



In The Supreme Court of Bermuda

**WINDING UP JURISDICTION
(COMMERCIAL COURT)
2014 No. 290**

IN THE MATTER OF ALGOSAIBI TRADING SERVICES LIMITED (Company #LC 11567)

AND IN THE MATTER OF THE COMPANIES ACT, 1981

AND IN THE MATTER OF A STATUTORY DEMAND DATED 10 JULY 2014

ABU DHABI COMMERCIAL BANK PJSC

Petitioner

-and-

ALGOSAIBI TRADING SERVICES LIMITED

Respondent

**EX TEMPORE JUDGMENT
(in Court)**

Date of hearing: September 12, 2014

Ms. Jennifer Haworth, MJM Limited, for the Petitioner

The Company did not appear

Introductory

1. In this case the Petitioner is a creditor of the Respondent Company which has served a Statutory Demand on 11 July 2014 requiring the Respondent to pay the judgment sum

of Saudi Riyals 268, 836,991.89. And that Statutory Demand was itself based on a judgment obtained from the Dubai Court of First Instance on 13 February 2014, according to the Petition.

2. The Petitioner appeared before the Registrar and satisfied the Registrar on 3 September 2014 that the requirements for service and advertisement had been met. The only question that has been problematic in that regard is the fact that the former service providers at the Company's registered office, being Canon's Court, 22 Victoria Street, Hamilton, have signified when served that they have resigned and that that address is no longer the registered office.
3. Ms. Haworth has therefore felt obliged to bring that matter to the Court's attention, and has requested that clarification be given as to the requirements for service in circumstances where a registered office is no longer an operative one.

Factual and legal findings: the status of an inactive registered office for service of process

4. The facts are that, the Petitioner having carried out a search at the Registrar of Companies' office, it is clear that the only registered office that is on record is in fact the address at which the Statutory Demand and Petition were served. And the question arises as to whether or not, in circumstances when it is known that that office has in effect been abandoned or has ceased to be an active office, the registered office continues to be an effective location for service to be effected on a company.
5. The registered office rules are contained in section 62 of the Companies Act 1981 which provides in material respect as follows:

“Registered office of company

62. (1) A company shall at all times have a registered office in Bermuda which shall not be a post office box to which all communications and notices may be addressed.

(2) On incorporation the situation of the company's registered office is that specified in a notice in the prescribed form given to the Registrar under section 69(2)(e).

(3) The company may change the situation of its registered office from time to time by giving notice in the prescribed form to the Registrar and such change takes effect upon the notice being registered by the Registrar.

(4)...”

6. These provisions have been considered by this Court before, although seemingly not in any published judgment. The traditional view that commercial practitioners have

taken is that section 62 (3) means that when a registered office has not been changed, the office that was registered remains the effective office for service purposes.

7. This is a problem that does occur from time to time when exempted companies in particular, whose key controllers are located in other jurisdictions, effectively abandon the administrative structure of the company in Bermuda. And it would be a considerable gap in our legal framework if it were not possible to serve a company effectively simply because the registered office was not an active one.
8. Ms. Haworth has, in fact, explored the option of seeking to serve the former directors of the Company overseas. But she has taken the view (rightly in my judgment) that such steps go beyond the requirements of winding-up law. And I am satisfied that, having regard to the provisions of section 62(3) of the Companies Act, service on the last registered office of a Bermuda company is good service.

Conclusion

9. For those reasons, having been satisfied that the Company was effectively served, I grant the winding-up order sought, together with the supplementary order that the Official Receiver be appointed as provisional liquidator of the Company¹.

Dated this 12th day of September, 2014_____

IAN RC KAWALEY CJ

¹ For the avoidance of doubt, when delivering judgment orally I omitted to formally enunciate that I also awarded the Petitioner its costs. The usual award will no doubt be included in the engrossed formal Order to be submitted for my signature in due course.