

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**



CAUSE NO. FSD 183 OF 2011(ASCJ)

IN THE MATTER OF THE COMPANIES LAW (2013 REVISION)

**AND IN THE MATTER OF BTU POWER COMPANY
(IN OFFICIAL LIQUIDATION) ("THE COMPANY")**

IN CHAMBERS

**BEFORE THE HON. ANTHONY SMELLIE, CHIEF JUSTICE
THE 24TH DAY OF MAY 2016**

APPEARANCES: Mr. Matthew Goucke and Mr. Peter Kendall of Walkers for the Joint Official Liquidators ("JOLs"), (present with them Mr. Michael Penner and Mr. Derksen of Deloitte for the JOLs)

JOLs' summons for directions for dealing with appeals against rejection of proofs of debts – security for costs where principal of appellants resident abroad.

NOTE OF EX TEMPORE RULING

1. The JOLs now apply by summons for orders which they seek as measures for ensuring that they can deal with two claims brought by Mr. Almazeedi, the former director of the Company. These are claims which Mr. Almazeedi has taken no steps to prosecute because, as he claims, he is first entitled to prosecute an appeal which he has filed before the Privy Council.
2. That is an appeal against the decision of the Court of Appeal by which the Court of Appeal acceded only in part to Mr. Almazeedi's claim that all orders earlier made by Justice Cresswell in this action should be set aside on the basis of actual or apparent bias on the part of that learned judge.

3. While holding that there was no basis whatsoever for a finding of actual bias, the Court of Appeal was concerned about the possibility of apparent bias (for reasons explained in their judgment) and so set aside only certain orders made by Cresswell J. Those were orders entered after a distinct date when the possibility of apparent bias could have arisen because of a connection between a major shareholder of the Company and the Qatari jurisdiction for which Cresswell J. had been appointed to serve as a judge pro tem.
4. The result was that only one significant decision made by Cresswell J. in this action was disturbed – that by which he had upheld the JOLs’ rejection of proof of debt filed by Mr. Almazeedi for some \$672,000, claimed as expenses said to have been incurred by him on behalf of the Company. This will be referred to as the “Personal POD Appeal” and the JOLs accept that no order I can make today shall relate to the merits of that Appeal, because it stands to be reheard de novo pursuant to the Court of Appeal’s directives. The JOLs nonetheless seek orders against Mr. Almazeedi for security for the costs of responding to the Personal POD Appeal and directions for its timely prosecution, to be backed by an “unless order”, given Mr. Almazeedi’s recalcitrant conduct in these proceedings and history of outright refusal to comply with orders of this Court.
5. A second aspect of the JOLs’ summons today deals with an extant appeal by BTU USA, an Almazeedi controlled entity, against the JOLs’ rejection of its proof of debt (“the BTU USA Appeal”).
6. The BTU USA Appeal was not the subject of an order by Justice Cresswell because it was filed too late in the day to have been dealt with by him, although pursuant to the terms of an unless order dated 25 June 2014, BTU USA was ordered to provide



security for costs in the sum of US\$80,000 in respect of the JOLs' anticipated costs of defending the BTU USA Appeal by no later than 16 July 2014, failing which, the BTU USA Appeal would be dismissed in its entirety. Despite BTU USA failing to provide the requisite security in accordance with the 25 June 2014 order, this order was set aside as a result of the Court of Appeal's decision. The BTU USA Appeal can therefore be dealt with by this Court without having been affected by the Court of Appeal's decision.

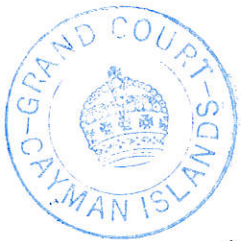
7. While the JOLs' summons expressly sought an order that the BTU USA Appeal be dismissed for want of prosecution, the JOLs have instead mollified their stance, seeking instead an order for security for their costs of dealing with it, along with directions also for its timely prosecution and backed by an unless order for reasons similar to those propounded as justifying the unless order in relation to the Personal POD Appeal.
8. The third and final aspect of the JOLs' summons relates to the JOLs' costs of and incidental to certain further appeals dated 21 June 2013 issued by other Almazeedi related entities (BTU Power Management Co. Ltd. (the "**Manager**"); Q. GEN Industries Limited ("**QGEN**") and BTU STEAG O&M Services Limited ("**BTU O&M**")) ("the Three Entities"). These appeals were against the JOLs' rejection of various proofs of debt submitted in the Liquidation by the Three Entities but have been withdrawn¹. Not only were their appeals withdrawn late in the day by Mr. Almazeedi, as events transpired, it turned out that the Three Entities had become



¹ The proof of debt appeals submitted by QGEN and BTU O&M being withdrawn in their entirety on 4 November 2013 and the Manager's appeals being partially withdrawn.

defunct with effect from 31 October 2013 and so he had had no authority to continue to pursue claims on their behalf following this time.

9. And so, without having determined their appeals on the merits– the appeals having been withdrawn by their attorneys of record at the time – Cresswell J. had ordered that the costs associated with them be awarded to the JOLs on the standard basis, for the period from 21 June 2013 up to 20 December 2013 (the latter date being the date when evidence filed by the JOLs provided detailed evidence in response to the Manager's remaining proof of debt appeals)) and thereafter on the indemnity basis, because of what Cresswell J. determined had been the “unreasonable conduct” in the pursuit of the Manager's remaining appeals by or on its behalf.
10. While I may not now proceed on the basis of that order itself of Cresswell J. as it was one of those set aside by the Court of Appeal, I am asked by the JOLs to replicate these cost orders because of their inevitability arising from the fact that the appeals were withdrawn and because there had been no warranted authority to pursue the appeals after 31 October 2013. This order for payment the JOLs also seek to be backed by an unless order.
11. That being in brief the background and nature of the relief sought by the JOLs present summons, I note before proceeding to pronounce upon it, that I have seen a letter from Mr. Almazeedi in which he submits that I should recuse myself from any further dealings with this case.
12. This is not the first time he has raised such an objection having done so before in a letter dated December 18 2015 sent by his then attorneys of record, Solomon Harris. Since then, Mr. Almazeedi has divested himself of their services and has entered a notice of intention to act in person.



13. I gave brief reasons on the 24 December 2015 for refusing the application in the letter of December 18 2015, reasons which I consider to be still valid and applicable for refusing Mr. Almazeedi's latest objections.
14. In summary, Mr. Almazeedi presents no objective or credible argument to justify his concerns about real or apparent bias on my part and certainly none that would be recognized by the case law as justifying a decision on my part to stand down from this matter. The modern law on the subject of apparent bias finds its source in the speech of Lord Hope in *Porter v Magill* [2001] UK HL 67. The question to be asked and answered is whether the circumstances are such as would lead a "fair minded and informed observer" to conclude that there was a "real possibility that the judge was biased". No such circumstances are shown by Mr. Almazeedi's objection to arise here. I therefore reject his objection and turn to express brief reasons why I accept the JOLs' applications for security for costs in relation to the Personal POD and BTU USA Appeals; their application for directions for costs in relation to the appeals dated 21 June 2013 and for unless orders for the enforcement of all those orders.
15. In the first place, it is an important consideration that Mr. Almazeedi is a foreign plaintiff who has no known assets in this jurisdiction. There are therefore no assets against which the JOLs might recover their costs in the event they are ultimately successful in resisting the Personal POD Appeal or the BTU USA Appeal.
16. Mr. Almazeedi has moreover made it expressly known on more than one occasion, that he has no intention of complying with orders of the Courts². There is therefore

² Most recently, per Mr. Guthrie QC, upon the JOLs' application for security for costs of responding to Mr. Almazeedi's application for leave to appeal against the orders of Cresswell J. See written ruling in C.I.C.A. Cause No. 20 of 2014, 6 March 2015, at paragraphs 67-70.

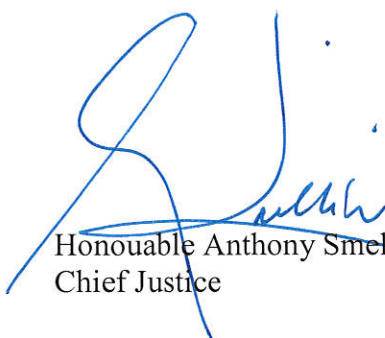


no reason to believe that he would satisfy any unsecured order for costs eventually made in favour of the JOLs in relation to the BTU USA or Personal POD Appeals.

17. Nor do I accept that Mr. Almazeedi is impecunious as he has declared in the past or as he has again stated in his more recent letter of May 20 2016 as a reason for not requiring him to provide security.
18. This claim to impecuniosity is belied by the fact that he was able to instruct local counsel as well as leading counsel, Mr. James Guthrie QC, to prosecute his appeal before the Court of Appeal despite, at that time, having already pleaded impecuniosity. His declared intention to press his appeal before the Privy Council is further indication to the contrary.
19. Mr. Almazeedi's engagement with this Court is also a matter of concern, seeking as he does to raise his objections by way of letter without participating in the proceedings (either in person or by lawyers) despite having been given proper notice of this, the JOLs' summons. He makes no formal or proper application for a stay of the proceedings, yet he would seek to persuade the Court that the JOLs should be blocked from conducting the affairs of the liquidation simply because he has presented the two extant BTU USA and Personal POD Appeals and because he states his intention to appeal to the Privy Council.
20. His attitude leaves me with the concern that he simply seeks to stymie the proper conduct of the liquidation in order to prevent the timely distribution of dividends to those who are entitled to receive them.
21. I am satisfied that the JOLs should be protected by the orders for security for costs which they seek in relation to the BTU USA and Personal POD Appeals and by the order for costs in relation to the Appeals filed on 21 June 2013.



22. The security in relation to the BTU USA Appeal will be USD80,000 and in relation to the Personal POD Appeal, USD40,000.
23. Unless these are paid into Court by 4 pm on 14 June 2016, those Appeals will be struck out.
24. The costs of the Appeals of 21 June 2013 are awarded to the JOLs to be taxed on the standard basis if not agreed (save that for such costs as were incurred by the JOLs after the 20 December 2013, the JOLs will be at liberty to apply that they be taxed on the indemnity basis). This qualification upon the order recognizes the same concerns which had led Justice Cresswell to grant indemnity costs; viz: the fact that the Appeals of 21 June 2013 were pursued after the purported appellant entities had been struck off the Register and so in blatant and unreasonable disregard for the consequential lack of authority.
25. I will also give directions for the timely hearing of the BTU USA and Personal POD Appeals and the JOLs are to have their costs of the instant summons, to be taxed if not agreed, on the standard basis.


Honouable Anthony Smellie
Chief Justice



May 30 2016