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IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 117 OF 2024 (IKJ)

IN THE MATTER OF THE ESTATE OF MAAN ABDUL WAHED AL-SANEA, A BANKRUPT

AND IN THE MATTER OF A REQUEST FOR RECOGNITION

IN CHAMBERS

Before:	The Hon. Justice Kawaley
Appearances:	Ms Dunzelle Daker and Ms Raedean Simpson of Ogier (Cayman) LLP, for the Plaintiff
Heard:	On the papers
Date of decision:	8 May 2024
Draft Judgment Circulated:	27 May 2024
Judgment Delivered:	28 May 2024

Bankruptcy-foreign bankruptcy proceedings-application for recognition at common law-governing principles

REASONS FOR DECISION

Introductory

1. By an Ex Parte Originating Summons dated 16 April 2024, Mr Aiman Meqham Almeqham (the "Applicant") applied for recognition of his status as bankruptcy trustee of Mr Maan Abdul Wahed Al-Sanea (the "Bankrupt"). The Summons was provisionally listed for 7 May 2024. On 1 May 2024, the Applicant's attorneys requested a hearing on the papers in the interests of proportionality, a request to which I acceded.

2. The Summons was supported by the Applicant's First Affidavit, sworn on 14 April 2024. The Applicant's counsel also submitted a Skeleton Argument (supported by a Bundle of Authorities), which summarised the evidence and clearly set out the governing legal principles. On 8 May 2024, I granted an Order in the following terms:

> "*1. The Applicant is recognised as the bankruptcy trustee of the assets of the Bankrupt in the Cayman Islands.*
>
> *2. The Applicant, as the bankruptcy trustee of the assets of the Bankrupt, has the power and authority to act for and on behalf of the Bankrupt – and in the Applicant's own name – in relation to assets, claims and liabilities of the Bankrupt in the Cayman Islands.*
>
> *3. Paragraph 2 above shall include, without limitation, and without obtaining any further order of the Court:*
>
> > *3.1 The right to participate in any and all proceedings in which the Bankrupt is named as a party, including but not limited to accessing the Court file in case number FSD107 of 2012 (AJEF), and to obtain copies of all documents (including evidence, exhibits, skeleton arguments, orders and judgments) relied upon in such proceedings;*
> >
> > *3.2 The right to request and receive and gather in copies of any material or information held by any former service provider to the Bankrupt located within the Cayman Islands; and*

> *3.3 The right to submit claims within any insolvency process within the Cayman Islands or commence proceedings within the Cayman Islands, in each case as if the Applicant himself is acting in the name of and for the Bankrupt.*"

3. As it appears that foreign personal bankruptcy recognition applications are uncommon in the Cayman Islands, I now give reasons for that decision.

The foreign bankruptcy proceedings

4. On 30 March 2023, the Bankrupt was found guilty on various criminal charges and sentenced to serve 9 years in prison. He was a prominent businessman believed to be of Kuwait origin who has been a national of the Kingdom of Saudi Arabia ("KSA") for many years. However troubled his business fortunes may have been in recent years, the trials and tribulations faced by his Caymanian companies such as Singularis Holdings Limited ("Singularis") and Saad Investment Company Ltd ("SICL") have contributed greatly to the development of cross-border insolvency law both here and elsewhere in the common law world. Singularis and SICL have been in liquidation in the Cayman Islands for more than 10 years.

5. In 2019, KSA implemented a new Bankruptcy Law and at the Bankrupt's request, the First Chamber of the Dammam Commercial Court on 18 February 2019 appointed one Mr Al-Naeim as trustee of the Financial Restructuring Procedure. The Applicant was appointed in his place on 22 July 2020 upon the death of the incumbent trustee. On 2 March 2022, the KSA Appeal Court rejected the restructuring plan, and appointed the Applicant as bankruptcy trustee responsible liquidating the bankrupt's estate ("Foreign Bankruptcy Order"). A certified translation of a certified copy of the Foreign Appointment Order was exhibited to the Applicant's First Affidavit.

6. The Judgment pursuant to which the Foreign Bankruptcy Order was made explained the Applicant's functions and powers, according to paragraph 21 of his First Affidavit, as follows:

> "*The Circuit deems it fit to appoint the officeholder, Aiman Meqham Almeqham, as the officeholder for the liquidation procedure, as he was the officeholder for the financial restructuring procedure. Accordingly, the Circuit rules with appointing him as the officeholder for the procedure. Based on Article 100 of the Law, as a result of the appointment of the officeholder in the liquidation procedure, the debtor shall cease to manage its activities. The officeholder shall replace the debtor in the management of its activities and in the fulfilment of the debtor's regulatory duties*

> *during the procedure. Additionally, based on his appointment .the officeholder becomes the representative of the debtors before all judicial, government authorities, including the executive authorities, in the matters required by the officeholder's work. The officeholder shall also be entitled to file cases on the debtors' behalf, as well as plead and defend in any case to which the debtors are parties, and claim the debtors' rights from third parties. He shall further be entitled to grant third parties power of attorney to act on his behalf in relation to cases and to refer to government and private entities. ... In addition to the foregoing, the officeholder shall be entitled to obtain any information or document related to the debtor's real estate assets or investment portfolios, or any information or document from any entity whatsoever. All entities shall provide the officeholder with any information or document without requiring a letter from the court, whenever such information or document is required by the officeholder's work. This in accordance with the Bankruptcy Law's aim to complete the liquidation procedures promptly maximize the bankruptcy assets and protect the rights of the creditors. (emphasis added)* "

7. The KSA not only has a different legal system and language, but also operates under an entirely different calendar. However, it was clear that the Applicant's role as the Bankrupt's Trustee is broadly similar to the role of bankruptcy trustee under Cayman Islands law: (a) assessing claims, (b) gathering in assets, and (c) making distributions to creditors, if possible. Under KSA Bankruptcy Law, the Applicant deposes, foreign and local creditors have equal standing right (i.e. the ranking of debts is not based on the creditor's place of origin). The Applicant had recently turned his attention to substantial loans made by the Bankrupt to SICL and Singularis. This occurred in the context of his being required by the KSA Court to evaluate claims made by the Liquidators of SICL against the Bankrupt's estate. The need for recognition of the Recognition Order flowed from the Applicant's need for proper legal authority to take primarily information gathering steps within the Cayman Islands on behalf of the Bankrupt's estate. The Applicant deposed:

> "*46. As to the question of reciprocal recognition between our two nations, I note that the SICL Liquidators have been permitted to act on behalf of the estate before the KSA Courts and judgments of the KSA Courts are enforceable in in the Cayman Islands. At pages 143 to 145 is a certified copy of a letter dated 4 October 2018 from the then Chief Justice of the Cayman Islands confirming the ability to get reciprocal relief from the Grand Court of the Cayman Islands.*"

8. That letter by the then Chief Justice was seemingly written in response to steps taken by the Bankrupt to obstruct the Cayman Liquidators' legal progress in KSA. It stated that a 12 December 2014 Order made in the SICL and Singularis liquidation proceedings (FSD Nos. 15 and 16 of 2010)

had confirmed that "*judgments in the courts of the Kingdom of Saudi Arabia are, in principle, enforceable in the Cayman Islands.*"

9. Against this background, it seemed clear that this Court's starting assumption should be that it should if possible assist the KSA Court by recognising the Foreign Bankruptcy Order and not requiring the application to be noticed to the SICL and Singularis Liquidators who appeared to have no discernibly legitimate basis for opposing it. In any event, any person adversely affected by an Order which was made in their absence would be entitled to apply to set aside or vary it.

Governing legal principles for common law recognition of the Recognition Order

10. The Applicant's counsel submitted that it was unclear whether under section 240 of the Companies Act (2023 Revision), a foreign debtor who was a natural person qualified for recognition. The term "*debtor*" is defined as meaning "*a foreign corporation or other foreign legal entity subject to a foreign bankruptcy proceeding in the country in which it is incorporated or established*". Bearing in mind that the Companies Act winding-up regime only applies to companies and, to limited extent, exempted limited partnerships, there can be little doubt that foreign personal bankruptcy proceedings fall without rather than within the international recognition provisions in Part XVII of the Companies Act.

11. It was rightly submitted that it was perfectly clear that no international recognition jurisdiction was conferred by section 156 of the Bankruptcy Act (1997 Revision): *In the Matter of Al Sabah* [2004-05 CILR 373] (Privy Council). Reliance was placed on the fact that at first instance (*Al Sabah* [2002 CILR 148]) , Smellie CJ found that, apart from any statutory jurisdiction:

> "*31. ...this Court has inherent common law powers to recognise and enforce the appointment of a foreign trustee in bankruptcy for the purposes of bringing into the estate the assets of a bankrupt which may exist in this jurisdiction. These are powers which have been acknowledged and invoked by this court in the past in analogous circumstances: see Blum v. Bruce Campbell & Co. and Gray v. Royal Bank of Canada. Those cases recognised the principles of Didisheim's case in which Lindley, M.R. stated the principle as based upon the doctrines of obligation and comity as between the courts of friendly states ([1900] 2 Ch. at 51):*
>
> *'On general principles of private international law, the courts of this country are bound to recognise the authority conferred on [the foreign appointee] unless [equivalent] proceedings in this country prevent them from doing so.*

> *32 The common law principles require me to be satisfied that the bankrupt was subject to the jurisdiction of the Bahamian court and that that court would be prepared reciprocally to recognize and enforce similar orders of this court. Both of those matters are satisfactorily addressed in the written judgment and order of Lyons, J. of the Bahamian court. The orders I make in recognition and enforcement of the orders of the Bahamian court appointing the trustee are made in reliance also upon this inherent jurisdiction of the court*".

12. The Cayman Islands Court of Appeal upheld the Chief Justice's decision on the primary basis that statutory recognition jurisdiction existed and saw no need to consider the Court's "*inherent jurisdiction*" ([2003 CILR 413]), per Taylor JA at paragraph 82. The Privy Council primarily considered the statutory jurisdiction under 156 to respond to a letter of request. It also found that section 122 of the Bankruptcy Act 1914 (UK) was still in force in the Cayman Islands, and so the Court's inherent jurisdiction was constrained by the limits of that statutory power. The Applicant's counsel, somewhat ambiguously, relied on Smellie CJ's alternative findings on the common law recognition powers while noting in a footnote that the decision had been overturned by the Privy Council.

13. The *ratio* of the Privy Council's decision was clearly not binding for the purposes of the present case. Section 122 of the UK 1914 Bankruptcy Act (from which section 156 of the Cayman Act is derived) is concerned with cooperation between courts within the British Empire. It provides:

> "*122:-- The High Court, the county courts, the courts having jurisdiction in bankruptcy in Scotland and Ireland, and every British court elsewhere having jurisdiction in bankruptcy or insolvency, and the officers of those courts respectively, shall severally act in aid of and be auxiliary to each other in all matters of bankruptcy, and an order of the court seeking aid, with a request to another of the said courts, shall be deemed sufficient to enable the latter court to exercise, in regard to the matters directed by the order, such jurisdiction as either the court which made the request or the court to which the request is made, could exercise in regard to similar matters within their respective jurisdictions*." [Emphasis added]

14. In *Al Sabah*, the foreign bankruptcy court was in The Bahamas, and section 122 of the 1914 UK Act was apparently in force in both The Bahamas and the Cayman Islands. Section 156 of the Bankruptcy Act is simply not engaged when the foreign bankruptcy order this Court is asked to enforce derives from a territory where that provision is not also in force. Accordingly, the only Cayman Islands authority on the common law power to recognise a foreign bankruptcy proceeding is this Court's decision in the *Al Sabah* case. The alternative findings of Anthony Smellie CJ (as he then was) which were overruled on the basis of submissions seemingly first raised at the highest appellate level, provide clear and valuable guidance for the recognition of foreign bankruptcy

orders made in territories which do not have provisions derived from section 122 of the Bankruptcy Act 1914. A previous case where a foreign trustee had been recognised at common law to which Smellie CJ referred in *Al Sabah* was also helpfully placed before the Court: *Blum-v-Bruce Campbell and Company* [1992-93 CILR 591].

15. To my mind it was not necessary to have regard to case law in parallel fields such as receivership. However, with no other direct local authority, the approach taken in the receivership context did reflect the application of essentially similar principles in an analogous commercial context. In *Re Silk Roads Fund Limited*, FSD 234/2017 (ASCJ), Judgment dated 8 February 2018, Smellie CJ recognised Bermudian joint receivers at common law applying similar principles to those he articulated in the bankruptcy sphere in *Al Sabah*. Those principles may be summarised as follows:

(a) the bankrupt must be subject to the jurisdiction of the court which appointed the foreign trustee;

(b) the foreign court must be willing to reciprocally enforce similar orders of this Court.

16. In *Re Silk Roads Fund Limited*, reference was made to the leading authority on common law recognition and assistance in insolvency matters, *Singularis Holdings Limited-v-PricewaterhouseCoopers* [2015] 1 AC 1675. That case confirms the existence of longstanding common law power, originally developed in the personal bankruptcy sphere, to recognise foreign insolvency proceedings and officers appointed by a foreign court to take control of the debtor's estate. The case also illustrates the fact that it is important to identify a basis in the common law for the forms of assistance actually provided. In *Singularis*, it was held (by the majority) that there was a common law power to apply for information relevant to the liquidation of the insolvent estate.

17. That the common law recognition and assistance principles in personal bankruptcy and corporate insolvency cases are largely indistinguishable is demonstrated by various authorities to which I was understandably not referred. It will suffice to briefly mention two. Firstly, the English Court of Appeal decision in a personal bankruptcy case, *Kireeva-v-Bedzhamov* [2023] Ch 45, Newey LJ considered the corporate insolvency cases on common law recognition and assistance under the principle of modified universalism (at paragraphs 81-88).

18. Secondly, it is now uncontroversial that if a foreign bankruptcy trustee is recognised at common law, they are entitled to lawfully act on behalf of the bankrupt with a view to, *inter alia*, collecting

debts due to the bankruptcy estate. In *Koldyreva-v- Motylev* [2020] EWHC 3083 (Ch), Meade J held:

> "*27. If the Russian court's order is recognised, the following consequences would flow. First of all, on the authority of Fletcher, again 29-057, the English court would recognise the manager's right to sue in her own name for the debts of the bankrupt under Russian bankruptcy law. That appears in paragraph 50.1 of Mr. McGrath's skeleton. Secondly, assignment of movable but not immovable property situated in England to the manager would take place…*
>
> *29. Common law recognition, however, has its limits. In particular it does not entitle the manager, i.e. the intended claimant, to make use of the statutory provisions and powers which arise under the Insolvency Act 1986…*"

Merits of application

19. The two main requirements for recognition, that the Bankrupt should be domiciled in the place where the Foreign Bankruptcy Order was made and that it be shown that reciprocal recognition would be afforded by the courts of that jurisdiction to orders of this Court were both met.

20. The Applicant sought recognition of his status as Trustee in Bankruptcy for the Bankrupt in order to be able to act in the name of and behalf of the Bankrupt in the Cayman Islands. He was appointed by a Court in KSA, the Bankrupt's domicile. The KSA Courts had already demonstrated their willingness to accord reciprocity by recognising years ago the Orders made by this Court appointing Joint Official Liquidators of, *inter alia*, SICL and Singularis. This Court had already on 12 December 2014 formally confirmed that, in principle, Orders of the KSA would be recognised here.

21. The purpose of the present application was, in particular, to enable the Applicant to participate in any relevant pending proceedings here and obtain information about the Bankrupt's affairs in this jurisdiction where various entities either formed by or invested in by the Bankrupt are known to have been established. Indeed, the application appeared to be motivated by the fact that the Applicant's ability to make the enquiries he wished to pursue had been impeded by his lack of formal standing to act on behalf of the Bankrupt under Cayman Islands law.

22. The form of Order sought was unremarkable. It sought recognition to authorise the Applicant to act within the jurisdiction in the name of and on behalf of the Bankrupt. It did not seek any powers beyond the scope of well-recognised forms of powers typically conferred in similar recognition orders, in accordance with well-established principles of private international law.

23. Faced with such an application, and having regard to the common law principles articulated by Anthony Smellie CJ (as he then was) in the *Al Sabah* case, this Court was "*bound to*" grant the Applicant the recognition he sought. It was also self-evidently appropriate to do so on an *ex parte* basis, on the papers, because there was no basis for believing that either:

(a) any valid grounds for challenging the Applicant's standing to seek recognition existed;

(b) any valid grounds for refusing recognition existed; and/or

(c) any person with standing to raise any such objections existed and/or could be identified.

Conclusion

24. For these reasons, on 8 May 2024 I granted the Recognition Order.

THE HONOURABLE JUSTICE IAN RC KAWALEY
JUDGE OF THE GRAND COURT