IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. FSD 3 of 2013

BETWEEN

STANDARD CHARTERED BANK

Plaintiff

And

AHMAD HAMAD ALGOSAIBI and BROTHERS COMPANY

and

others

Defendants

Mr. Stephen Moverley Smith QC instructed by Mr. Colm Flannagan of Nelson & Company for the Plaintiff

No one appeared for the Defendants

Henderson, J.

Hearing: June 9, 2014

Judgment: June 10, 2014

JUDGMENT

1. The Plaintiff Standard Chartered Bank ("the Bank") has obtained in Bahrain a decision of the Bahrain Chamber for Dispute Resolution ("the Bahrain Decision") acknowledging that the defendants are indebted to the Bank in the amount of U.S. $25,000,000. The

Bank now seeks to have the Bahrain Decision recognized and enforced in the Cayman Islands. The Bank says that the Bahrain Decision was given by a Court possessing jurisdiction under its local law to give it, that the defendants submitted to the jurisdiction in Bahrain, and that the Bahrain Decision is final and conclusive.

2. The defendants were served outside the jurisdiction with the Writ of Summons and Statement of Claim in this proceeding. In response, they filed an Acknowledgment of Service in which they asserted that they intended to contest the claim. They attempted to set aside my *ex parte* order permitting service outside the Cayman Islands. Subsequently, they agreed to a Consent Order dismissing that application and then filed a fresh Acknowledgment of Service stating that they no longer intended to contest the claim. The defendants have never filed a defence.

3. In these circumstances the Bank could and usually would take out a Judgment in Default of Defence pursuant to Order 19 rule 2 of the *Grand Court Rules*. It is well known that a judgment of that sort may not be viewed as a final judgment in other jurisdictions. The Bank has asked me to give directions and set this matter for trial although it is anticipated that the trial will be uncontested. Evidently, the Bank expects to derive some benefit from proceeding in this manner when attempting to obtain recognition of the Bahrain Decision in other jurisdictions.

4. In *Berliner Bank AG v Karageorgis et al* [1996] 1 Lloyds Law Reports 426 (QB - Commercial Court), Mr. Justice Colman entertained a similar request. He concluded that the rule providing for the issuance of an "automatic judgment" in default of a

pleading or in default of an appearance is "merely permissive". He cited *Austin v. Wildig* [1969] 1 WLR 67 for this proposition and then said:

> *It is perfectly true that O. 19 relates to the service or failure to serve a defence, but I see no reason in principle why, if the Court has inherent jurisdiction in relation to O. 19 to order a full trial of the claim, it should not also have inherent jurisdiction in certain circumstances to order the full trial of a claim where there has been a failure to acknowledge service and therefore a failure to give notice of intention to defend. I refer again to the note in the Supreme Court Practice which suggests that the jurisdiction might be exercised in cases where the plaintiff cannot obtain on summons or motion for judgment all the relief he seeks. It seems to me that a plaintiff who seeks a judgment which is likely to be enforceable outside the jurisdiction of the English Courts rather than a judgment obtained under the automatic procedures provided by the rules, both O. 13 and O. 19, is entitled to invite the Court to proceed to the trial of his claim, notwithstanding that he can by means of an automatic judgment obtain precisely the same judgment in form which he obtains as a result of a trial of the matter in open Court. It seems to me to be inappropriate that the Court should decline to exercise its jurisdiction in such a case if there is material before it to suggest that a judgment obtained by the automatic method might well not be enforceable in foreign jurisdictions where the defendant is known to have assets or where there is a reasonable belief that he might have assets.*

5. In *the Berliner Bank* case the claim which Coleman, J permitted to proceed to trial was an action on certain guarantees. The present action is simply one for recognition of and enforcement of a foreign judgment. One may question the utility of devoting Court time to a "trial" with just one party present, particularly where the only issue is the validity and enforceability of a foreign judgment. However, our Order 19 rule 2 is also permissive in nature: if a defendant fails to serve a defence the plaintiff "may" enter final (i.e., default) judgment. In contrast, Order 25 dealing with orders for directions and the fixing of trial dates has mandatory application in all but a few enumerated cases (see

rule 1(1) and (2)); the failure of a defendant to plead is not one of those cases. Thus, by refraining from entering default judgment when a defendant fails to plead, a plaintiff becomes entitled to a directions hearing and a trial date. While I may question whether a one-sided hearing on the merits will prove useful to the Bank, I am prepared to conduct one if the Bank so wishes.

Henderson, J.

Henderson, J.