mr. Al Sanea's unencumbered estate below the frozen amount and accordingly did not constitute contempt. Again, it was submitted that even if that is incorrect the breach was unintentional or technical and should not be characterized as contempt for these purposes.

50) Interestingly, it is submitted as well, that Mr. Al Sanea's personal financial information is private and confidential and the defendant was seeking an order that such information should not be disclosed in open court or be available to third parties and to the extent that that is necessary, Mr. Al Sanea applies for hearing in private.

51) Mr. Beazley concedes that the information supplied and verified by Mr. Al Sanea does not include all the information required pursuant to the Cayman Worldwide Freezing Order. He said that it is entirely understandable and for very good reason since there was argument before the English Commercial Court Judge on the return date for the English proceedings as a result of which there had been certain amendments as to the information which should have been supplied by Mr. Al Seana. In particular the English court enlarged the minimum asset transfers to be disclosed to one hundred thousand dollars (US\$100,000.00) rather than ten thousand (US\$10,000.00). It further restricted the supply of historic information to the period since January 1, 2009. The plaintiff AHAB did not dispute those amendments in the English Court and in fact Mr. McQuater, Q.C. seems to accept that in these proceedings the plaintiff would not resist an increase of the limit as well as an amendment to the time for which disclosure ought to be made to be similar to that in the English Proceedings.

52) Finally, Mr. Beazley objects to any order for contempt on the basis of a failure by the 2<sup>nd</sup> defendant to deliver documents. He said that there was no such request in the writ, nor was there any such order in the WFO and according there is no breach by the 2<sup>nd</sup> defendant which could be the subject of contempt proceedings. In any event he said that the information which is being sought is in Saudi Arabia and that the whole matter is governed by Saudi law.

53) I wish to say something on this issue at this point in time. The question of jurisdiction is indeed a matter which the 2<sup>nd</sup> defendant will and must pursue in other applications and nothing that I say here must be interpreted to be any reflection as to

any views as to the appropriateness of this jurisdiction to hear this matter. The submission is made on behalf of the 2<sup>nd</sup> Defendant that:

“The contempt proceedings have no merit. But even if they did, these contempt proceedings should not in any event proceed because they constitute an impermissible interference with the sovereignty or a friendly state, namely Saudi Arabia. These are quasi-criminal proceedings against a person in Saudi Arabia, who is a Saudi citizen and resident which seek by quasi-criminal sanction to punish him for acts done and not done in Saudi Arabia and to compel him to act and not act in that country. They seek to do so in so in respect of a matter which is of great financial and commercial significance in Saudi Arabia to the Saudi authorities and to individuals concerned.”

54) Despite the best efforts by the 2<sup>nd</sup> Defendant’s counsel, there is little evidentiary basis for this bald submission as there is no evidence before this court that these proceedings in any way affect any “vital interests” of Saudi Arabia apart from Mr. Al Sanea’s say so. Precisely what are these “vital economic interests” is not disclosed to this court nor is any indication given as to why those interests are at risk, except for the submission. The further submission that: “In circumstances where the Saudi authorities are already dealing with the matter, and have or may have their own requirements of the Defendant which may conflict with the requirements of this Court, exercise by this Court of the contempt jurisdiction against Mr. Al Sanea would be contrary to Public International Law,” is on its face purely speculative. There is no averment that there is any conflict with anything being done by the Saudi authorities, granting for purposes of the argument that such would necessarily be a bar to contempt proceedings in this jurisdiction for a breach of an order made by these courts.

55) But finally, Mr. Beazley submits that in any event even if the court does not agree with his submissions that Mr. Al Sanea should not be the subject of any contempt proceedings here while his applications challenging jurisdictions and to set aside the service in this proceedings are still outstanding, he submits that it would be wrong to punish Mr. Al Sanea for breach of an order which should never have been made or served in proceedings which should never have been brought in this jurisdiction. That it seems to me, goes to the very heart of the application which the 2<sup>nd</sup> Defendant

has made as to jurisdiction and service and as I have stated elsewhere, it is not a matter for this court at this point in time.

56) It seems to me that what this Court must concern itself with is whether, and if so to what extent the orders of this Court had been validly made and whether, assuming validity in the making of the order, it had been validly served. Those are the issues with which this court must concern itself. I accordingly will proceed on an examination of those issues from here.

57) There is one further comment which I should like to make. That relates to the role of the so-called Saudi Committee in Saudi Arabia. In the course of the skeleton submissions and during his oral submissions there are several mentions of this Committee. It is said to have been set up by “the highest authorities” in Saudi Arabia. It is not clear to me as to who constitutes this “highest authority” and what gives it this pride of place. There is also a submission that, “all the relevant matters are being dealt with by the Saudi Committee in accordance with Saudi procedures”. Again, no evidence has been led as to the terms of reference of this Committee but this Court is asked to assume on the basis of this assertion that that Committee is “fully able to deal with all the matters involved in these proceedings”.

58) By way of a final comment, I would consider that it must be somewhat misconceived to suggest that in this time of the global economic village, merely because individuals are residents of one small area in one country, albeit with business tentacles reaching out all over the world in numerous countries, that their disputes are necessarily to be resolved wholly and exclusively within the confines of the place of residence. I shall deal with this no further.

59) In these proceedings where the plaintiff is applying for certain declarations as to whether the 2<sup>nd</sup> Defendant has breached certain orders and is in contempt of the Orders of this Court, the Court must examine the law relating to contempt and make

findings of fact to the appropriate standard of proof, based upon the evidence, and then answer the questions:

1. Was the Order of this Court validly made?
2. Has the order of this Court of July 24, 2009 been duly served upon the 2<sup>nd</sup> Defendant?
3. Has breach of the order been established to the requisite standard?

### **ANALYSIS OF CONTEMPT**

60) It seems to me that any discussion of the law relating to contempt in general, and whether the contempt has been made out in this case, in particular, must start with the proposition of law, trite in the extreme, that validly made orders of a court of competent jurisdiction must be obeyed by persons to whom those orders are directed. It may also be accepted that because of the particular severity of the sanctions which may be available against a person found to have breached an order of the court, the standard of proof required to ground a finding of contempt is the higher criminal standard of beyond a reasonable doubt and the burden of proof is on the applicant. In **Great Future International Limited and Others v Sealand Housing Corporation and Others** [2004] EWHC 124 (Ch) Lewison J said:

The burden of proof is, of course, on the applicant. The standard of proof is a criminal standard--that is proof beyond reasonable doubt.

61) That this requires that each element of the allegation amounting to contempt must be proven to the appropriate standard is axiomatic. (See **Gulf Azov Shipping Co. Ltd. v. Idisi** [2001] EWCA Civ 21 at [16]) In similar vein, in **Segoes Services Ltd (in liquidation) v Kaweske and Fontanetta** [2006] CILR N 34, Smellie CJ had held that, before committing a defendant for contempt of court for breach of a freezing injunction, the court must be satisfied according to the criminal standard of proof. These propositions properly form part of the submissions on behalf of the 2<sup>nd</sup> Defendant in opposing this application.

62) It is recognized that in these proceedings, quasi-criminal in nature, the standard of proof is that of criminal proceedings, proof beyond a reasonable doubt. However, it is equally clear that, as in criminal proceedings it is not always possible to have direct evidence of the commission of the crime, so it may be possible to reach legitimate conclusions objectively, from the circumstances or the occurrence of a set of circumstances which point inexorably to a particular direction. I shall examine each of these issues in the following paragraphs.

63) It may be useful here to acknowledge the “non-contentiousness” of other substantive submissions by the 2<sup>nd</sup> Defendant’s counsel at the outset of the consideration of whether the application should succeed or be dismissed.

**Impugned Action not breaching limits of frozen unencumbered assets**

64) Mr. Beazley submits, in my view correctly, that where the allegation to ground the complaint of contempt is breach of a freezing order which freezes the assets of the putative contemnor below a certain figure, it is enough to dispose of this ground if the defendant discharges an evidential burden of showing that the assets which remain frozen exceed the sum frozen by the order. In support of this, the decision of Lewison J. in **Great Future International** is also cited.

65) In that case, his lordship referred to **Canadian Imperial Bank of Commerce v Batessa** (21 April 1993, unreported) in which the issue of where the burden of showing remaining assets in excess of the limit in the freezing order, lay. There, Sir Stephen Brown, the President of the Court of Appeal:

"Miss Andrews has submitted that the judge was wrong in his approach and that he should have approached the matter on the basis that the burden of proving that the defendant's assets had been reduced below £242,500 lay on the plaintiff. And that notwithstanding any difficulties arising about that matter nevertheless the notice of motion must be deemed to be defective. She said the judge was wrong in not approaching the matter on that basis.

She also submits that the judge was wrong in relying upon *R v Edwards* and in saying that the evidential burden of proving compliance with the proviso rested on the defendant. I disagree with these submissions."

Lewison J continued:

[16] Although the President describes what was being submitted as an evidential burden, since proof is involved it seems to me to be more accurately described as a persuasive burden. That also corresponded with the position in domestic criminal law, as understood at that time.

66) His lordship then went on to consider two cases subsequent to the CIBC case above, (**R v Lambert** [2001] UKHL 37, [2002] 2 AC 545 and **R v Carasse** [2001] EWHC Crim 2845 [2002] 1 WLR at 1714, both cases concerned with the presumption of innocence contained in Article 6.2 of the European Convention, and which he says, consistent with that legislation, seem to require the defendant/contemnor to discharge only an "evidential burden".

He concluded:

[20] Although *these cases are concerned with the interpretation of legislation, and hence with the provisions of s 3 of the Human Rights Act 1998*, it seems to me that the same principle must apply to common law offences, including civil contempt of court. In those circumstances it is clearly arguable that the ruling of the Court of Appeal in the *Canadian Imperial Bank* case, placing a persuasive or legal burden on the defendant, can no longer be supported as being compatible with art 6. (My emphasis)

67) He subsequently, in his judgment, defined the "evidential burden" as being the "leading of evidence such as might leave the tribunal of fact in reasonable doubt on the question of issue". He then cited **R v Lambert** per Lord Hope at page 588, in words which I find to be instructive:

"If the evidential burden were to be so slight as to make no difference, if it were to be enough, for example, for the accused merely to mention the defence without adducing any evidence, important practical considerations would suggest that, in the general interest of the community, the burden would have to be a persuasive one. *But an evidential burden is not to be thought of as a burden which is illusory. What the accused must do is put evidence before the court which, if believed, could be taken by a reasonable jury to support his defence.*" (Emphasis mine)

68) I understand Lord Hope to be saying that in the circumstances it is not sufficient for the respondent to assert that his assets are in excess of the frozen amount but it is necessary to lead some evidence as to the validity of the assertion. The interjection of “if believed” and “taken by a reasonable jury” taken together import the concept of objectivity of the judgment. As such, the totality of the evidence must be looked at in arriving at a determination as to whether the appropriate burden has been discharged. In the instant case, and based upon the totality of the evidence available to the Court at this time, it is not at all clear that the net value of unencumbered assets of the 2<sup>nd</sup> Defendant is in excess of the figure of US\$ 9.2 billion, the figure in the WFO. Indeed, part of the 2<sup>nd</sup> Defendant’s own argument is that these actions by the Plaintiff in various jurisdictional fora, are having a deleterious effect on those values even now. Indeed, one of the bases on which the application is opposed in relation to the voting of Singularis into liquidation is that the company was probably insolvent, and that the action thereby protected the shares.

### **Serious Nature of contempt**

69) It is also not difficult to agree with the 2<sup>nd</sup> Defendant’s submissions that proceedings for contempt of court are “serious” given the potentially harsh penalties which may be visited upon the putative contemnor. I note in that regard, however, the provision in the Grand Court Rules, Order 45 Rule 5 which deals with “Enforcement of Judgments and Orders” and say that it is consistent with the submissions of the 2<sup>nd</sup> Defendant counsel where he says that, at least with regard to “human” as apposed to “corporate” persons, the enforcement of mandatory or prohibitory injunctions is by way of sequestration issued with leave of the court or committal of the individual.

70) It is worth noting, however, that the Cayman GCR in Order 52 where it deals with committal proceedings also given the Court the right to exercise its discretion so as to give effect to other sanctions. Thus Order 52 Rule 9 provides as follows:

Nothing in the foregoing provision of this Order shall be taken as affecting the power of the court to make an order requesting a person guilty of Contempt of Court, or a person punishable by virtue of any enactment in

like manner as if he had been guilty of Contempt of Court, to pay a fine or to give security for good behaviour, and those provisions, so far as applicable, and with the necessary modifications, shall apply in relation to an application for such order as they apply in relation to an application for an order of committal.

71) The exercise of the court's discretion where contempt is alleged is, therefore, in my view, wider than posited by Mr. Beazley. It must follow from the foregoing that it is open to the court, should it come to the view that there has been a breach of the WFO, to grant the declaration and to make a ruling consistent with Rule 9 referred to above.

72) There can also be no dispute that where the breach of an order is occasioned by the impossibility of compliance therewith, no contempt occurs. In that regard Mr. Beazley, in my view correctly, directed the Court's attention to the dictum of Briggs J at paragraphs 32 and 33 of **Sectorguard Plc v Dienne Plc** [2009] EWHC 2693 (Ch), per Briggs J in the High Court of Justice (Chancery Division) decision handed down 3 November 2009. There the learned judge stated:

32 By contrast, I accept the thrust of Mr. Grant's second submission that failure to perform an impossible undertaking is not a contempt. The mental element required of a contemnor is not that he either intends to breach or knows that he is breaching the court order or undertaking, but only that he intended the act or omission in question, and knew the facts which made it a breach of the order: see **Adam Phones v Goldschmidt** [1999] 4 All ER 486 at pages 492j-496j.

33 Nonetheless, even a mental element of that modest quality assumes that the alleged contemnor had some choice whether to commit the relevant act or omission. An omission to do that which is in truth impossible involves no choice at all. Failure to comply with an order to do something, where the doing of it is impossible, may therefore be a breach of the order, but not, in my judgment, a contempt of court.

### **Procedural Safeguards - Service**

73) I turn next to consider what the defendant refers to as the "procedural safeguards" in the process. These relate in particular, to the question of service, central to any ruling in contempt proceedings. It is trite law that where an application for committal is made, the court will be astute to discover whether the purported contemnor has been served with a copy of the penal order and notice of the committal application. In both

cases, the document in question is to be served personally unless the court otherwise dispenses with personal service. It is clear therefore that the Court has a discretion so to do.

74) It is argued by Mr. Al Sanea's lawyers that he has not been served with the relevant documents in accordance with Saudi Law. With respect, the issue here is whether the service has accorded with the law of these Islands.

75) It will be recalled that Order 65 Rule 1, provides as follows.

1. (1). Any document which by virtue of these rules is required to be served on any person need not be served personally unless the document is one which by an express provision of these rules or by order of the Court is required to be so served.
- (2) Paragraph (1) shall not affect the power of the Court under any provision of these rules to dispense with the requirement for personal service.

76) It is clear that the rules provide for allowing service, other than personal service, in its discretion. Moreover, Order 45 rule 7 (7) provides as follows:

Without prejudice to its powers under Order 65, rule 4 [to make orders for substituted service], the Court may dispense with service of a copy of an order under this rule if it thinks it just to do so.

Order 65 rule 4 referred to above states:

- 4 If, in the case of any document which by virtue of any provision of these rules is required to be served personally on any person, it appears to the court that it is impracticable for any reason to serve that document personally on that person, the Court may make an order for substituted service of that document.
- 5 An application for an order for substituted service may be made by an affidavit stating the facts upon which it the application is founded.
- 6 Substituted service of a document, in relation to which an order is made under this rule, is effected by taking such steps as the Court may direct to bring the document to the notice of the person being served.

77) It was the submission by Mr. Beazley for Mr. Al Sanea, that the only exception to the personal service requirement under Order 47 rule 7(2) is the limited one in Order 45

rule 7 (6) which deals with prohibitory injunctions and would, on his submission, be permitted to be effected by non-personal service where the person against whom the order is being sought to be enforced, has had notice of it by reason of by being notified of the terms of the order, whether by telephone, telegram or otherwise".

78) Despite his best efforts of learned Queen's Counsel, this Court is unable to accept the submission of Mr. Beazley, that the Grand Court Rules could be interpreted in such a restrictive manner given the clear terms of Order 45 Rule 7 (7) set out above, and its specific reference to Order 65 rule 4, which is the Order dealing with service of documents. Nor do I accept the submission that support for that proposition is to be found in the dictum of Stamp J in **Ronson Products Ltd. v. Ronson Furniture Ltd** [1966] Ch 603, 615-616, cited by Mr. Beazley. I am of the view that the Rules are consistent in leaving with the Court its inherent jurisdiction to regulate and control its own processes and in so doing, to exercise its discretion in the interests of justice.

79) While I accept the general submission that the purported contemnor must have had brought to his attention the precise terms in respect of which he is alleged to be in breach, I regret that I do not share the view that the dicta cited of Smellie CJ in **Telesystem International Wireless Inc. v T.I.W Do Brasil Limitada** [2002] CILR 96 at [45] amounts to a derogation from the general principle that the court will make the necessary supplementary orders based on the expectation that it will bring the orders in question, to his notice, and this may, pursuant to the Rules, be by way of substituted service.

80) Indeed, it seems to me that support for this proposition is found in dicta from the authority cited by Mr. Beazley, **Mander v. Falcke** [1891] 3 Ch 488, 492. There, Kekewich J. stated:

"The rule in Lord Eldon's time was that there must be personal service of a notice of motion to commit. It is not laid down anywhere that you cannot have an order for committal without personal service of the notice of motion; but the Court will not allow the order to go until it is satisfied that

*every endeavour has been made to effect personal service.*” (Emphasis mine)

81) I am also of the view that the supposedly “further procedural safeguard” put forward by Mr. Beazley in terms of ensuring that the *notice itself* must have the information and the order, the breach of which is at issue with the defendant, is illusory. For it is clear that, as the authority of **Harmsworth v Harmsworth** 1987 1WLR 1676 cited by him states, per Nicholls L.J:

As I read the Rules and as I understand the decision in **Chiltern District Council v. Keane**, the Rules require that the notice itself must contain certain basic information. That information is required to be available to the respondent to the application from within the four corners of the notice itself.

### **State of Mind**

82) It was also submitted by counsel for the 2<sup>nd</sup> Defendant, that the state of mind of the purported contemnor is critical to a finding of contempt. There must, it was submitted, be an intent to do the thing prohibited by the Order of the Court, or an intention not to do the thing required by it. It is only where the foregoing has taken place *and* the putative contemnor is seized of all the facts which would make his conduct a breach of the order that there ought to be a finding that there has been contempt. Assuming that he was so aware, then notwithstanding it was not his intention to disobey the order, this would not provide a defence. There is what appears to be a contradiction in the submissions of counsel on the question of intent. On the one hand it was submitted that it was for the applicant to prove beyond a reasonable doubt that there was an intent to disobey the order while it was also submitted that the fact that the contemnor did not intend to disobey the order is irrelevant. It may be that these apparently contradictory positions are reconcilable on the basis that where there is credible evidence that there was willful, contumacious disobedience of the order the order, the penalty imposed by the Court would be more severe. However, I believe that the real explanation is to be found again in the judgment of Lewison J in the **Great Future International** case referred to elsewhere

in this judgment. There his lordship, in discussing “The Mental Element in Civil Contempt”, stated:

[32] In **Knight v Clifton** [1971] Ch 700, [1971] 2 All ER 378, Sachs LJ said:

"When an injunction prohibits an act the prohibition is absolute and is not to be related to intent unless otherwise stated on the face of the order."

[33] In **Stanton v Trowbridge Urban District Council** [1910] 2 Ch 190, 74 JP 210 Warrington J said:

"If a person or corporation is restrained by injunction from doing a particular act, that person or corporation commits a breach of the injunction and is liable for process of contempt if he or it in fact does the act, and it is not answer to say that the act was not contumacious in the sense that in doing it there was no direct intention to disobey the order."

[34] Mr. Connerty accepted that these passages accurately state the requirement of the mental element for breach of an injunction. In other words, it was enough that a deliberate act, which was in fact in breach of an injunction, had been committed. He submitted, however, that if the defendant acts under the direction of a statutory authority that is not deliberate for the purposes of the mental element. In my judgment that is not correct. It confuses whether an act is voluntary with whether it is deliberate.

## **RULING**

83) Given the evidence which I accept and the submissions made by the plaintiff in the instant case therefore, the court must now seek to determine whether the evidence provided has been such as to satisfy it that the declaration of contempt sought should be granted. It seems to this Court that whatever the virtue of the 2<sup>nd</sup> Defendant’s counsel’s submissions that contempt proceedings are “proceedings of last resort” and that because of the “draconian nature” of the remedies, the risk of arbitrariness and that as “satellite litigation” it is likely to be an unproductive use of judicial time, it does not derogate from the principle that legitimate orders of the court, validly made, must be obeyed. As was stated by the learned authors of “**Gee on Commercial Injunctions**” Fifth Edition at paragraph 19:055:

“No one can justify contempt on the ground that the order should never have been made, or was irregular. If an order has been made, it must be obeyed until it is set aside”. (See **Isaacs v Robertson** [1985] AC 97;

**Hadkinson v Hadkinson**, [1952] P 285; **M v Home Office** [1992] Q.B. 270.

84) It can also be accepted without reservation that given the quasi-criminal nature of contempt proceedings, procedural probity must be scrupulously observed.

85) The submission for Mr. Al Sanea that in light of the foregoing “no application should be made in respect of a technical breach of a court order”, is misconceived because, while the application may be technical, it is for the court to decide whether the application, based on technicality and/or triviality, constitutes “an abuse of process” and indeed whether, as Briggs J said in **Sectorgard**, a breach of the order “amounts to contempt”. Indeed, as his lordship implicitly suggested in that case, purely “technical contempt applications” are “*applications not directed at the obtaining of compliance with the order in question*”. I adopt his lordship’s reasoning and conclusion. Mr. Beazley’s submissions of abuse of process notwithstanding, there seems no basis for supposing that the plaintiff here is not seeking “compliance” with the Court’s WFO. By the definition advanced by Lewison J. there is no mere “technical” breach here. It is therefore clear that the facts in the authority cited by Mr. Beazley, **Adams Phones Ltd v Goldsmith and Others** [1999] 2 AER 486, (the inadvertent deletion of a software program from a hard drive of a computer), are easily distinguishable from the present case here and has, with the greatest of respect, no application.

86) Nor, in my view does the court receive any assistance from the case **WX v. YZ** [2002] CILR 514 in the Cayman Islands Court of Appeal where Taylor J.A. made pronouncements about circumstances of delay in complying with orders of the Court. There is no difficulty in accepting the defendant’s submission that where there has not been full compliance with the terms of the Court’s order, “a key consideration will be the extent of compliance”. Similarly, where there has been late compliance, the court’s view of the nature of the disobedience, whether it is a contumelious defiance, will obviously impact upon the nature of the sanction, if any, to be imposed. It almost goes without saying therefore, that where a party has purged his contempt

by the time of the hearing the court is unlikely to insist upon any sanction, since the main basis for the contempt application is to secure obedience to the order.

**Was the order of July 24, 2009 validly made by Henderson J in the Grand Court?**

87) The Hearing which was held ex parte before Henderson J, on July 24, was instituted by the plaintiffs and it was brought in this jurisdiction because on the face of all the documents which were produced to the court, there was a sufficient nexus between the Cayman Islands jurisdiction and the 2<sup>nd</sup> Defendant and several of the defendant companies which were either wholly, directly or indirectly owned by the 2<sup>nd</sup> Defendant. Indeed, there is a considerable body of evidence which indicates that many of these companies were established in the Cayman Islands and that Mr. Al Sanea himself had on occasions been to these Islands in connection with these companies.

88) I have formed the view that in the circumstances of the evidence which came before his Lordship, Henderson J, the learned judge was entirely within his powers in holding that he had jurisdiction to hear the matter and to grant the order in the terms in which he gave it. I am also satisfied based upon the course of events thereafter, that his subsequent review of that order and his ruling of November 17, 2009, clearly indicate that the judge gave very careful thought to whether jurisdiction lay in the Grand Court in the Cayman Islands. I have no reason to disagree with the learned judge in relation to those findings. He also had to consider whether this was an appropriate case to order service out of the jurisdiction. Under Order 11 rule 4 (2), it has to be made sufficiently clear to the court that the case is a proper one for the order of service out of the jurisdiction. It is clear that Henderson J formed this view based upon the evidence led before him.

89) In any event, on August 24<sup>th</sup> an order was made for substituted service on the 2<sup>nd</sup> Defendant and I made this order on an application by the plaintiffs and in compliance with the Rules of the Grand Court, to which reference has been made above.

90) *En passant*, I must say that I find it a little unusual to hear counsel saying that because the matter concerns Saudi nationals who inhabit a small area of Eastern Saudi Arabia and many of the matters are related to things taking or having taken place within that area, this court should defer to the Saudi authorities, when it does not appear that any such suggestion is made in respect of similar proceedings in the Courts of England. The submission that these proceedings are being brought in this jurisdiction to “put pressure” on the 2<sup>nd</sup> Defendant and uses impermissible tactics would appear to me to be a plea of abuse of process. I would need much more cogent evidence than has been led by the 2<sup>nd</sup> Defendant to come to that view. However, that is not a matter which has been per se, advanced or could be advanced given the 2<sup>nd</sup> Defendant’s intention to challenge the jurisdiction of this court. Nor, it seems to me, to be a matter which I need to or could try, upon the evidence before me. It is clear that if that is the basis upon which the 2<sup>nd</sup> Defendant intends to resist this application, it would hardly be adequate.

91) One of the arguments advanced why the WFO should not have been made is that there was “non-disclosure” on the part of the applicant for the ex parte order. I do not accept that there has been any material non-disclosure in relation to the grant of the ex parte WFO. Certainly, the allegation that AHAB had failed to disclose the “fact” that it had defaulted on its debts would not, on the authorities be a basis for denying it the protection of the WFO. There certainly was no suggestion that had that “fact” been made available to the tribunal, it would have arrived at any different conclusion. The entire matter was the subject of a careful review by Henderson J, and the learned judge came to the view that the order was correct. I have no reason and no evidence upon which to second-guess the learned judge. The submissions that AHAB had failed to bring to the courts attention the various Saudi connections involved and had also failed to assert that the Cayman Islands was the most appropriate or even “an appropriate” jurisdiction and the citing of the *Spiliada Maritime Corp v Cansulex* [1987] AC 460 and *In the Matter of Cairnwood Global Technology Fund* (2007) CILR 193 per Foster J (Ag), are in my view relevant not to these proceedings but rather to the application on jurisdiction which the 2<sup>nd</sup> Defendant is pursuing.

**Has Service been validly effected?**

92) Having considered the submissions on service, I am also satisfied that service has been validly effected within the terms of the provisions of the Cayman Grand Court Rules. There is no doubt that this Court may make a valid order for substituted service of its various processes and that the order for substituted service made on August 24, 2009 was validly given and once its terms were complied with, service has been duly effected. In that regard, I am prepared to hold that the terms of the WFO and of this application did come to the attention of the 2<sup>nd</sup> Defendant.

93) Mr Al Sanea has served an affidavit of a **Sudanese** ? lawyer, Jaafer Tag Alsir Ali, addressing Saudi law on service, which purported to show that service was not valid according to Saudi Law. It does not in my view cause me to change my view on the issue of the validity of service under the entirely appropriate Cayman Grand Court Rules which I have referred to above.

**Has breach of the WFO been established to the requisite standard?**

94) Having considered the evidence in the respective affidavits before me, I am of the view that the 2<sup>nd</sup> Defendant, having been made aware of the WFO, was in breach in relation to the transfer of US\$60 million transferred from SICL on his instructions from that company to Saad Specialist Hospital and that he is guilty of contempt personally as well as in his capacity as a director of SICL for the breach of the Order. The question is whether that transfer reduced the 2<sup>nd</sup> Defendant's unencumbered assets to a figure below the \$9.2 billion figure of the WFO. I agree that the issue is a live one in relation to which the conclusions of Lewison J. in **Great Future International** are relevant. I am however prepared to hold that where, as here, the amount at stake is so great, the evidential burden which the defendant to a freezing order must satisfy, is not met by the defendant saying that that a) historically his fortune was as much as \$24 billion; b) the actions of the Plaintiff has had a deleterious effect on those values so that he could not provide the information sought in terms of the WFO, and c) makes no definitive statement as to his present net worth.

95) I am fortified in my views by the finding of Henderson J on the evidence before him that in relation to the transfer of the \$60 million:

This transfer occurred prior to the appointment of the joint provisional liquidators and at a time when Mr Al Sanea was in control of SICL. The recipient company is wholly owned by Mr Al Sanea in his person capacity... The inference that Mr Al Sanea has no intention of complying with my [WFO] is irresistible.

96) In that regard, even if it is correct (as submitted by Mr. Beazley) that Mr. Al Sanea's assets are above \$12.3 billion, (which is far from clear), that would not excuse the transfer to Saad Hospital. As submitted by Mr. McQuater, the money transferred belonged to SICL not directly to Mr Al Sanea. SICL is subject to the WFO and its assets, as reported in its most recent audited financial statements, are significantly less than the amount frozen (reported net assets as at 31 December 2008 were about US\$4.5bn).

97) With respect to the issue of the Singularis shares, Singularis itself is a Defendant (having received, according to the averments made by AHAB received significant sums from the money defrauded from the plaintiff by the 2<sup>nd</sup> Defendant) and a respondent to the WFO. It is itself obliged to give asset disclosure but has failed to do so. It was submitted that at all relevant times, Mr Al Sanea was the principal director of Singularis and its sole shareholder and its controlling mind. It was his responsibility to ensure that Singularis gave asset disclosure and Singularis could only do so through Mr Al Sanea. I also accept the correctness of the submission that by placing Singularis under the control of the liquidators, Al Sanea effectively prevented that defendant from making disclosure and defeated its ability to comply with the orders of the court which affected it. The result is that Mr. Al Sanea is also guilty as a director of Singularis of the breach by that company, for by his actions, he willfully prevented its compliance with its obligations under the WFO (see **Director General of Fair Trading v Buckland** [1990] 1 WLR 920).

98) Further, despite the protestations of the 2<sup>nd</sup> Defendant that the order is not clear as to the meaning of “deal” as used in the order, and that the 2<sup>nd</sup> Defendant’s submission that placing the probably illiquid company under the control of liquidators was an appropriate response to that illiquidity, I hold that voting the shares to place the company into liquidation was, in fact, a “dealing” with the assets. I also hold that the same argument applies in relation to this instance of alleged breach with respect to the extent of the unencumbered assets as applied in relation to the transfer of the \$60 million.

### **The transfer of assets from AHAB to Al Sanea**

99) Evidence has been led before this court that in the English proceedings the threshold limit for the value of assets/monies transferred from AHAB to the 2<sup>nd</sup> Defendant or any of his companies to be disclosed, was placed at \$100,000.00 rather than \$10,000.00 and, as I understand the position of the Plaintiff, it would not be averse to having that figure apply here. Similarly, the period for which the transfers were to be disclosed would, again as a consequence of the position taken in the English proceedings, would now commence at January 1, 2009.

100) In my view, the non-compliance is technically a breach of the order but I do not believe that it can be placed in the same context as the transfer of the \$60,000,000.00 or the voting of the Singularis shares to place the company under the control of liquidators.

### **Disclosure of assets**

101) Plaintiff’s counsel has pointed out that the 2<sup>nd</sup> Defendant has only lately begun to make disclosure of his assets under the WFO and had sought to say that there had been disclosure under the English order. However, that disclosure had been only forthcoming late in the day after the time given in the WFO had expired. Moreover, the 2<sup>nd</sup> Defendant had only now disclosed the valuable asset of vintage wines to the value of some \$750,000.00 after the Plaintiff had found out about it and it could no longer be hidden. Nevertheless, since there has been some disclosure and the Plaintiff

appears willing to adjust the Cayman Freezing to conform with the English Order, I do not believe that this should immediately be treated as a contempt for which sanctions should be ordered forthwith. This is not in any way meant to derogate from the continuing efficacy of the order of Henderson J, of July 24, 2009

**SAMBA shares**

102) As far as the issue of the SAMBA shares is concerned, it does not appear that there is any good evidence of the said transfer, and I understood Mr. McQuater Q.C. to be saying that this could not reasonably be pursued.

**Bahrain properties**

103) Notwithstanding the evidence from Dr. Al Mardi on the question of the transfer of real estate in Bahrain and the purported effect of the supposed Power of Attorney, it is not clear to me that the alleged transfers were not in breach of the order. However, given the standard of proof required for a positive finding of contempt, I would be hesitant to characterize it as such without more.

104) I want to touch very briefly on the question of the need under paragraph 21 of the WFO, which allows each defendant to expend from its assets reasonable sums for legal representation, to advise the Plaintiff of the source of such funds. It did not seem to me from the submissions from Mr. McQuater that the Plaintiff was pursuing this too assiduously. The failure to so advise the Plaintiff, in my respectful view, is a technical breach in that its enforcement does not directly assist the Plaintiff to get the other information which it seeks pursuant to the WFO.

105) I need only add that with respect to the other defendants (the “Maples defendants”) who were also arguably in breach of the WFO in not providing details of transfers to them from AHAB, it has been conceded by the Plaintiff that after the filing of the contempt proceedings, they have made a purported attempt to comply

with the order and while the information supplied is being examined, the application against them is to be adjourned.

**The Reliefs sought**

- 106) It will be recalled that the reliefs sought in the applications were as follows:
- a) Sanction by way of fine, sequestration of assets or otherwise;
  - b) Requiring the 2<sup>nd</sup> defendant to provide such security for his good conduct as the court thinks fit;
  - c) An order to return certain books, records and documents as referred to in the letter from Appleby dated 23 September 2009 and identified in schedule A to the 6<sup>th</sup> Affidavit of George Keighley), together with any further documents books and records belonging to the Plaintiff that are in the possession, custody or control of the 2<sup>nd</sup> Defendant to the Plaintiff and to preserve them pending such return.
- 107) Mr. Beazley in his submissions had resisted any suggestion that the Court should order the surrender of documents since such relief was not claimed in the statement of claim in the substantive action and was not part of the WFO. I agree that although the Court has a discretion as to the nature of the sanction to be imposed, as narrowly drawn as the WFO was, there seems to be no basis for making such an order in these proceedings. I would, however, reiterate that there is no contradiction of the fact of the transfer of the US\$60 million to Saad Specialist Hospital Company from SICL. Nor is there any contention about the 2<sup>nd</sup> Defendant having voted his shares in Singularis to place that company in liquidation. These are therefore facts which the Court can accept as proven. It is also reasonably to be concluded that based upon the evidence which is not challenged, the 2<sup>nd</sup> Defendant was the author of the instructions in both cases.
- 108) Given the absence of the 2<sup>nd</sup> Defendant from the jurisdiction and the uncertainty as to the status or availability of the assets of those companies which are now almost all under the control of Interim Receivers, it is clear that an order for imprisonment

would be futile and in any event perhaps unjustified, while sequestration may not be appropriate or even possible. Nevertheless, the Court having found that specific breaches of its orders were contumelious and amounted to contempt must indicate by the relief granted its disapproval of such behaviour.

109) In the circumstances the 2<sup>nd</sup> Defendant is required to provide security in the sum of \$500,000.00 in the form of a bond acceptable to the Court and to the Plaintiff and to be held by an approved financial institution in the Cayman Islands. This is to be held as security for the performance of his and Singularis's obligations to deliver the information ordered under the Grand Court WFO of July 24, 2009 as it may be amended, on or before thirty (30) days from the date hereof or by the date of the hearing of its application on the issue of jurisdiction of this Court. The 2<sup>nd</sup> Defendant is to provide this security within seven (7) days of this Ruling being released in Final Form.

110) Within thirty (30) days of the finalization of the formal Order herein, the 2<sup>nd</sup> Defendant is also to make such efforts as are necessary to recover the sum of US\$60,000,000.00 paid from the account of SICL in Switzerland to Saad Specialist Hospital Company or to provide an affidavit with evidence of the basis for being unable so to do.

111) With respect to costs of this application, subject to the other terms of the Order being agreed within 5 days, written submissions on behalf of the 2<sup>nd</sup> defendant are to be filed and served within seven (7) days of the 15<sup>th</sup> March 2010 with the plaintiff to file and serve response submissions on or before 22<sup>nd</sup> March 2010.

112) I invite the parties to submit a draft order based on the above Ruling, for my signature.

ROY K. ANDERSON  
JUDGE OF THE GRAND COURT (ACTING)  
March 15, 2010