

INDEX

“Parts A and C are provided to assist in understanding the Court’s decision. They do not form part of the reasons for the decision. The full judgment of the Court, at Part B, is the only authoritative document.”

Section	Title	Page
PART A		
	DRAMATIS PERSONAE	A1
	EVIDENCE DEFINITIONS	A2
	EXECUTIVE SUMMARY	A3
PART B: JUDGMENT		2
	HEADNOTE	B1
Introduction		
	Introduction of the <i>dramatis personae</i> , historical and factual background to the action	5
	BEGINNINGS	7
	A Change of Direction	9
	The Investments Held by the Money Exchange	18
Section 1	KNOWLEDGE OF THE AHAB PARTNERS OF THE FRAUD UPON THE BANKS AND OF THE EXTENT OF THE BANK BORROWINGS, INCLUDING THE AL SANEA INDEBTEDNESS	22
	The London Proceedings and the disclosure of the N Files	28
	General probabilities or improbabilities (including the legal principles)	42
	THE RE-ESTABLISHMENT OF THE MONEY EXCHANGE, THE COMMENCEMENT OF THE FRAUD WITH THE GENERAL KNOWLEDGE OF THE AHAB PARTNERS DURING THE 1980s AND 1990s: “ABDULAZIZ’S TIME”	53
	A more detailed examination of the knowledge of the AHAB Partners	71
	The Adjustment Schedules	79
	Further communications with El Ayouty: 1990 to 1994	82
	The creation of separate financial statements for separate “Divisions” of the Money Exchange	91
	2000: ABDULAZIZ’S FINAL BOARD MEETINGS AND CONTINUITY INTO SULEIMAN’S TIME	123

	Continuation of and knowledge of the Fraud after Abdulaziz's stroke: Resolution R/66	128
	Suleiman's knowledge: his Chairmanship, both de facto and formal – September 2000 – February 2009	136
	YOUSEF'S KNOWLEDGE	149
	Yousef's and Suleiman's attempts to liquidate the Money Exchange	159
	Yousef's next move: investigate for himself	166
	Yousef's purported withdrawal from the Money Exchange	173
	Yousef's continued involvement	178
	Conclusions on Yousef's knowledge	185
	SAUD'S KNOWLEDGE AND INVOLVEMENT	186
	Saud's involvement with false accounting resolutions and his review of El Ayouty Audit Packs	187
	More on Omar Saad	189
	Back to Saud's involvement	192
	Saud's List	196
	El Ayouty reporting to Saud more than to Suleiman after Abdulaziz's time	201
	Contrasting Saud's Inconsistent Evidence	206
	The Evidence in London	206
	Evidence of Saud's knowledge of Al Sanea's Indebtedness: Saud's Calculations	208
	Saud's Changing Evidence on the borrowing of the Money Exchange	213
	Saud's relationship with Al Sanea	217
	SAUD'S KNOWLEDGE – OCTOBER 2000 TO APRIL 2003	219
	Saud's attempts to address Al Sanea's Indebtedness	220
	Agreement to net off SAR 450m or SAR 400m	220
	Saud tries in 2002 to deal with failure to reduce Al Sanea's balances by netting off in 2001	223
	Saud's Calculations and the 2001 Audit Pack	226
	Source of the figures	227
	Bank Loans Figure	228

	Al Sanea's Gross and Net Indebtedness	231
	Dividend Figures	232
	Implications of Saud's Calculations	232
	No Support for AHAB's "New For Old" case to be found in Saud's Calculations	235
	SAUD'S CONTINUING INVOLVEMENT WITH THE AFFAIRS OF THE MONEY EXCHANGE AFTER SAUD'S CALCULATIONS, UNTIL THE COLLAPSE IN 2009	237
	Manipulation of the Financial Statements for 2004	238
	Consolidated Financial Statements – Revaluation of Investments	242
	Saud Receives the 2002 Audit Pack	245
	Money Exchange Financial Statements for 2002	247
	Letter to Al Sanea regarding repayment	249
	Group Profile and Other Documents forwarded to Saud in August 2003	251
	Consolidation	255
	More on the KPMG Financial Statements for 2003	256
	The 2003 Money Exchange Financial Statements	258
	2004 Autumn Dividends	262
	2005 and the False Financial Statements for 2004	264
	Money Exchange Financial Statements for 2004	264
	KPMG Consolidated Financial Statements	268
	2006 and the false financial statements for 2005	271
	2007 and the false financial statements for 2006	280
	2008 and the false financial statements for 2007	284
	SAUD'S CONTINUED INVOLVEMENT IN EFFORTS TO SELL THE MONEY EXCHANGE	291
	Further evidence of Saud's knowledge of the financial affairs of the Money Exchange appears from his involvement with the efforts to sell it to Maan Al Sanea	291
	Evidence of Discussions	292
	A more detailed look at Saud's attempts to produce financial statements for SAMA	293
	Saud's Correspondence with El Ayouty in 2001	299

	E&Y Consolidated Accounts	301
	AHAB PARTNERS' KNOWLEDGE OF THE FINANCIAL BUSINESSES	302
	AIH	304
	ATS (formerly AIS)	305
	TIBC	306
	Abdulaziz	310
	Suleiman	315
	Saud	336
	SAUD'S ROLE IN ESTABLISHING TIBC	351
	Saud's knowledge of TIBC	354
	Dawood Algozaibi	360
	Accounts and Audit Packs	371
	Other important AHAB witnesses on the subject of the Partners' knowledge of the Financial Businesses.	376
	Mr. Mohammed Hindi	376
	Mr. Mark Hayley	380
	Mr. John Potter	385
	Group Profiles	393
	Conclusion on knowledge of the Financial Businesses	397
	SAUD'S ACTIONS IN 2009	399
	2008 Audit Pack	400
	"Billion Dollar Problem"	403
	Bid to sell the Money Exchange to Al Sanea	406
	Saud's knowledge as revealed also from the updated audit pack	412
	INFERENCES TO BE DRAWN improbabilities (including the legal principles)	417
	CONCLUSIONS ON KNOWLEDGE AND AUTHORITY	424
Section 2	RELATIVE BENEFITS RECEIVED BY AHAB/AHAB PARTNERS AND AL Sanea THROUGH THE MONEY EXCHANGE	426
	The history of the acquisition of the share portfolio	430
	ENORMOUS COST OF THE SHARE PORTFOLIO	436

	COMPARED TO AHAB'S BALANCE SHEET	
	COST OF BORROWING BY THE MONEY EXCHANGE	438
	SAMBA SHARES: THE ORIGINAL PORTFOLIO SHARES DERIVED FROM THE ORIGINAL SAMBA PORTFOLIO	441
	TRANSFER OF SAMBA SHARES TO AL SANEA	444
	AHAB'S CONSENT TO TRANSFERS TO AL SANEA	446
	THE COST OF FUNDING THE ORIGINAL PORTFOLIO OF SHARES	451
	<i>(i) Borrowing to Pay for the Investments</i>	451
	<i>(ii) Cumulative Funding Cost of the Original Portfolio</i>	452
	<i>(iii) "Pledged portfolio"</i>	453
	THE ADDITIONAL SAMBA SHARE ACQUISITIONS	454
	THE COST OF ADDITIONAL PURCHASES OF SAMBA SHARES	454
	WERE THE ADDITIONAL PURCHASES FUNDED BY MONEY EXCHANGE BORROWING?	457
	AHAB'S REASONS FOR ADDITIONAL SHARES BEING HELD IN AL SANEA'S NAME	461
	PURCHASES IN THE NAME OF AHAB	464
	Dividends Distributed by the Money Exchange	467
	Personal Expenses of the AHAB Partners	470
	No correlation between dividends declared by the Money Exchange and payment of SAMBA dividends	473
	GROUP LENDING	473
	YOUSEF'S VILLA	475
	YOUSEF'S LOAN IN THE FINANCE DIVISION	476
	AL OUMI CENTRE	477
	ETISALAT SHARES	479
	OVERSEAS DEPOSITS	480
	Failure to Provide Full Disclosure of Assets	485
	Conclusion	491
Section 3	AHAB'S "NEW FOR OLD" CASE	493
	Saud's reasons for not mentioning "New for Old" earlier	506
	"New for Old": further lack of specificity	517

	AHAB'S application to further re-amend	520
	AHAB'S case on "New for Old": post-amendment	521
	Timing of "New for Old"	522
	The formulation and implementation of "New for Old"	526
	Lack of written record	529
	Dislike and distrust of Al Sanea	535
	Badr's evidence	536
	"New for Old": incompatible with events after Suleiman's death	554
	"New for Old": not fit for purpose in any event	556
	"New for Old": unnecessary if Saud believed that Al Sanea had repaid his indebtedness	561
	The documents relied upon by AHAB in arguments as evidence of "New for Old"	564
	Conclusions on "New for Old": A case based on inference	577
Section 4	THE FORGERY ALLEGATIONS	579
	AHAB's case on forgery as finally pleaded	583
	Burden and Standard of Proof improbabilities (including the legal principles)	584
	What is Forgery of a Signature? improbabilities (including the legal principles)	586
	Authorised and unauthorised signatures	587
	Increased facilities	588
	Renewed facility	588
	Authority	589
	AHAB's changing case on Al Sanea's role in forging Algosaiabi signatures	592
	AHAB's changed case: "New for Old"	596
	"Manipulation"	596
	AHAB's case is not made on a " <i>facility by facility basis</i> " – the authorised limit	598
	The Evidence	599
	The witness evidence on the process for signing documents	599
	Methods of application	608
	Expert evidence on forgery (including the legal principles)	608

	Documents and Allegations of Forgery	608
	The Forensic evidence: The Forgery Schedule	610
	Limitations to the forensic evidence	612
	Copy documents	612
	Chain of Custody	612
	Removal of documents by the 'Young Algosaiabis'	614
	Al-Jazira Documents	619
	SICL and Singularis Promissory Notes	620
	The Agreed Joint Statement	620
	The signatures alleged to be forgeries	621
	Abdulaziz signatures	622
	The HSBC Facility	624
	Suleiman signatures	636
	Suleiman signatures in the period between Abdulaziz's stroke and his death	638
	The period between 11 May 2003 and March 2004	639
	The March 2004 memorandum	642
	The period after March 2004	643
	The Bank Narrative Chronologies	644
	Increased facilities with Suleiman signatures not alleged to be matched	645
	Arab National Bank Chronology	646
	Arab Bank Chronology	647
	Abu Dhabi Commercial Bank (“ADCB”) Chronology	647
	Commercial Bank of Kuwait (“CBK”) Chronology	648
	Renewed facilities with Suleiman signatures alleged to be matched	649
	CBK (cont’d)	649
	Saudi Hollandi Bank Chronology	650
	Arab Bank Chronology (cont’d)	651
	ADCB Chronology (cont’d)	651
	CBK (cont’d)	652

	Matched and unmatched signatures on the same facility document	653
	Matched signatures on supporting documents but not on the facilities	656
	CBK (cont'd)	656
	Deutsche Bank chronology	657
	ATS, AIH and TIBC facilities	657
	Badr's involvement in increased facilities signed by Suleiman	661
	The SICL and Singularis Promissory Notes	662
	Yousef's signatures	662
	Saud's signatures	663
	Non-banking related documents	663
	TIBC related documents	664
	Saud's signatures on bank facility and facility related documents	665
	Increased facilities with Saud signatures not alleged to be matched	668
	Renewed facilities with Saud signatures alleged to be matched	669
	Matched signatures on facilities but not on the supporting documents (or vice versa)	670
	The period after March 2009	670
	Saudi Investment Bank	672
	Bank Al Bilad	672
	Evidence Saud authorised others to apply his signature to documents	673
	Dawood	674
	Methods or processes of application of matched signatures	679
	Fused toner powder and Inkjet	681
	Hand Stamps	681
	The missing suitcase of stamps	684
	The evidence of the stamp manufacturers	685
	Suleiman applying his own signature stamp	689
	The 10 Al-Jazira signatures	693

	Conclusion on AHAB’s forgery case	698
Section 5	THE “MANIPULATION” OF DOCUMENTS	702
	Introduction	703
	AHAB’s application to amend improbabilities (including the legal principles)	704
	(1) Handwriting and Forensic Document Analysis	706
	(2) Badr	708
	(3) Discovery	710
	Pleading dishonesty improbabilities (including the legal principles)	710
	AHAB’s pleaded case	711
	AHAB’s manipulation case	715
	General	715
	Categories of Manipulations	717
	Category 1 Manipulations	717
	Category 2 Manipulations	719
	The inferences that AHAB seeks to draw	719
	Refinements to AHAB’s Manipulation Case	722
	(1) Location of Documents	722
	(2) Manipulation and Forgery	724
	(3) No Check on “New for Old”	726
	(4) Errors in the manipulations	728
	Conclusion	729
Section 6	THE AL SANEA INDEBTEDNESS TO THE MONEY EXCHANGE	731
	(1) THE BORROWING AGREEMENT.	733
	(2) INDEBTEDNESS IN THE 1980s AND 1990s	734
	(3) CONTINUATION AFTER ABDULAZIZ’S STROKE	736
	PERCEPTION OF AL SANEA’S WEALTH	739
	AL SANEA’S LEDGER 3 INDEBTEDNESS	744
	RELATIONSHIP BETWEEN LEDGER 3 AND THE SAMBA SHARES TRANSFERRED TO AL SANEA	744

	THE NATURE OF AL SANEA’S INDEBTEDNESS AND WHY IT WAS PERMITTED TO INCREASE	752
Section 7	AHAB’S PROPRIETARY TRACING AND PERSONAL CLAIMS AGAINST THE DEFENDANTS UNDER CAYMAN AND FOREIGN LAW	755
Section 7A	THE SO-CALLED "MONEY OUT SCHEMES" AND AHAB’S ABILITY TO TRACE ITS MONEY INTO THE HANDS OF THE DEFENDANTS: HERE THE GTDS	924
	EVIDENCE RELIED UPON: "FOLLOW THE CASH", AUDITED ACCOUNTS, THIRD PARTY DOCUMENTS	927
	Bank Statements	928
	Audited Accounts	928
	The El Ayouty Audit Packs	930
	DKW – The Palmer Square Bonds	934
	US\$121,707,589.14 cash paid by SICL	934
	Was AIH the buying party?	935
	US\$122,369,277.86 transferred by the Money Exchange to SICL	937
	The issue on the Palmer Square Bond payments	939
	The Deloitte argument on the materials	940
	Mr. Charlton's analysis	941
	The materials relied upon by Mr. Charlton	942
	The Hayley memorandum of 3 June 2008	943
	The documentary evidence that contradicts Deloitte's argument	950
	Conclusion on the US\$122,369,277.86 transferred by the Money Exchange to SICL	952
	CHEQUES	954
	AHAB's pleaded case in relation to cheques	954
	No cheques payable to the GTDs	955
	Cheques paid to AHAB Partners and “related” parties	958
	LETTERS OF CREDIT (“LCS”)	959
	AHAB's pleaded case in relation to LCs	959
	No LC payments to GTDs	959

	Why LCs were required by the Money Exchange to enable it to drawdown funds	961
	The remaining 94 LCs	967
	Capitalisation of Equipment	968
	Reimbursements	972
	Conclusion	975
	CASH WITHDRAWALS	976
	AHAB's pleaded case – US\$560m cash withdrawals	977
	AHAB's lack of evidence	977
	The Hayley spreadsheets	978
	The US\$303m	980
	'GENERIC TRANSFERS'	981
	AHAB's pleaded case	981
	Generic transfers to SICL	982
	Mr. Hargreaves' failure to trace	983
	Schedule 10a – the 22 receipts	984
	Schedule 10b – the 36 receipts	989
	Conclusion	990
	Generic transfers to Singularis	991
	Schedule 10c – 8 receipts	992
	GENERIC TRANSFERS – SCHEDULE 10 - 3,933 RECEIPTS	993
	The 49 largest transactions	994
	"INDIRECT" TRANSFERS TO THE GTDs	997
	AHAB's pleaded case	998
	AHAB's absolute beneficial property	999
	The US\$174.5m	1001
	CONTRIBUTIONS TO SICL AND SINGULARIS BY AL SANEAS SHAREHOLDER	1003
	AHAB'S GENERAL APPROACH: HARGREAVES 'TRACING' AND 'PATTERNS'	1005
	Audited financial statements	1008
	Capitalisation of SICL	1010

	Capitalisation of Singularis	1016
	Conclusion on SICL and Singularis Capitalisation	1017
	Conclusion	1018
	SICL'S AND SINGULARIS' EXTERNAL FUNDING	1018
	FUNDS INTO STCC	1019
	AHAB's pleaded case	1019
	STCC's business	1021
	STCC's audited accounts	1022
	STCC – increased capital	1023
	Third party funds into STCC	1024
	CBK "DEPOSITS"	1028
	Mr. Hargreaves' evidence	1030
	The letter of 17 December 2007	1031
	Facsimile of 14 January 2008	1032
	The GTJOLs' attempts to get CBK bank statements and the proceedings against Al Sanea; CBK's refusal to give information to the GTJOLs	1033
	SICL'S CLAIM AGAINST AL SANEA	1034
	Conclusion	1037
Section 7B	AHAB'S TRACING CLAIM: THE AWALCOs	1038
	Mr. Hargreaves' Patterns	
Section 7C	TRACING AND OTHER CLAIMS AGAINST SIFCO 5	1074
	improbabilities (including the legal principles)	
	SUMMARY	1075
	LAW ON TRACING AS IT APPLIES TO SIFCO 5	1081
	BASIC PRINCIPLES	1081
	AHAB'S APPROACH TO TRACING	1083
	AHAB'S INABILITY TO ESTABLISH A PROPRIETARY BASE	1092
	AHAB'S PLEADED CASE	1092
	AHAB'S INABILITY TO TRACE SWOLLEN ASSETS	1094
	"IMPOSSIBILITY" OF TRACING	1112

	BONA FIDE PURCHASER	1114
	BARCLAYS WAS THE REAL PURCHASER	1115
	ATTRIBUTION OF KNOWLEDGE	1121
	CONCLUSION	1149
	CAUSES OF ACTION AGAINST SIFCO 5	1150
	(1) DISHONEST ASSISTANCE	1150
	(2) CONSPIRACY	1152
	(3) UNJUST ENRICHMENT	1153
	CONCLUSION ON AHAB'S CLAIMS	1153
Section 7D	THE ILLEGALITY DEFENCE	1154
	(I) THE NATURE OF THE ILLEGALITY DEFENCE	1162
	(II) APPLICATION OF THE RELEVANT PRINCIPLES OF ILLEGALITY	1170
	(1) POSITION PRIOR TO <i>PATEL V MIRZA</i>	1170
	(i) Origins of Illegality/Unclean Hands	1170
	(ii) <i>Tinsley v Milligan</i> and the Highwayman's Case	1172
	(2) THE APPLICATION OF THE PRINCIPLES DERIVED FROM <i>PATEL V MIRZA</i>	1174
	(i) The Facts and Result	1174
	(ii) The "reliance test"	1176
	(iii) Authorities since <i>Tinsley v Milligan</i>	1176
	(iv) Disapproval of the reliance test	1178
	(3) NEW TEST FOR ILLEGALITY	1180
	APPLICATION OF LORD TOULSON'S FACTORS TO AHAB'S CLAIM	1182
	(1) SERIOUSNESS OF THE ILLEGALITY	1182
	(2) KNOWLEDGE OF THE ILLEGALITY	1186
	(3) CENTRALITY OF THE FRAUD TO THE ENTERPRISE	1188
	(4) BENEFITS TO AHAB FROM THE ILLEGALITY	1191
	(i) AHAB's Direct Benefits from the Fraud	1191
	(ii) Al Sanea's benefit	1194

	(iii) The Defendants	1195
	(5) HOW SERIOUS A SANCTION IS THE DENIAL OF ENFORCEMENT OF AHAB'S CLAIM?	1195
	(6) THE PURPOSE OF THE INFRINGED RULE AND THE DETERRENT EFFECT	1196
	(7) AVOIDING INCONSISTENCY IN THE LAW	1198
	INSOLVENCY	1199
	(1) FURTHERING THE PURPOSE OF THE RULE WHICH HAS BEEN INFRINGED: A DETERRENT TO CONDUCT THAT IS ILLEGAL OR CONTRARY TO PUBLIC POLICY	1202
	(2) A GENERAL EXCEPTION FOR LIQUIDATORS?	1203
	(3) AHAB AS DE FACTO LIQUIDATOR	1206
	(i) Equally, Non-Enforcement Does Not Negate Any Duty To Creditors	1206
	(ii) AHAB is not in liquidation	1208
	(iii) Instead of undertaking an investigation AHAB has attempted in these proceedings to stifle a proper inquiry	1212
	(iv) AHAB is not independent	1216
	(v) Proceedings were not commenced for creditors	1218
	FURTHER ON LOCUS POENITENTIAE	1218
	(1) PRINCIPLES	1218
	(2) <i>LOCUS POENITENTIAE</i> – CONDUCT TO 2009	1220
	(3) CONDUCT FROM 2009 ONWARD	1223
Section 8	THE GTD COUNTERCLAIMS	1228
	First the GTJOLs' Arguments on SICL's Counterclaim	1233
	The SICL Promissory Notes	1235
	The GTJOLs' submissions on the Cash Accounts	1240
	The Nine Accounts in SICL's Books and Records	1242
	The Agreed Balances	1243
	Double-Count between Accounts 3 and 4	1245
	Account 3 – What is Agreed	1246
	Account 3 – Mr. Hatton's " <i>Recalculation</i> "	1246

	The Seven Pairs of FX Transactions	1247
	Land Transactions As Reflected in the Accounts	1248
	The US\$123.6 Million Deposits	1249
	Accounts 6, 7 and 8	1250
	Account 6	1251
	Account 7	1255
	Account 8	1256
	Account 9	1257
	11 January 2009 Audit Confirmation	1259
	Following are the GTJOLs' submissions on the FX Transactions	1266
	Background to FX Businesses at SICL and the Money Exchange	1266
	The Nature of FX Forward Trading	1266
	The FX Business at the Money Exchange	1268
	The FX Business at SICL	1268
	FX Trading between the Money Exchange and SICL	1269
	The 20 FX Counterclaim Transactions	1270
	Were These Entries Backdated, and If So Why?	1272
	Following in quotation are AHAB's submissions on the FX Transactions which I accept:	1276
	Following are the GTJOLs' submissions on the Land acquisitions allegedly held in trust for SICL	1277
	The Acquisition of Land in Saudi Arabia	1277
	Omar Saad's Role in Acquiring Land for AHAB	1279
	Property 0	1288
	Property 1	1295
	The 27 March 2016 Visit to the Notary	1297
	Property 2	1297
	The Riyadh Properties	1298
	The Yanbu Properties	1302

	The 21 March 2016 and 27 March 2016 Visits to the Notaries	1304
	Property 3	1305
	Visit to the Notary on 27 March 2016	1306
	Property 4	1307
	The 16 March 2016 Visit to the Notary	1310
	Documents and Accounting Entries	1311
	Reversal of the Entries in the Accounts	1312
	Conclusion on the SICL Counterclaim: Restatement of the Accounts	1315
	The GTJOLs' Submissions on Singularis' Counterclaim	1318
	AHAB's Submissions on the Singularis Promissory Note - Accepted	1323
PART C		
	SUMMARY OF FINDINGS	C1