

## CAYMAN ISLANDS

### GRAND COURT

#### ***Wael Almazeedi -v- BTU Power Company*** ***(in official liquidation) (Unreported, 20*** ***November 2015)***

#### APPARENT BIAS - JUDGES SITTING IN MULTIPLE JURISDICTIONS

This Appeal considered two important questions. First, when sitting in Jurisdiction A in a case concerning parties who are domiciled in Jurisdiction B, should a judge disclose their connection with Jurisdiction B or even recuse himself? Second, does it make a difference that the party domiciled in Jurisdiction B is closely connected with the government in Jurisdiction B or that the Judge's status as a judge in Jurisdiction B may depend on the power of the government in that jurisdiction to terminate that status?

Justice Sir Peter Cresswell, a judge of the Financial Services Division of the Grand Court of the Cayman Islands, heard the petition for the winding up of the Respondent, made a winding up order and appointed the Respondent's liquidators. Cresswell J was also unknown to BTU Power Company's ("BTU") sole director and chief executive officer Mr. Wael Almazeedi (the "Appellant"), a supplementary judge of the Qatar International Court.

The problem with this connection was that a number of the preference shareholders in BTU, who had presented the winding up petition, were in fact related to the Qatari Government. The concern in these circumstances was that the Judge may have been subject to the doctrine of apparent bias: that is to say that, in the absence of any actual bias, nevertheless the appearances of the thing are such that the Judge should not have sat on the case in question.

The modern test for apparent bias was stated by Lord Hope in *Porter -v- Magill*<sup>1</sup> in these terms:

*"The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased".*

In coming to a decision, this particular case required Right Honourable Justice Sir Bernard Rix to consider the role that the Minister of Finance plays in the appointment and removal of judges in Qatar. The Minister of Finance is in fact a pivotal figure in determining certain appointments and removals of members of the Court. His Excellency Ali Shareef Al Emadi ("Mr. Al Emadi") was appointed Minister of Finance and Chairman of the Council of Ministers on 26 June 2013. The appointment of Mr. Al Emadi was significant because he had previously been CEO of a subsidiary of one of the original petitioners in the winding up, and also significant preference shareholder in BTU.

After a review of the common law position and applying the modern test for apparent bias, Mr. Justice Rix came to the conclusion that as at the time when the winding up order was made, the fair-minded and informed observer would have concluded that it was not uncommon for a judge to have to deal with litigation in which the government of the country in which he was a judge was interested. However, in these circumstances, where the litigation was brought in a different country from that of the government interested in that litigation, it was unnecessary for the litigation to be conducted by a judge who was also a judge of that government's country. When the litigation was

---

<sup>1</sup> [2011] UKHL, [2002] 2 AC 357 AT [103]

commenced, Mr. Al Emadi was not Minister of Finance and chairman of the Council of Ministers in Qatar. The conclusion was that the fair-minded and informed observer would not have concluded that the Judge's independence and impartiality were compromised at that point. However, the position changed when Mr. Al Emadi became Minister of Finance and Chairman of the Council of Ministers. At that point Mr. Al Emadi had a direct interest in claims that BTU had made against Mr. Wael Almazeedi and in defeating the proofs of debt that Mr. Wael Almazeedi had brought against BTU. The fair-minded and informed observer, knowing of the role of Mr. Al Emadi, would consider that there was a danger that the Judge's independence and impartiality were compromised and in that sense that there was a danger of bias. It was held that all Orders of the Judge in the proceedings after Mr. Al Emadi was appointed on 26 June 2013 should be set aside.

Judges should therefore disclose their connection with any relevant jurisdiction and consider recusing themselves if appropriate, such as if a judge is closely connected with the government of that jurisdiction and the judge's status as a judge may depend on that government.

*Founded in 1928, Conyers Dill & Pearman is an international law firm advising on the laws of Bermuda, the British Virgin Islands, the Cayman Islands and Mauritius. With a global network that includes 130 lawyers spanning eight offices worldwide, Conyers provides responsive, sophisticated, solution-driven legal advice to clients seeking specialised expertise on corporate and commercial, litigation, restructuring and insolvency, and private client and trust matters. Conyers is affiliated with the Codan group of companies, which provide a range of trust, corporate secretarial, accounting and management services.*

This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.