

BRITISH VIRGIN ISLANDS COURT OF APPEAL

Sheikh Mohamed Ali M Alhamrani et al v Sheik Adbullah Ali Alhamrani Civil Appeal HCVAP2012/026

CIVIL APPEAL - ORDER FOR DISCOVERY -
DOCUMENTS PASSING BETWEEN CLIENT AND
ATTORNEY - LEGAL PROFESSIONAL PRIVILEGE -
BASIS ON WHICH AN APPELLATE COURT WILL
INTERFERE WITH THE DISCRETION OF A JUDGE

The Appellants and Respondent in this case are brothers. Alhamrani Universal Company ("Universal") was a company incorporated in Saudi Arabia in which they both had an interest. Universal is one of a number of companies which the Appellants and the Respondent jointly owned along with their sisters, collectively known as the Alhamrani Group. The Appellants and the Respondent are engaged in a dispute concerning the ownership of previously jointly owned assets. In 2008, under a court ordered buy/sell process, the Respondent purchased the Appellants' interest in Universal. During the process the Appellants, who were then directors of Universal, sought and obtained legal advice from Mr. Hardan, an attorney employed by Universal. Universal was aware of and consented to Mr. Hardan providing legal advice to the Appellants. In the course of advising the Appellants, certain communications and emails (the "Documents") were created and left on the Alhamrani Group servers and other computers.

During the course of the trial and upon application by the Respondent, the Learned Commercial Judge ordered the Appellants to disclose the Documents. The Appellants appealed to Mitchell JA, a single justice of appeal. He confirmed the orders of the Commercial Judge on the basis that: (1) the advice was provided by Mr. Hardan in the course of his employment by Universal in which the Respondent was a partner; (2) the Appellants and Mr. Hardan were aware of the Respondent's objections to Mr. Hardan providing legal advice when the Respondent as part of the Alhamrani Group was paying for it; (3) the Documents were stored on the Alhamrani Group computer system and communicated via its email system; and (4) it must

plainly have been in the contemplation of the parties that the result of the process would be that the Respondent would buy the Appellants' interests.

The Appellants appealed further to the Full Court. Allowing the appeal, revoking the decision of Mitchell JA [Ag.] and setting aside relevant parts of the Order of Bannister J, the Court of Appeal held that for a document to have legal professional privilege attached, it must be confidential. Since Mr. Hardan was an attorney at law engaged by the Appellants for the purpose of giving legal advice, he would be considered to be in the business of confidential communication. As legal professional privilege attaches to confidential communications generated between an attorney and his or her client when the communication was made for the dominant purpose of giving or obtaining legal advice, the Documents would be subjected to legal professional privilege. Further, since only the client can waive privilege and on the facts the clients did not do so, privilege could not now be transferred to Universal and more importantly to the Respondent.

It was noted that a breach of Mr. Hardan's contract by him could not have changed his status as a qualified lawyer and the Appellants' status as his clients or changed the status of the advice as confidential and privileged advice, as a breach of duties by the legal advisor does not of itself invalidate privilege. The Court of Appeal applied the cases of *Harris -v- Harris* [1931] P 10 and *Goddard -v- Nationwide BS* [1987] QB 670 in relation to this point.

Applying the case of *BBGP Managing General Partner Limited - v- Babcock & Brown Global Partners* [2011] Ch. 296, the Court also held that confidentiality and privilege was not lost merely because some of the Documents were stored electronically and discovered by the Respondent.

The Court confirmed that directors were bound to act bona fide in the best interests of the company and that they were not to engage in dealings where their interests would or possibly may conflict with that of the company. However, the Court felt that the evidence before it did not establish that the Appellants, acting as directors of Universal acted in some way which conflicted with the interests of Universal. In its view the legal advice provided by Mr. Hardan related to the dispute between the Appellants and the Respondent. It bore no relation to the business of Universal and, as such, it was not proven that the Appellants had acted in a manner whereby their interests as directors conflicted with that of the company.

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