IN THE GRAND COURT OF THE CAYMAN ISLANDS

8-03-11

Cause No. 416 of 2009

BETWEEN :

MUNIB MASRI — Plaintiff

And

(1) CONSOLIDATED CONTRACTORS INTERNATIONAL COMPANY SAL
(2) CONSOLIDATED CONTRACTORS (OIL AND GAS) COMPANY SAL

Defendants

APPEARANCES :

Mr Anthonmy Akiwumi and Mr Chris Levers of Stuarts Walker Hershant on behalf of the Plaintiff

Mr Neil Timms QC instructed by Mr Kyle Boardhurst of Broardhurst Barristers on behalf of the Defendants (acting by their Lebanese court appointed administrator) on their summons dated 4th March 2010

Mr Marc Kish of Maples and Calder on behalf of The Baku-Tblisi-Ceyhan Pipeline Company on its Summons dated 22nd September 2010 ("BTC's Summons")

Ms Rachael Reynolds of Ogier was heard on BTC's Summons on behalf of Mr Lee Manning in his capacity as receiver appointed by the English High Court over certain debts owed to the First Defendant

REASONS FOR RULING

INTRODUCTION AND PROCEDURAL HISTORY

1. This is an enforcement action arising out of very lengthy and highly contested litigation which has beer occupying the English courts at great length since 2004. The Plaintiff,

Munib Masri ("Mr Masri"), is a judgment creditor. The Defendants, Consolidated Contractors International Company SAL ("CCIC") and Consolidated Contractors (Oil and Gas) Company SAL ("CC (Oil and Gas)"), are both members of a group known as the Consolidated Contractors Group of Companies and I shall refer to them collectively as "the CC Companies" unless the context requires otherwise. They are jointly and severally liable to Mr Masri in respect of four separate judgments rendered by the English High Court in 2007 and 2008 for a total of approximately US$65 million, which have been referred to as "the English Quantum Judgments". The underlying cause of action arises out of a contract made in 1992 concerning an oil exploration and exploitation concession in respect of the Masila oil field in Yeman. The essential principle of the contract is that Mr Masri would be entitled to 10% of certain revenues due to the CC Companies and liable for 10% of certain costs arising in connection with the concession, which turned out to be immensely profitable for the parties. The English Quantum Judgments remain substantially, if not wholly, unsatisfied. According to the judgments of various English judges who have adjudicated upon the matter, both at first instance and on appeal, the CC Companies are well able to pay but are flatly refusing to do so.

2. On 21st October 2008 Tomlinson J., sitting as a judge of the English Commercial Court, appointed Mr Lee Manning, a partner of the English firm of Deloitte & Touche, as receiver by way of equitable execution over certain of CCIC's' contractual receivables. The effect of this order (referred to as the "English Receivership Order") is fully explained in the written reasons for my ruling made in the Recognition Proceeding (as defined in the next paragraph). Put simply, the English Receivership Order empowered Mr Manning to collect specified receivables and freeze CCIC's right to receive the money. The property over which Mr Maning is appointed is listed in Schedule B to the English Receivership Order and includes the sum due to CCIC from Baku-Tbilisi-Ceyhan Pipeline Company ("BTC") pursuant to "BTC Crude Oil Line & SCP Gas Line Project". The sum due is recorded as "$[1,097,984.60]". I infer from the use of square brackets that there must have been some issue or uncertainty about the amount due at the time when the English Receivership Order was made. However, it is common ground that the amount actually due is $750,001 as stated in an invoice dated 30th October 2008.

3. On 31st October 2008 Mr Masri issued an originating summons (Cause 513 of 2008) by which he sought a declaration that "Mr Manning ... the Receiver of [CCIC] as appointed pursuant to [the English Receivership Order] be recognized within the Cayman Islands .... on the same terms and conditions as [the English Receivership Order] and subject to the same Undertakings...". I shall refer to this originating summons as "the Recognition

Proceeding". On 18th November 2008 Foster J. made an *ex parte* order which has been described as the "recognition order". It not only declared that the appointment of Mr Manning as receiver be recognized in the Cayman Islands but also contained detailed orders and directions which gave the impression that Mr Manning was being appointed as receiver by this Court, which he was not. Mr Manning misrepresented the effect of the "recognition order" by telling BTC that it was required to pay any amounts due and/or payable to CCIC pursuant to the contract into court. BTC was not a party to the Recognition Proceeding and had not been given notice of the application, but it did in fact pay US$750,001 into court on 6th April 2009. Some fifteen months later, on 19th February 2010, I struck out the Recognition Proceeding and set aside the "recognition order".

4. During the course of hearing the application to strike out the Recognition Proceeding I was told that on 3rd September 2009 Mr Masri had commenced an enforcement action against both CC Companies based upon one of the four English Quantum Judgments, namely the judgment for US$3,861,645.27 rendered by Gloster J. on 11th February 2008. This is in fact the action with which I am now concerned and I shall refer to it as "the Enforcement Action". I was also told that Smellie CJ. had given leave for the writ to be served out of the jurisdiction and that the CC Companies had been duly served through diplomatic channels in accordance with the Hague Convention. Although I had decided that the Recognition Proceeding must be struck out and the "recognition order" set aside, I also formed the view that the catalogue of error and irregularity identified in the reasons for my ruling had obscured the merits of Mr Masri's case. For the reasons given, I considered that Mr Masri had good grounds for domesticating the English Quantum Judgments and that he could expect to obtain a summary judgment in the Enforcement Action. Therefore, I directed that the sum of US$750,001 which BTC had paid into court in response to the "recognition order" should be transferred and treated as having been paid into court in respect of the Enforcement Action.

5. I do not recall having been told during the course of last year's hearing that Smellie CJ. had also made a mareva injunction on 1st September 2009 against CCOG for the purpose of freezing its shareholdings in CC Alfurt (Oil and Gas) Company Limited and CC South Alfurt (Oil and Gas) Company Limited ("the Alfurt Companies"). The evidence is that these two companies were both incorporated under the Companies Law on 30th August 2006 and have registered offices at Clifton House, George Town, Grand Cayman. The Cayman Islands conflict of laws rule is that the shares issued by these companies are, prima facie, treated as property located in the Cayman Islands. These orders were actually made two days before the writ was formally issued as a means of preventing

the defendants from learning about the Enforcement Action until after the application for the mareva injunction had been heard and determined. No application was made at that time for any form of injunction in respect of the sum due from BTC, presumably because BTC had paid that amount into court in the Recognition Proceeding which was then still pending against CCIC.

6. On 18th February 2010 acknowledgments of service were filed in the Enforcement Action on behalf of each of the CC Companies. On 4th March 2010 a statement of claim was served and, on the same day, the CC Companies (acting through their Lebanese court appointed administrator) issued a summons challenging the jurisdiction of this Court. The issue of this summons should have triggered an application by the attorneys acting for Mr Masri and/or the CC Companies for the Enforcement Action to be transferred to the Financial Services Division, failing which the Registrar should have transferred it on his own motion in accordance with GCR Order 72, rule 6(3)(a). If there had been compliance with this rule, the action would have been assigned to a commercial judge who would have reviewed the Court file and made appropriate case management decisions, with the result that the CC Companies' summons would have been heard long ago. I now direct that the Enforcement Action be transferred to the Financial Services Division and that it be assigned to me. Having regard to the amount of court fees already paid, no transfer fee is payable.

7. In the meantime, on 22nd September 2010, BTC issued its own summons in the Enforcement Action by which it seeks an order that the sum of US$750,001 paid into court be returned on the ground that it is BTC's money and it faces the risk of having to pay twice. The circumstances surrounding BTC's payment into court are described in an affidavit sworn on 18th October 2010 by Mr David Grant, the company's assistant corporate secretary. He says that on 26th February 2009 BTC gave notice to CCIC's Cayman attorneys that it intended to pay US$750,001 into court in compliance with the "recognition order". The response was an e-mail from CCIC's administrator objecting to the proposed payment on the basis that the sum owed was properly payable to Citibank NA, Bahrain ("Citibank") to whom CCIC had allegedly assigned the proceeds of the contract. BTC was subsequently sent documentation evidencing that CCIC and 19 affiliated companies had entered into an English law governed credit facility with Citibank and that on 2nd October 2002 BTC had agreed with CCIC that "all future payments will be made to Citibank N.A. Bahrain ... for further credit to CCIC's account No.4624114 held with Citibank N.A. in Bahrain". Since the designated account is in the name of CCIC, it was not clear to BTC that there had in fact been an assignment. According to Mr Grant's affidavit, it was then agreed amongst the parties that CCIC

would apply to this Court for an order clarifying whether or not this receivable fell outside the scope of the English Receivership Order on the basis that it had been assigned to Citibank. On this basis Mr Grant says that BTC paid the US$750,001 into court on 6th April 2009. However, CCIC's response was to commence an action on 15th April 2009 in the Baku Court of the Republic of Azerbaijan seeking an order that BTC pay the money to CCIC, not Citibank. By a ruling dated 16th April 2010 the Baku Court ordered that the principal sum of US$750,001 plus interest and costs "shall be withheld from [BTC] to the benefit of [CCIC]", which means that BTC is ordered to pay this amount to CCIC. It is said that the Baku Court also made the apparently inconsistent finding that the sum due from BTC had been assigned and is payable to Citibank. It is relevant to note that Citibank was not party to the proceeding. In the light of these events BTC then issued its summons seeking an order that the US$750,001 be paid out of court and returned to BTC. This summons was originally due to be heard on 15th December 2010 but listing difficulties resulted in it being heard at the same time as CCIC's summons challenging the jurisdiction of this Court.

8. Following my order to strike out the Recognition Proceeding in February last year, Mr Manning did not seek to take any further action in this jurisdiction for almost a year until 28th January 2011, when he purported to intervene in the Enforcement Action and issue his own summons seeking an order that the US$750,001 be paid to him. There was no prior agreement about who was entitled to be heard on each summons. Having heard counsel for BTC on its summons, the Court was presented with the contention that Mr Manning had no locus to be heard on the summons and that the CC Companies (acting though their Lebanese administrator) could not be heard on anything other than their own summons without being treated as having voluntarily submitted to the jurisdiction. Having reconsidered the matter, I decided that I should hear and determine the summonses in what I regarded as a logical sequence, beginning with the CC Companies' jurisdictional challenge.

THE JURISDICTIONAL CHALLENGE

The Law

9. Counsel for the CC Companies accepts that the English Quantum Judgments are capable of being enforced in this jurisdiction for the reasons explained in my previous ruling. Counsel did not dispute that Mr Masri's writ and statement of claim constitutes a properly formulated enforcement action within the meaning of GCR Order 11, rule 1(1)(m) and that he can expect to obtain a summary judgment unless the order for service out of the jurisdiction is set aside. The CC Companies' case is that the *ex parte*

order should be set aside because there is no evidence that they have any assets within the jurisdiction against which a judgment of this Court could be enforced. It is said that paragraph 18 of my previous ruling (which is admittedly *obiter*) reflects a wrong statement of the law and that this Court should not follow the decision of the English Court of Appeal in *Tasarruf Mevduati Signorta Fonu –v- Demirel* [2007] EWCA Civ 799 because it is wrong in principle and reflects a misunderstanding of the reason why RSC Order 11, r.1(1)(m) was introduced into the English Rules.

10. Until 1983 it was not possible to enforce a foreign judgment at common law in England against a foreign judgment debtor, even though he had assets within the jurisdiction. In 1983 paragraph (m) was introduced into the rule to close this gap. The 6th Cumulative Supplement to the then current edition of the Supreme Court Practice explained the rule change in the following way – *"The right to serve where the claim is based on a judgment or arbitral award is new: the provision is designed to deal with the case of a defendant who is not domiciled in the jurisdiction but has assets here".* It is said that the only purpose of this rule was to enable judgment creditors to enforce against English assets and that there cannot be any other possible justification for allowing service out of the jurisdiction. It does appear from the report of *Demirel* that the court was not referred to this passage, but I am not persuaded that this analysis of the legislative history helps me decide the basis upon which this Court should exercise its discretion under our equivalent rule.

11. It is more helpful in my view to analyse the issue from first principles. This Court has a discretionary power to exercise *in personam* jurisdiction over foreigners only in the circumstances specified in GCR O.11, r.1(1). The Court's discretion can be exercised only if "the case is a proper one for service out of the jurisdiction". It is well established that a case will not be regarded as a proper one for service out of the jurisdiction unless the plaintiff can demonstrate that he has a good arguable case. This means a good arguable case for establishing the cause of action pleaded in his writ. In this case the pleaded cause of action is the breach by the CC Companies of their obligation to pay the sum of US$3,861,645.27 and the remedy sought is a judgment for this amount. On any view Mr Masri has a good arguable case and if he does establish his cause of action, he will be entitled to his remedy, namely a money judgment, as of right. On this basis it could be said that Mr Masri has a perfectly proper case for service out of the jurisdiction. However, when the Court is asked to exercise a discretionary power, other considerations also come into play. Firstly, the Court's discretionary powers should be exercised, if at all, only for the purposes for which they were created. I agree with Mr Timms that the purpose of GCR O.11, r.1(1)(m) is not simply to allow foreign judgments

to be domesticated. Its purpose is to put the judgment creditor in the position of being able to enforce against assets in this jurisdiction or take some other step towards enforcement. Secondly, the Court should decline to exercise its discretion, or to exercise it in a particular way, if to do so would be futile.

12. In *Demirel*, Sir Anthony Clarke MR said, at paragraph 27 –

> ".. we accept that the court should not automatically exercise its discretion in favour of permitting service out of the jurisdiction unless it is just to do so, and that it will ordinarily not be just to do so unless there is a real prospect of a legitimate benefit to the claimant from the English proceedings. We see no reason why that benefit should not be indirect or prospective."

He went on to say at paragraph 29 –

> "Thus a claimant seeking to enforce a foreign judgment by action does not have to show that there are assets in the jurisdiction. To require him to do so would be tantamount to construing the rule as if it were limited in that way. The claimant must show that he has a good arguable case in the action, that is that he has a good arguable case that the judgment should be given based upon the foreign judgment. He must in our opinion ordinarily show further that he can reasonably expect a benefit from such a judgment. Otherwise there would be no useful purpose in the proceedings."

I agree with these propositions.

13. The purpose of granting leave to serve out of the jurisdiction is to put the judgment creditor in the position of being able to enforce in this jurisdiction or take some other step towards enforcement. In my judgment, it would be inconsistent with this objective for the Court to refuse leave to serve out merely because the judgment creditor is unable to demonstrate that the debtor has an asset, meaning some property having a net present realisable value, against which he could immediately commence enforcement proceedings. Suppose that the judgment debtor is the registered owner of land within the jurisdiction, but the land is charged to secure a debt which far exceeds its current market value. It could be said that the land is not an asset because its net present realisable value is nil. However, I can see no good reason for refusing to give the judgment creditor the opportunity to register a second charge, in the hope that the market value of the land will increase or that the amount owing to the prior chargee will be discharged from some other source. It seems to me that the opportunity to register a second charge would be a sufficient reason for allowing service out, even though it might never have any realizable value. In my judgment a creditor in the position of Mr Masri, who will almost certainly succeed in obtaining a judgment if he is given leave to serve out, should not be deprived of the opportunity to commence enforcement

proceedings or take some other step towards enforcement (such as the appointment of a receiver or the examination of an officer) unless to do so would be obviously futile.

14. Having reconsidered *Demirel* in the light of Mr Timms' carefully argued written and oral submissions, I am still persuaded that this Court should follow and apply this decision. It seems to me that the approach adopted by the English Court of Appeal in this case is entirely consistent with the principles applicable to the exercise by the Court of its discretionary powers in general and it also reflects the policy which I think should be applied in this jurisdiction. However, I am not prepared to apply the principle in exactly the same way as the English Court of Appeal did on the facts of the *Demirel* case. Sir Anthony Clark MR said (at paragraph 40) –

> "Mr Demirel has been involved in business in Turkey on a very large scale indeed. He has not kept his assets in Turkey and, perhaps naturally, he has made use of the international banking system. Through a company he calls Merrill Lynch International he has procured the setting up of trusts to shelter his assets in the Cayman Islands. It seems to us that, if free to do so, he might use other parts of the international banking system of which London is now a central part. It is we think a reasonable possibility that one of these days Mr Demirel will have assets in London, either in the form of physical assets or in the form of claims against other institutions. In these days of global business we should, in our opinion, be somewhat less parochial than once we were."

15. The same approach was adopted by Blair J. in *NML Capital Ltd –v- Republic of Argentina* [2009] QB 579, a case which arose out of the fact that the Republic of Argentina defaulted on a bond issue. Under the terms of the bonds, the Republic of Argentina had waived sovereign immunity and submitted to the jurisdiction of the United States District Court for the Southern District of New York. The plaintiff bondholder sought to enforce its New York judgment against the Republic of Argentina in England. One of the points taken on the state's jurisdictional challenge was that NML made an unjustified assertion that Argentina had assets in England. The judge concluded that *"So far as I can see, there was no basis for the statement of belief that Argentina has assets in this country, and I consider this to be a matter of legitimate criticism of the evidence which NML placed before the court"*. He referred to the passage from *Demirel* (at paragraph 29, quoted above) and went on to say *"It is difficult in my view to contend that a creditor who has obtained judgment in New York in respect of a bond issue cannot reasonably expect a benefit from enforcing the judgment in England or that there is no useful purpose in such proceedings. The remarks of the Court of Appeal, at para.40, about global business seem equally in point here."*

16. What Sir Anthony Clark MR and Mr Justice Blair seem to be saying is that it will always be potentially useful for a judgment creditor obtain an English judgment if his debtor is a sovereign state or a company carrying on a global business, because it is reasonable to expect that such entities will sooner or later do business in London or have an asset in London. In other words, it is being said the usefulness of an English judgment arises out of London's status as a major international financial centre. If the judgment debtor can be characterized as an entity which is inherently likely to do business of some kind in London, even if it is only making use of the banking system for the purpose of making a sterling transfer, then I think that it is being said that this would be a sufficient justification for exercising jurisdiction over such a debtor for the purposes of an enforcement action. The Cayman Islands is also home to a substantial international financial services industry, but I am not prepared to adopt the same logic as the English courts have done. I do not think that it would be appropriate to exercise jurisdiction over the CC Companies for the purposes of GCR O.11, r.1(1)(m) simply because they are part of a major international business which is likely, at some point in the future, to do business with a Cayman incorporated counterparty or hold an asset through a Cayman incorporated holding company. In my judgment there would have to be evidence of some more tangible benefit to justify exercising this Court's discretion in favour of Mr Masri.

17. The *ex parte* order was made on the basis of the evidence comprised in the affidavit sworn on 28th August 2009 by Mr. Simon Morgan, a partner of Simmons & Simmons who are the solicitors acting for Mr Masri in the English proceedings. Mr Morgan's affidavit has 40 exhibits, most of which are copies of orders and judgments made in the English proceedings. The exhibits directly relevant to the issue which I have to decide are (i) the two stop notices filed in this Court in relation to shares of the Alfurt Companies and (ii) documents extracted from the Court file relating to the Recognition Proceeding, in particular an affidavit sworn by Mr Edgard E. Joujou who is CCIC's Lebanese court appointed administrator. The case against the two CC Companies is the same in the sense that they are jointly and severally liable on the same judgment, but the basis upon which the Court exercised its discretion to allow service out of the jurisdiction is different and I will analyze the evidence in respect of each company separately.

Evidence relating to CCOG

18. Exhibit "SRM 3" of Mr Morgan's affidavit comprises two stop notices filed on 23rd March 2007 pursuant to GCR Order 50, rule 11. The purpose of these stop notices is to put the

public on notice that Geopetrol Yemen Limited Corp, a company incorporated in Panama ("Geopetrol"), has a beneficial interest in 40 shares (representing 20% of the capital) issued by CC South Alfurt (Oil and Gas) Company Limited and registered in the name of CCOG and that Virgin Resources Limited, a company incorporated in Canada, ("Virgin") has a beneficial interest in 45 shares (representing 22½% of the capital) issued by CC Alfurt (Oil and Gas) Company Limited and registered in the name of CCOG. These stop notices and the supporting affidavits constitute evidence that CCOG is the legal owner of these shares and that it holds the legal title upon trust for the benefit of Geopetrol and Virgin respectively. However, the supporting affidavits do not explain the underlying transaction or its commercial rationale. Mr Morgan infers (in paragraphs 73 and 74 of his affidavit) that the Alfurt Companies must be connected with CCOG's Yemeni oil concessions known as the Al Furt Block and the South Al Furt Block, referred to in an Mr Suheil Nasser's affidavit of assets sworn on behalf of CCOG for the purposes of the English proceedings, a copy of which is contained in Exhibit "SRM39". Mr Nasser says that the book value of CCOG's three concessions is $3 million.

19. Taken by itself, this evidence leads to the conclusion that CCOG was, and may still be, the legal owner of shares which constitute property located in the Cayman Islands. Mr Morgan goes further and asserts a belief that "it is reasonable to assume that the value of [CCOG's] interests in the shares (which relate to two of the three blocks) is less than $3 million". I think that he is saying that if three concessions have a book value of $3 million, two of them must have a value, albeit less than $3 million. However, this analysis misses the point. The stop notices and supporting affidavits are evidence that CCOG is holding the legal title as trustee and does *not* have any beneficial interest in these particular shares. It must be wrong to treat these particular shares as an asset of CCOG, in the sense that they have, or ever had, any realizable value which belongs to CCOG. However, the more compelling point is that CCOG is not carrying on business as a trust corporation. I think that it may have been reasonable to infer, on the basis of the evidence before the Chief Justice, that the Aflurt Companies owned title to the oil concessions and that CCOG was and still is the legal and beneficial owner of that part of their issued share capital which was *not* covered by the stop notices. I think that the Chief Justice must have made the *ex parte* order on this basis.

20. However, I must now take into account the affidavit sworn on 18th November 2010 by Mr Seamus R. Andrew, an English solicitor who has acted on behalf of the CC Companies in connection with the English proceedings since June 2010. This affidavit was not sworn for the purposes of this Enforcement Action. Mr Andrew swore it in support of his clients' defence to an allegation that they were in contempt of the English court by

failing to comply with a disclosure order. Mr Akiwumi makes the obvious point that Mr Andrew is not an officer of CCOG; he does not have firsthand knowledge of the transactions in question; and he is acting on behalf of clients who are going to extreme lengths to avoid having to satisfy their obligations and have been thoroughly discredited, as least in the eyes of the English courts. I approach Mr Andrew's evidence with caution bearing all these points in mind. However, I must also assume (in the absence of any evidence to the contrary) that Mr Andrew is acting properly in accordance with his professional obligations as an English solicitor and that he would not knowingly mislead the court. It seems to me that Mr Andrew could not properly swear an affidavit of this sort on the basis that he is doing nothing more than repeating what Messrs Shehadeh and Nasser have told him. It seems to me that he must make some enquiry to satisfy himself that what he is being told is true and complete. At paragraphs 130-144 of this affidavit, Mr Andrew explains in some detail the transactions amongst CCOG, Geopetrol, Virgin and the two Alfurt Companies which led to the stop notices being filed in this Court.

21. Mr Andrew says that in 2006 CCOG signed a production sharing agreement with Geopetrol and Virgin in relation to the two oil concessions known as the Alfurt and South Alfurt blocks in the Yemeni oil field. For reasons which are explained, he says that the Alfurt Companies were incorporated for the purpose of temporarily holding the participants' respective interests pending the grant of governmental approval for Geopetrol and Virgin to own their interests directly. Pending this government approval, CCOG held legal title to 100% of the shares. Geopetrol and Virgin's equity participation (20% and 22½% respectively) was established by a trust agreement and protected by the filing under GCR Oder 50, rule 11. The Yemeni government's approval was obtained on 21st April 2007, whereupon the ownership interest in the concessions was transferred to the participants. (The Yemeni Oil Ministry's written approval is exhibited to the affidavit, but has not been included in the evidence before this Court). Mr Andrew says that the Alfurt Companies had fulfilled their function by 21st April 2007. Since then, they have had no assets and are now dormant, shell companies.

22. This evidence actually confirms the inference that I would have drawn from Mr Morgan's evidence alone, namely that CCOG was the beneficial owner of 58½% of the issued share capital capital of the Alfurt Companies, being the proportion which was not held on trust for Geopetrol and Virgin. If Mr Andrew's evidence is true, CCOG is presumably now the legal and beneficial owner of 100% of the issued share capital (because the trust agreement has been discharged). However, he also says that the shares are now worthless. In fact, the ongoing liability for fees payable to the Registrar

of Companies and the registered office provider would mean that the shares constitute a liability rather than an asset. There is nothing inherently improbable about Mr Andrew's evidence. Nor does it appear to be inconsistent with any other evidence put before this Court. The onus is on Mr Masri to demonstrate that it will be of some benefit to domesticate the English Quantum Judgment against CCOG. Assuming that the Alfurt Companies have not been struck off the register or are restored on Mr Masri's application, I recognize that it would be possible for Mr Masri to commence enforcement proceedings which could ultimately result in him becoming the registered owner of at least 58½%, or more probably 100%, of the shares of both Alfurt Companies. However, Mr Akiwumi was unable to explain how this would benefit Mr Masri or what steps he would take next, given that there is no evidence at all tending to suggest that the Alfurt Companies themselves have ever had any assets in this jurisdiction.

23. In my judgment there is no basis upon which I can properly reject Mr Andrew's affidavit. In the light of this evidence, Mr Masri has not satisfied me that there is any tangible benefit to be gained from domesticating the English Quantum Judgment as against CCOG. I think that it will serve no useful purpose to allow the Enforcement Action to continue against CCOG with the result that I should exercise the Court's discretion by setting aside the *ex parte* order.

Evidence relating to CCIC

24. In the case of CCIC, it seems to me that Mr Masri can only meet the " tangible benefit test" if he can demonstrate that there is now or will be some prospect of being able to garnishee the debt of US$750,001 owing by BTC to CCIC. The evidence points to no other potential benefit. In order to obtain a garnishee order absolute against BTC, pursuant to GCR Order 49, Mr Masri will need to establish that (i) BTC is within the jurisdiction; (ii) BTC is indebted to CCIC (and not Citibank); and (iii) the garnishee order absolute will operate as a good discharge for BTC. For the purposes of persuading the Court to exercise its discretion to grant leave to serve CCIC out of the jurisdiction, Mr Masri does not have to establish that he *will* be entitled to a garnishee order absolute. He merely has to demonstrate that there is some prospect of being able to obtain an order nisi in the forseeable future, if not immediately,

25. It is not in dispute that BTC is "within the jurisdiction" within the meaning of Order 49, rule 1(1) because it is incorporated under the Companies Law and has its registered office in this jurisdiction. The fact that its principal place is business is in Azerbaijan does

not lead to a contrary conclusion. Nor is it in dispute that in October 2002 CCIC entered into a written contract (identified as Contract No. C-02-BTC-456195) with BTC by which CCIC undertook to construct an oil pipeline in between Baku in Azerbaijan and Ceyhan in Turkey ("the Pipeline Contract"). The final payment certificate reflects that CCIC has completed the construction work and that a final balance of US$750,001 (out of a total contract price of approximately US$228 million) fell due from BTC on 30th October 2008. As part of the financing arrangements between CCIC and its bankers, BTC was instructed and agreed to make payments due under the Pipeline Contract by wire transferring money to Citibank, New York for the further credit of CCIC's account with Citibank, Bahrain. For the reasons explained in paragraph 7 above, the last payment was not made in this way.

26. Two issues have been argued at some considerable length. In support of BTC's summons, Mr Kish has argued that this Court should recognize the decision of the Azeri Court of Appeal as having determined that BTC is indebted to Citibank rather than CCIC, with the result that any application by Mr Masri for a garnishee order would be doomed to fail. Mr Timms has not adopted this argument. At the outset of his submissions Mr Timms said that he was not going to argue the case for CCIC based upon the decisions of the Azeri courts. Instead, he submits that even if the debt is owing to CCIC (about which no admission is made), the *situs* of the debt is Azerbaijan, with the result that Mr Masri's proposed garnishee application would still be doomed to failure.

27. As a matter of Cayman Islands law, an ordinary trade debt is situate in the country where the debtor resides. The reason is that the country of the debtor's residence is normally the place where the creditor can enforce payment. The result is that enforceability and *situs* do not fully coincide: a debt will not normally be situate in a country if it is not enforceable there, but the fact that it is enforceable in a particular country does not necessarily mean that it is situate there. In the case of a company, "residence" in this context is equated with jurisdiction, with the result that it may have a residence in more than one place. The following passage from the judgment of Atkin L.J. in *New York Life Assurance Company –v- Public Trustee* [1924] 2 Ch.101 was approved by the Privy Council in *Kwok –v- Commissioner of Estate Duty* [1988] 1 W.L.R. 1035, at page 1041 –

> "…. 'Now, when you are dealing with a corporation, you are dealing again with a legal notion, and you have to examine the question where the debt can be said to be situate. It appears to me plain that a corporation according to our law is deemed to reside for the purposes of suit in the place where it carries on business in its own name, and in the case of corporations, you have many activities in many countries, such as the big insurance companies – for example, the

plaintiffs in this case. It appears to me that the true view is that the corporation resides for the purposes of suit in as many places as it carries on business, and it is to be noticed that in ordinary cases where an obligation is entered into by the corporation without any particular limits of the place where it is payable, inasmuch as that obligation is an ordinary personal obligation which follows the person, you have in each jurisdiction a right to sue the corporation there; the corporation is resident there, and the obligation is enforceable there. Under ordinary circumstances the debt would be situate in each place where the corporation can be found.' ...".

28. The evidence is that BTC is resident in at least two places. It is resident in the Cayman Islands because it is incorporated here. It is resident in Azerbaijan because it is carrying on business there. In these circumstances, Mr Timms says that the debt is situate in Azerbaijan and not the Cayman Islands. In support of this proposition, he relies upon *Jabbour –v- Custodian of Israeli Absentee Property* [1954] All E.R. 145 in which Pearson J. said –

"Where a corporation has residence in two or more countries, the debt or chose in action is properly recoverable, and therefore situated, in that one of those countries where the sum payable is primarily payable, and that is where it is required to be paid by an express or implied provision of the contract or, if there is no such provision, where it would be paid according to the ordinary course of business."

Mr Timms says that the Pipeline Contract must be primarily performable in Azerbaijan, the place in which its pipeline was constructed and a place in which BTC is carrying on business. BTC has agreed to pay sums due under the contract by crediting CCIC's account with Citibank, Bahrain, but this does not point to the conclusion that BTC is carrying on business in Bahrain or that the debt would be enforceable in Bahrain. I agree that these circumstances lead to the conclusion that the *situs* of this debt is Azerbaijan and that it is not property located in the Cayman Islands.

29. However, the fact that the debt is treated, as a matter of Cayman Islands law, as property located in Azerbaijan is not necessarily a complete answer to the question whether it would have some tangible benefit to put Mr Masri in the position of being able to apply for a garnishee order against BTC in this jurisdiction. He will not succeed in obtaining a garnishee order absolute without demonstrating that BTC will thereby obtain a good discharge from its contractual obligations to CCIC. The Cayman Islands conflict of laws rule is that I should look to the proper law of the contract to ascertain whether a Cayman court order can have the effect of achieving a discharge of the parties' contractual obligations. I refer to *Dicey & Morris The Conflict of Laws,* 10th Edition, Rule 152 as the most helpful statement of the common law applicable in this country (more so than Rule 208 in the current 14th Edition). It states –

"Rule 152. – The discharge of a contract normally depends upon the proper law of the contract.

(1) A discharge in accordance with the proper law of the contract is valid and effective in England.

(2) A discharge not in accordance with the proper law of the contract is not valid and effective in England. "

The application of this rule to the situation where a debt situate in one country arises under a contract, the proper law of which is that of a different country, leads to the following conclusion, at page 820 of the 10th Edition. *"A contractual debt may, and normally will, be regarded as "situate" at the debtor's place of residence, but the discharge of the debt, whether by performance or through other events, is a matter subject not to the lex situs of the debt but to the proper law of the contract from which it arises."*

30. At the end of the oral argument, which had not focused on this point, I was under the clear impression that the Pipline Contract was expressed to be governed by Azeri law. The decisions of the Azeri courts, on which I was addressed at length, addressed the effect of the alleged assignment to Citibank and also addressed, at least to some extent, the rights of Mr Manning who was made a party to the action. The Azeri courts did not address the effect of a garnishee order, which was hardly surprising since the Enforcement Action had not even been commenced at that time. In the absence of any relevant evidence of Azeri law, I felt unable to conclude that a garnishee order absolute would *not* constitute a discharge for BTC. In the absence of evidence, this must be regarded as an open issue. I therefore came to the conclusion that I should exercise the Court's discretion by allowing the Enforcement Action to go forward as against CCIC. I could not properly conclude that it would be futile. It seemed to be that it would be of some benefit, or at least potential benefit, to give Mr Masri the opportunity of obtaining a garnishee order because I could not exclude the possibility that it might be made absolute. In the absence of evidence on the point of Azeri law, it would have been wrong to pre-judge the issue against Mr Masri.

31. I announced my decision to this effect immediately without giving full reasons and moved on to the next stage of the proceeding because I was concerned about the inordinate delay which had already occurred. After further lengthy argument, I reserved my decision on BTC's summons. Whilst writing my composite reasons, I read the actual terms of the Pipeline Contract which had not been drawn to my attention during the oral argument. It is written in English and by Clause 51.1, it is in fact expressed to be governed by English law. This has a significant impact upon my reasoning for deciding the jurisdictional challenge in favour of Mr Masri. Instead of

looking to Azeri law, I should be looking to English law to determine whether a Cayman garnishee order absolute will provide BTC with a good discharge. If the applicable conflict rule had required me to look to Azeri law, the specific point in issue would have to be addressed by expert evidence given by Azeri qualified lawyers. No such evidence is before the court. However, for obvious reasons, it is the established practice of this Court to take judicial notice of English law.

32. As a matter of English law, it is clear that an obligation arising under a contract governed by English law cannot be discharged by foreign legislation, in this case GCR Order 49, rule 8. It follows that a Cayman garnishee order absolute will not operate so as to provide BTC with a good discharge. This conclusion is supported by the decision of the House of Lords in *Adams –v- National Bank of Greece* [1961] AC 255, which concerned a sterling bond issue made by a Greek bank. The proper law of the bondholders' contract and a related contract of guarantee was English law. Subsequently, the Greek government enacted legislation, the effect of which was to discharge Greek banks from their obligations in respect of bonds denominated in sterling or other foreign currencies. The bondholders sued in London and the House of Lords held that the proper law of the bondholders' contract was English law and that, accordingly, the bondholders were entitled to succeed because the bank's obligation arose under English law and could not be discharged by operation of foreign legislation. Similarly, BTC's payment obligation arises under the Pipeline Contract, the proper law of which is expressed to be English law. It follows that a discharge of BTC's payment obligation purportedly arising under Cayman Islands legislation, namely GCR order 49, rule 8, will not be recognised as a good discharge under the proper law of the contract.

33. In *Eram Shipping Company Ltd –v- Hong Kong and Shanghai Banking Corporation Ltd* [2003] UKHL 30 the House of Lords set aside a garnishee order made under the English equivalent of GCR Order 49 because it would not operate and a good discharge under the proper law of the contract under which the debt arose, which was Hong Kong law in this case. The judgment debtor had a credit balance on a bank account maintained with HSBC in Hong Kong. It was not in dispute that both the *lex situs* of the debt due from HSBC to the judgment debtor was Hong Kong and that it arose out of a contract, the proper law of which was Hong Kong law. HSBC carries on business and is resident in both Hong Kong and England, with the result that the judgment creditor was able to commence garnishee proceedings against the bank in England. The House of Lords set aside the order because an English garnishee order would not operate as a discharge under Hong Kong law. Lord Bingham said –

" (25) As appears from the provisions of primary and subordinate legislation cited above [ie. the English legislation and rules which are substantially the same as GCR Order 49], the discharge of the third party or garnishee on making payment to the judgment debtor under a final or absolute order has been an integral feature of this procedure from the beginning ..... (26) It is not in my opinion open to the court to make an order in a case, such as the present, where it is clear or appears that the making of the order will not discharge the debt of the third party or garnishee to the judgment debtor according to the law which governs that debt."

34. Since a Cayman Islands garnishee order will not be recognised under the proper law of the Pipeline Contract as a good discharge of BTC's obligation, it follows that BTC would continue to be exposed to a claim for payment in the Azeri courts or the English courts (which could exercise jurisdiction under CPR r.6.20(6)). For this reason I now conclude that Mr Masri will not succeed in obtaining a garnishee order absolute, even if it is established that the debt is owed to CCIC and not Citibank. I can see no other basis on which it will confer some tangible benefit to proceed with the Enforcement Action. It seems to me that it would be futile to do so. In my judgment it follows that, notwithstanding what I said at the end of the oral argument, I should exercise the Court's discretion by setting aside the *ex parte* order as against both CC Companies.

BTC'S SUMMONS FOR AN ORDER FOR REPAYMENT OF THE MONEY IN COURT

35. It may be said that BTC is entitled to an order on its summons as an automatic result of deciding the jurisdictional issues in favour of the CC Companies. Even if this is right, I should still explain the ruling which I would have made on BTC's summons if the jurisdictional issues had been decided in favour of Mr Masri.

<u>The money in court belongs to BTC</u>

36. BTC 's first argument is both simple and compelling. Mr Kish says that the money in court belongs to BTC. It was paid into court in response to the "recognition order". That order was set aside. No appeal has been lodged and the time for doing so expired long ago. An garnishee order nisi operates to create an equitable charge over the debt, thereby preventing the garnishee from paying the original creditor, but there would be no justification for forcing BTC to *pay* money into court in order to secure its liability to pay in the event that the order is made absolute, even if I had come to the conclusion that Mr Masri had a good prospect of obtaining an absolute order. It follows that there is no justification for ordering BTC to *leave* in court money which had been paid pursuant to an order which has now been set aside. Mr Akiwumi's response is that the money in court now belongs to CCIC and not BTC. In my judgment this argument is wholly unsustainable. If I have understood him correctly, Mr Akiwumi says that BTC

intended to pay this money to CCIC in satisfaction of the debt. He says that the money was paid into court with the intention of discharging BTC's obligation to CCIC, with the result that it became CCIC's money and therefore constitutes an asset of CCIC upon which Mr Masri could levy execution in due course. This argument ignores the evidence. The basis upon which BTC paid the money into court is explained in Mr David Grant's affidavit. I summarised his evidence in paragraph 7 above and do not need to repeat it here. BTC was confronted with competing instructions from Mr Manning, CCIC's English court appointed received, and Mr Joujou, its Lebanese court appointed administrator. BTC attempted to adopt a neutral stance by paying the money into court. It did so in the belief that the parties had agreed to resolve the conflict in the Cayman court, but this did not happen because Mr Joujou commenced an action in the Azeri court. I accept Mr Grant's explanation. If BTC had intended to pay CCIC and ignore Mr Manning's claim based upon the "recognition order", it would surely have credited $750,001 to CCIC's account with Citibank, Bahrain. In my judgment the money in court must belong to BTC.

37. Having set aside the Recognition Proceeding, I ordered that the money in court be transferred and held on account of the Enforcement Action as a means of preserving the status quo, as it then existed. BTC was not party to the Recognition Proceeding. It did not know about the applications made by CCIC upon which I adjudicated on 17th February 2010. I assumed that Mr Masri would proceed with his Enforcement Action, but I did not know what position would be adopted by BTC. Nor was I addressed about the Azeri proceedings and the purported effect of the Azeri court orders. By ordering that the money be transferred and held to the account of the Enforcement Action, I was simply intending to preserve the status quo and put the onus on BTC to ask for its money back, if and when it thought fit to do so. In my judgment BTC would be entitled to have its money back, unless Mr Masri had actually obtained a garnishee order nisi or CCIC (acting by Mr Manning) had obtained a judgment or at least a mareva injunction pending judgment. I should not freeze BTC's money unless I am satisfied, at the very least, that Mr Masri and/or CCIC are in a position to assert a claim against BTC and the circumstances are such that a mareva injunction or its equivalent would be warranted. Mr Joujou elected to sue BTC on behalf of CCIC in the Azeri court. Mr Manning elected to do nothing, at least not until after it was too late. Mr Masri failed to progress his Enforcement Action in a timely manner and has not succeeded in obtaining a garnishee order nisi. Even if one or other of them had commenced a proceeding or, in Mr Masri's case, pursued his action more diligently, there is no basis whatsoever for making what would amount to a mareva injunction against BTC. In the absence of evidence to the contrary, I should assume that BTC is a reputable, solvent company which is ready,

willing and able to pay its debts as they fall due. I have no hesitation in characterizing BTC as an innocent victim, caught in the cross fire between Mr Masri and CCIC. In my judgment there is no justification, in the present circumstances of this case, for making an order which will have the effect of freezing BTC's money.

The "double jeopardy" argument

38. The "double jeopardy argument" arises is two different ways. If the debt is owed to CCIC, a garnishee order made by this Court would expose BTC to the risk of having to pay twice for the reasons explained above. Alternatively, if this Court does not recognise that the debt is owed to Citibank (if this is what the decisions of the Azeri courts actually mean), then BTC would be exposed to the risk of double payment for an entirely different reason. Mr Kish, counsel for BTC, relies upon the second of these two arguments in support of his application for an order that the money in court be paid back to BTC.

39. It can be said that Mr Kish's argument is misconceived. If BTC is exposed to double jeopardy, the exposure exists in any event whether or not it has money in court. Conversely, I think that BTC is entitled to have its money back in any event, whether or not it is exposed to double jeopardy. Having decided to order that the money in court belongs to BTC and that it is entitled to have it back in any event, it is not strictly necessary for me to consider whether or not the Azeri court's decision would be recognised as a defence to a garnishee proceeding commenced by Mr Masri or an action by Mr Manning. I will do so because I have been addressed by counsel on this issue at length.

40. Clearly, a foreign judgment which is final and conclusive on the merits and not impeachable on some recognised ground is conclusive as to any matter thereby adjudicated upon, and cannot be impeached on grounds that it was wrongly decided on a matter fact or law. This principle applies if (i) the foreign court is regarded as a court of competent jurisdiction in accordance with Cayman Islands rules; (ii) there is an identity of parties; and (iii) there is an identity of subject matter. BTC challenged the jurisdiction of the Baku Court in reliance upon the arbitration provision contained in the Pipeline Contract. Having lost its challenge, BTC voluntarily submitted to the jurisdiction and contested the claim brought by CCIC (acting by its Lebanese administrator) on its merits. The result is that the Baku Court is regarded as a court of competent jurisdiction for these purposes.

41. Whether or not there is an identity of parties is more difficult to determine, partly because I am being asked to consider an issue which is, at least to some extent, hypothetical. On the assumption that the Mr Masri is able to commence a garnishee proceeding, the parties are Mr Masri as judgment creditor, BTC as garnishee and CCIC as judgment debtor. In the proceeding before the Baku court, the plaintiff is CCIC (acting by its Lebanese court appointed administrator) and the defendant is BTC. Mr Masri was not a party, but Mr Manning did participate. It is said that the requirement of identity of parties is satisfied because there is a privity of interest between Mr Manning and Mr Masri. For present purposes, I will assume that this is correct. In passing, I note that there is no evidence to suggest that Citibank has any knowledge of this litigation whatsoever.

42. I think that Mr Kish's argument falls at the third hurdle. I am not persuaded that there would be an identity of subject-matter. This involves identifying the issue which would arise on a garnishee proceeding in the Cayman court and ascertaining whether that issue has already been determined by the Azeri courts. The issue which would arise in the Cayman court is whether CCIC had effected an absolute assignment of its debt to Citibank, such that Citibank is now BTC's creditor. I am not persuaded that this is the issue which the Azeri courts have actually decided. Before explaining my reasons for this conclusion, it is important to make the observation that I have not had the benefit of any expert evidence from any independent Azeri lawyer who is able to explain the meaning and effect of the Azeri court decisions in an authoritative way. I have simply been presented with English translations of the judgments and the parties' Cayman Islands attorneys have made competing submissions about their true meaning and effect. This is not a satisfactory means of deciding disputed issues of foreign law. However, to the extent that I have to decide the issue at all, I must do my best with the evidence put before the Court.

43. At first instance, the Baku Court does not appear to have considered the credit agreement made between Citibank and CCIC, but it did have a copy of the letter dated 2nd October 2002 by which BTC was instructed to make payment to CCIC's account at Citibank, Bahrain. The Baku court found that –

> "The Court considers that the letter, dated 2 October 2002, sent by BTC Co by CCIC about assignment of the right to receive payments under the [Pipeline Contract] to Citibank N.A. Bahrain was in fact a contract entered into between CCIC and BTC Co to the benefit of Citibank N.A. Bahrain".

In the absence of evidence from an Azeri lawyer, I am unable to conclude that a contract for the benefit of a third party within the meaning of Article 403.1 of the Azeri Civil Code has the same legal effect as an absolute assignment under Cayman Islands law. The fact that the Baku court actually ordered that $750,001 "shall be withheld from BTC to the benefit of CCIC" suggests that the judgment should not be interpreted as a declaration that the debts arising under the Pipeline Contract had been assigned to Citibank. The fact that the judgment contains a good deal of discussion about the role of Mr Manning and findings that the English and Cayman court orders cannot be recognised also points to this conclusion. It seems to me that the effect of the English and Cayman orders would not be relevant to the question whether the receivables due under the Pipeline Contract had been assigned to Citibank.

44. The Azeri Court of Appeal upheld this decision without shedding any more light upon its meaning and effect. Its judgment states –

"On August 12, 2002 CCIC (owner of the claim) assigned all proceeds payable to it under [the Pipeline Contract] to Citibank (the third party) and the mentioned assignment was made official through the exchange of letter dated October 2, 2002 among CCIC, Citibank and BTC.'

This passage could be interpreted to mean that a contract of assignment had been concluded between CCIC and Citibank in August and that notice of the assignment had been given to BTC in October 2002. However, the next passage in the judgment appears to state that the October letter constituted some form of collateral contract made between CCIC and BTC "about the assignment". It states –

"Taking into consideration the above mentioned, the court believes that the letter dated October 2, 2002 about the Assignment of the rights to receive payments under [the Pipeline Contract] is a contract about assignment and there is no doubt to the validity of the contract".

The Court of Appeal goes on to find that "BTC breached the contract about the assignment by transferring the amount to the bank account of the Cayman court and, thus, caused damage to [CCIC]". I find this aspect of the judgment somewhat confusing because there is no discussion about Citibank's position. It seems plainly obvious to me that any assignment to Citibank could only have been by way of security. If the proper law of the contract of assignment was English or Cayman Islands law, equity would imply a right to re-assignment on redemption. In the event that the proper law of the assignment is Azeri law, I am bound to assume that it is the same in the absence of evidence to the contrary. It follows that Citibank's position is relevant. Does the credit facility still exist ? If so, is anything owing to Citibank ? Has Citibank made a demand ? Has there been a default ? If not, has there been a re-assignment ? None of these

questions have been addressed by CCIC in its evidence before this Court. Nor is there any indication that they were addressed in the proceeding before the Azeri courts. Indeed, there is a complete absence of evidence about Citibank's position. So far as I am aware, on the basis of the evidence before this Court, Citibank has no knowledge of any of this litigation.

45. In my judgment BTC has not established that it would be able to rely upon the judgment of the Azeri court as a defence to an application for a garnishee order. In the absence of compelling expert evidence, I am not prepared to treat an order that "the amount of $750,001 ... shall be withheld from [BTC] to the benefit of [CCIC]" either as constituting a declaration that the debt is owed to Citibank or as constituting an order consequential upon such a finding. In *Turner –v- London Transport* [1977] ICR 952, at page 966, Geoffrey Lane LJ (as he then was) said "a case of issue estoppels cannot begin to be established unless it can be ascertained with some degree of precision what it was that the dominant judgment in fact decided." To my mind, the meaning and intended effect of the Azeri judgments is uncertain and ambiguous. It follows that BTC would not be able to rely upon it as a defence to a garnishee application.

CONCLUSIONS

46. The *ex parte* order by which Mr Masri was given leave to serve the CC Companies out of the jurisdiction will be set aside on the ground that he has not established that the domestication of the English Quantum Judgment will have any tangible benefit for him, either now or in the future.

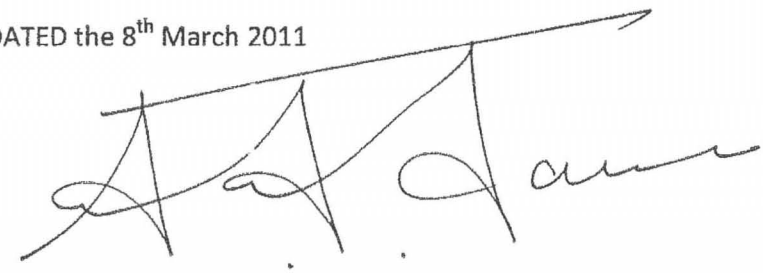
47. BTC is entitled to an order for the return of the money which it paid into court. The money in court belongs to BTC and there is no basis upon which the Court could properly require BTC to give security in respect of Mr Masri's intended application for a garnishee order. This would be so even if I had decided that (i) the order for service out of the jurisdiction should not be set aside and (ii) a garnishee order absolute would operate so as to give BTC a good discharge.

48. As regards Mr Manning, prima facie he had no right to be heard because he is not a party to the Enforcement Action. However, it is always open to the Court to hear a non-party if he has a sufficient and legitimate interest in the matter. I concluded that I should allow his counsel to make submissions in connection with BTC's summons. However, the mere fact that I was prepared to hear counsel for Mr Manning on someone else's summons does not lead to the conclusion that I should allow him to intervene in the Enforcement Action and become a party for the purpose of making his

own application for relief. BTC was allowed to intervene in the Enforcement Action because I had made an order which affects its rights – I ordered that its money be transferred and stand to the account of this action. Mr Manning rights (or the rights of CCIC which Mr Manning is entitled to assert) are not directly affected by the Enforcement Action. Mr Manning could have commenced an action against BTC. He chose not to do so and I can see no justification for allowing him to intervene in the Enforcement Action, even if I had not set aside the order for service out the jurisdiction. Technically, I think that Mr Manning's summons dated 28th January 2011 has the status of a draft because it was never filed and served. However, if it has been filed, I order that it be struck out.

49. Having heard counsel this morning on the question of costs, I decided that costs should follow the event. Thus, BTC will have the costs of its summons paid by Mr Masri. The CC Companies will also have the costs of their summons paid by Mr Masri. Having recognised that the CC Companies are indebted to Mr Masri, it seems to me that Mr Masri must be entitled to set off the amount of his liability for costs against the amount owed to him on the English Quantum Judgment.

DATED the 8th March 2011



The Honourable Mr Justice Andrew J. Jones QC