

3/15/11

**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION**



Cause No. FSD 79 of 11 (JJ)

**The Hon Mr. Justice Andrew J. Jones QC  
In Chambers, 3<sup>rd</sup> October 2011**

**IN THE MATTER of Section 46 of the Companies Law (2010 Revision)**

**AND IN THE MATTER of the Grand Court Rules 1995, Order 102(2)(1)(b)**

**BETWEEN:**

**ISRAEL OIL & GAS CORPORATION**

**Plaintiff**

**And**

**ISRAEL PETROLEUM COMPANY LIMITED First Defendant  
INTERNATIONAL THREE CROWN PETROLEUM LLC Second Defendant**

Appearances: Ms. Tina Asgarian and Mr. Michael Makridakis of Ogier for the Plaintiff  
Mr. James Eldridge and Ms. Caroline Moran of Maples and Calder for the Defendants

**RULING**

**INTRODUCTION**

1. Israel Petroleum Company Limited ("IPC") was incorporated under the Companies Law as an exempted company on 19<sup>th</sup> November 2009 as the vehicle through which a joint venture between Bontan Corporation Inc ("Bontan") and International Three Crown Petroleum LLC ("ITP") would be carried into effect. Bontan and its wholly owned subsidiary, Israel Oil & Gas Corporation ("IOG") are companies incorporated in Ontario,

Canada. ITP is a limited liability company incorporated in Colorado, USA and is owned and controlled by Mr. Howard Cooper.

2. In October 2009 ITC entered into a contract with Petromed Corporation whereby ITC was granted an option to purchase certain natural gas and oil exploration rights (referred to in the evidence as “the Concessions”) which had been granted to Petromed Corporation by the Government of Israel. ITC exercised its option and then assigned the Concessions to IPC pursuant to the terms of the Contribution and Assignment Agreement dated 14<sup>th</sup> November 2009 made between ITC, Bontan, IOG, Allied Ventures Incorporated (“Allied”) and IPC itself. Recital B to the Contribution and Assignment Agreement sets out the parties’ intentions regarding the relationship between the financial contributions that each of them would make to IPC and their corresponding shareholding in IPC. The authorized share capital is US\$50,000 divided into 50,000 ordinary shares of US\$1.00 each. Clause 3 of the Contribution and Assignment Agreement provided that IPC should issue 7,500 shares to IOG, 2,250 shares to ITC and 250 shares to Allied. By a subsequent agreement dated 14<sup>th</sup> April 2010, it was agreed that Allied would be deemed never to have owned any interest in IPC and that the interest originally intended to be owned by Allied would be re-allocated to IOG and ITC on a pro rata basis, such that IOG and ITC would be the registered holders of 7,679 and 2,321 shares, representing 76.79% and 23.21% of the issued (voting) share capital respectively. In fact, only 2,320 of ITC’s shares are registered in its own name. One share is registered in the name of another company, also controlled by Mr. Howard Cooper. Why this was done has not been explained in the evidence. It follows that IOG has the ability to pass both an ordinary resolution and a special resolution.
3. At the same time as entering into the Contribution and Assignment Agreement, the parties also entered into a Stockholders Agreement which regulates the management of IPC and confers certain rights on its shareholders. For present purposes it is relevant to note that Clause 2(a) provides that the management of IPC shall be vested in a single director. Clause 2(c) provides that the single director will be ITC (acting as a corporate director) and Clause 2A provides that it shall not be removed from office other for willful

misconduct which has a material adverse effect upon the project. However, the appointment of a new director in place of ITC may only be done on the vote of shareholders holding at least 80% of the issued share capital. It follows that IOG has the power to remove ITC from office (assuming that the willful misconduct requirement is met) but no power to appoint a successor without the approval of ITC.

4. The Stockholders Agreement also states the circumstances in which the parties may sell or transfer their shares in IPC. Clause 5 provides as follows –

(a) General Prohibition. *No stockholder shall sell, assign, transfer, give, pledge, encumber or in any way dispose of (collectively, a "Transfer"), any Shares, or enter into an agreement to Transfer any Shares, without the Director's prior written consent, which consent may not be unreasonably withheld, and unless (a) such Stockholder has complied with the provisions of this Section 5, and (b) the transferee of any such Shares has agreed to be bound by the terms of, and become a party to, this Agreement. Any purported Transfer in violation of any provision of this Agreement shall be void and ineffective and shall not operate to Transfer any interest or title to the purported transferee, and neither the Director nor any other Person shall be required to register such prohibited Transfer on the books and records of the Company.*

(b) Right of First Refusal.

(c) Exempt Transfer. *As used herein, the term "Exempt Transfer" shall mean a Transfer between a Stockholder and either (a) any Person that, directly or indirectly, through one or more intermediaries, has voting control of, is controlled by, or is under common voting control with, such Stockholder, (b) with respect to natural persons, such Stockholder's spouse, parents, children, siblings and/or grandchildren; (c) a trust, corporation partnership or other entity, whose beneficiaries, stockholders, partners, or owners, or other Persons holding a controlling interest, consist of such Stockholder and/or such other Persons referred to in the immediately preceding clauses (a) or (b); (d) with respect to any Stockholder that is a partnership, a limited partnership, a limited liability company or a corporation, such Stockholder's*

*partners, members or stockholders; or (e) the Company pursuant to the terms of an employment agreement, stock option agreement or similar agreement between such Stockholder and the Company; provided that in the event of any Transfer made pursuant to one of the exemptions provided by clauses (a), (b), (c) and (d), (i) the Stockholders shall inform the Company of such transfer and (ii) the transferee shall enter into a written agreement to be bound by and comply with all provisions of this Agreement, as if it were an original Stockholder hereunder, as possible.*

5. IPC's articles of association also contain a (common form) provision dealing with the transfer of shares. Article 9 provides as follows –

*The Directors may in their absolute discretion decline to register any transfer of shares without assigning any reason therefore. If the Directors to register a transfer they shall notify the transferee within two calendar months of such refusal.*

6. On 8<sup>th</sup> March 2011 Mr. Kam Shah (the CEO of IOG) sent an e-mail to Mr. Howard Cooper (the director of ITC) in the following terms –

*“Dear Howard:*

*Attached is a share transfer form by our wholly owned subsidiary, Israel Oil & Gas Corporation, for transfer of 750 IPC shares to Bontan itself and 750 IPC shares to our wholly owned subsidiary, 1843343 ONTARIO INC., together with supporting board resolutions of Bontan and each subsidiary. Under our Stockholders Agreement, this is a transfer exempted from the right of first refusal provisions, as both subsidiaries are, of course, under Bontan's common control. Per the Stockholders Agreement, I have also attached an opinion from Messerli & Kramer P.A. to the effect that the US Securities Act is inapplicable to the share transfers. Kindly confirm receipt of our transfer request and please forward an updated register of members, and related supporting resolutions, to document our share transfer.*

*Thanks much for your prompt attention to this matter.*

*Very truly yours,*

*Kam Shah*"

It is relevant to note that each of the share transfers expressly provides that the transferees agree to be bound as stockholders under the terms and conditions of the Stockholders Agreement.

7. On 11<sup>th</sup> March Mr. Howard Cooper responded as follows –

*"....ITC does not have sufficient information on which to base a decision whether to approve the proposed share transfers. As you know, ITC's approval is required under section 5(a) of the Stockholders Agreement and Article 9 of the Articles of Association. In light of the current disputes between the parties, ITC cannot approve the transfer without such information. Accordingly, please advise the purpose of the proposed transfer and confirm that the transfers will not have any effect on the issues in disputes between the parties. When we receive your reply, we will respond to your request"*

8. Mr. Kam Shah did not reply until 25<sup>th</sup> April. He said –

*"..... I can confirm to you that we wish to transfer these shares for the purpose of calling a meeting to discuss both the management of the company as well as other administrative matters relating to the day to day running of the Company, for example, the manner in which the audit of the company's accounts will be conducted pursuant to Article 70 of the Articles of Association. I do not think we are required to make any statement to you as to what impact, if any, this will have on the litigation. We have made a legitimate request to transfer shares for a legitimate purpose and your refusal to register the transfer can be for no reasonable purpose..."*

IPC's articles of association do not contain any provision whereby a shareholder can requisition an extraordinary general meeting of the company, with the result that IOG must rely upon section 61 of the Companies Law (2010 Revision) which provides that three members of the company shall be competent to summon a general meeting. The purpose of splitting IOG's shareholding amongst three Bontan Group companies is to meet this technical statutory requirement.

9. The following day, on 26<sup>th</sup> April, Mr. Howard Cooper communicated ITC's decision to refuse registration of the transfers. He stated his reasons as follows –

*"Kam:*

*In regard to your below request that ITC approve the share transfer, Article 9 of the Articles of Association of the company provides that "The Directors may in their absolute discretion decline to register any transfer of shares without assigning any reason therefore." ITC is within its rights under the Articles and Cayman law to refuse to register the transfer without giving a reason.*

*Further, Bontan is in continuing and substantial default of its obligations under the Contribution Agreement and Stockholders Agreement and has no legal basis for invoking provisions of the of the Stockholders Agreement for any purpose. In this regard, I call your attention to the fact that ITC has now had to advance to IPC Cayman another approximately \$222,000 to pay a cash call from the Operator for initial costs relating to preparation for the appraisal well. ITC has advanced approximately \$1,900,000 to IPC Cayman to keep it viable because of Bontan's failure to fund, and IPC Cayman has another approximately \$2,000,000 in outstanding liabilities that it has not been able to pay because of Bontan's failure to fund. As you know, it is ITC's position that Bontan has no legal entitlement to ownership to any share in IPC Cayman in view of its manifest*

*failure to perform its obligations, let alone the right to transfer any shares to a third party.*

*But even if the Stockholders Agreement could be invoked by Bontan, ITC has no obligation under the agreement to approve this transfer. As I previously indicated to you, in view of the litigation between the parties, and ITC's concern that the purported transfer are intended to prejudice ITC's legal claims, it was entirely reasonable for ITC to request confirmation from Bontan that the transfers would not be used in any manner to change Bontan's legal position in the litigation. Further, it was entirely reasonable for ITC to request the reason for the transfer, appearing as it has in the midst of the ongoing litigation, and frankly our suspicions are borne out by your refusal to give a reason.*

*It should also be noted that Section 5(a) of the Stockholder's Agreement provides that, "No Stockholder shall.....transfer.....any shares.....without the Director's prior written consent, which consent may not be unreasonably withheld...." Bontan did not seek ITC's prior consent as required but rather attempted to effect the transfer without our prior written consent as required by the agreement. The question of consent does not even arise in these circumstances, since the procedure prescribed in the agreement was not followed.*

*ITC declines your request to approve the purported transfers.*

*Howard"*

10. IOG responded by issuing its Originating Summons on 28<sup>th</sup> April 2011. It seeks (1) a declaration that ITC has unreasonably withheld its consent to the share transfers pursuant to the terms of Clause 5 of the Stockholders Agreement or, alternatively that in exercising its discretion under Article 9 ITC failed to act in the interests of the company and acted unreasonably; (2) an order pursuant to section 46 of the Companies Law that IPC's register of members be rectified; and (3) an order requiring ITC to issue share certificates

to the transferees. IPC and ITC, as defendants to the Originating Summons, now apply for orders that it proceed as if it had been commenced by writ and that it be stayed pending final determination of the action pending in the Tel Aviv District Civil Court.

## **THE ISRAELI PROCEEDINGS**

11. In order to put the Defendants' application into its proper context, it is necessary to have a general understanding of the Israeli proceedings which are described in an affidavit sworn by Mr Or Baron Gil, who is one of the lawyers acting for ITC. This proceeding originates from the fact that in January 2010 Petromed Corporation purported to rescind its agreement to assign the Concessions to IPC for reasons which are said to be connected with IPC's failure carry out critical seismic surveys. In March 2010 it was discovered that Petromed Corporation was negotiating to sell the Concessions to new investors. The dispute between Petromed Corporation and IPC was settled on terms that the new investors would take a majority interest in the Concessions in exchange for paying certain development costs incurred by IPC. The result was that IPC's economic interest in the Concessions was significantly diluted. At the same time, the Israeli Government published a directive to the effect that it would not approve the assignment of the Concessions to IPC and the new investors unless they were able to prove a collective "financial capability" in the sum of US\$100 million. It was a term of the settlement agreement that the new investors would provide IPC with a "financial umbrella", in effect guaranteeing its share of the financial capability requirement (which was US\$14 million) until 30<sup>th</sup> November 2010. If IPC was unable to meet its financial commitment within this timeframe, it would be required to elect between losing its (approximately 14%) interest in the Concessions or paying a fine of US\$28 million to the new investors. IPC's interest in the Concessions was held through a limited partnership called IPC Oil and Gas (Israel) LP ("the LP"), of which IPC was initially the sole limited partner and ITC was the general partner.

12. Then, on 13<sup>th</sup> October 2010 ITC caused IPC to enter into an agreement with the Ofers Brothers Group whereby it acquired half of IPC's interest in the Concessions in consideration for providing finance up to US\$28 million, thus enabling IPC to meet the financial capability requirement by the 30<sup>th</sup> November 2010 deadline. As a result of this transaction Ofers Brother Group became a limited partner in the LP with a 50% interest. Furthermore, on 25<sup>th</sup> October 2010, ITC caused IPC to enter into a contract with Shaldieli Ltd, a public company whose shares are listed on the Israeli Stock Exchange, whereby IPC exchanged its partnership interest in the LP for 90% of the issued share capital of Shaldeili Ltd. The purpose of this transaction, according to ITC, is to give IPC the opportunity to raise finance through a public offering of shares. However, Bontan and IOG assert that both the Ofers and the Shaldeili transactions were done by ITC (in its capacity as IPC's sole director) without their consent in breach of the terms of the Stockholders Agreement.
  
13. On 11<sup>th</sup> January 2011 Bontan and IOG commenced an action in the Economic Division of the Tel Aviv District Court against, inter alia, Shaldieli Ltd, IPC, ITC and Mr. Howard Cooper, by which they claim (i) a declaration that the Shaldeili transaction was void because it was concluded without their consent in breach of the Stockholders Agreement; (ii) an order that ITC be removed as director of IPC and general partner of the LP; (iii) consequential orders unwinding the Shaldeili transaction and compensating Bontan and IOG for their losses alleged to have been suffered; and (iv) orders compensating them for losses said to have been suffered as a result of the settlement agreement with Petromed Corporation and the agreement with Ofers Brothers Group. Put simply, the defence put forward by Mr. Howard Cooper on behalf of both ITC and IPC is that the Shaldeili transaction was in the interests of IPC; that Bontan/IOG's consent was not required on a true construction of the Stockholders' Agreement; and that they knew about and did not object to the Ofers Brothers Group transaction. Mr. Howard Cooper has also counterclaimed in the names of IPC and ITC asserting that Bontan/IOG are in breach of their funding obligations under the Contribution and Assignment Agreement, as a result of which it is alleged that IOG was not entitled to retain its shareholding in IPC. It is not disputed that the shares in IPC were properly issued to and registered in the name of IOG

pursuant to the Contribution and Assignment Agreement, but the Tel Aviv Court is asked to declare that the allotment of shares to IOG is void as a result of the subsequent breach.

14. Mr. Gil summaries the issues arising in this proceeding in paragraph 17 of his first affidavit in the following way –

*In light of the above, the following questions stand to be determined in the Israeli Proceedings:*

- 17.1 *whether Mr. Cooper and/or ITC have acted improperly in connection with the Shaldieli Transaction and the management of IPC generally;*
- 17.2 *whether ITC should be removed as the sole director of IPC;*
- 17.3 *whether Bontan's approval was required for the Shaldieli Transaction;*
- 17.4 *whether the Shaldieli Transaction is improper (either because Bontan's approval was not obtained, or otherwise) and whether it should be set aside;*
- 17.5 *whether the establishment of [the LP] and the Ofer Agreement were improper;*
- 17.6 *whether Bontan has breached its funding obligations pursuant to the Stockholders' Agreement and [Contribution] and Assignment Agreement;*
- 17.7 *whether Bontan (or more specifically, IOG) is entitled to the shares in IPC that are registered in its name, or whether the issue of those shares was void (and/or whether it should be required to transfer its shares to IPC, or in the alternative, to ITC); and*

17.8 *whether the Stockholders' Agreement remains in effect (and whether the rights conferred in it can still be relied upon by Bontan, notwithstanding their alleged breaches and failures)*

It will be immediately apparent that the issues arising out of the Originating Summons before this Court are not the same as those to be determined in the Israeli proceedings. There are two issues before this Court. The first issue is whether or not ITC (as sole directors of IPC) unreasonably withheld its consent to the split of IOG's shareholding amongst three Bontan group companies within the meaning of Clause 5(c) of the Stockholders Agreement, which is expressed to be governed by the law of the state of Delaware. The Second issue is whether or not ITC properly exercised its discretion under Article 9 in the interests of the company (as opposed to the interests of ITC and/or Mr Howard Cooper). The remedies sought are declarations, an order for rectification pursuant to section 46 of the Companies Law and an order requiring ITC to issue share certificates to the transferees. It is the Defendants' case that I should temporarily stay the trial of this Originating Summons until after the determination of the Israeli proceeding which is not likely to happen until the end of 2012 or beginning of 2013.

#### **APPLICATION FOR A TEMPORARY CASE MANAGEMENT STAY**

15. It is not in dispute that this Court has jurisdiction to grant a temporary case management stay. The Chief Justice's recognition of this inherent jurisdiction in *Re Sphinx Group of Companies* [2009] CILR 28 and *Ahmad Hamad Algosaihi and Brothers Company –v- Saad Investments Company Limited et al* [Unreported 25<sup>th</sup> June 2010] was confirmed by the Court of Appeal in the latter case [Unreported 1<sup>st</sup> December 2010]. In so doing, the Court of Appeal followed the decision of the English Court of Appeal in *Reichhold Norway ASA –v- Goldman Sachs International* [2000] 2 All E.R. 679.
16. In *Reichhold*, at first instance, Moore-Bick J. described the jurisdiction in this way –

*The court's power to stay proceedings is part of its inherent jurisdiction .... It is exercised under a wide variety of circumstances to achieve a wide variety of ends. Subject only to statutory restrictions, the jurisdiction to stay proceedings is unfettered and depends only on the exercise of the court's discretion in the interests of justice. I am in no doubt, therefore that I do have jurisdiction to stay the present proceedings; the question is whether it would ever be right to do in a case such as the present, and if so under what circumstances.*

This statement was approved on appeal and subsequently adopted in *Aglosaibi* by the Cayman Islands Court of Appeal, which answered the question posed by Moore-Bick J. in the following way. The Court should ask itself "whether the benefits which were likely to result from imposing a temporary stay so clearly outweigh any disadvantage to the plaintiff that this case was one of those cases in which 'rare and compelling circumstances' provided the 'very strong reasons' that justified doing so." In the circumstances of this case, I am not satisfied that any tangible case management benefits will flow from the grant of a stay and, even if some benefit can be identified, it certainly will not outweigh the disadvantages which would be imposed upon the Plaintiff.

17. Counsel for the Defendants asserts that there are extensive overlaps between the factual issues which arise on the Originating Summons and the Israeli proceedings and submits this is, by itself, sufficient to justify a case management stay. I do not accept this proposition for the following reasons. Firstly, it is perfectly clear that there is no overlap between the *causes of action* asserted by IOG/Bontan in the Israeli proceedings and those asserted in the Originating Summons. The only causes of action asserted in the Originating Summons are that ITC acted in breach of Clause 5 of the Stockholders Agreement by unreasonably withholding its consent to the share transfer/split and that ITC (in its capacity as the sole director of IPC) exercised its power under Article 9 unlawfully, because it did not act bona fide and in the interests of the company. It is perfectly clear that these causes of action, which did not arise until 26<sup>th</sup> April 2011, are not asserted in the Israeli proceedings. Even if it might now be possible for IOG to introduce these causes of action into the Israeli proceedings by re-amending its statement

of claim (a point which is not addressed by Mr. Gill in his affidavit), the Tel Aviv Court would have no jurisdiction to make an order for rectification of IPC's register because this is a statutory remedy arising under the Companies Law which can only be granted by this Court.

18. Secondly, whilst recognizing that differences in the pleaded causes of action do not necessarily mean that there will be no overlap between the factual issues, a proper analysis of the causes of action pleaded in these two proceedings leads me to conclude that there are no overlapping factual issues. Counsel for the Defendants says that the overlapping factual issues include (a) whether or not IOG is a shareholder of IPC; (b) whether the Stockholders Agreement remains in effect and can be relied upon by IOG; and (c) the merits of IPC and ITC's claims in the Israeli proceedings which in turn affect the "reasonableness" of ITC's decision to refuse the share transfer request. In my judgment, this submission reflects a misunderstanding of the issues which arise on the Originating Summons for the following reasons. Firstly, it is an unchallenged fact that IOG is registered as the holder of 7,679 ordinary shares in IPC. Whether or not ITC can establish that the issue of shares to IOG is capable of being rescinded is a matter of mixed fact and law which does not arise on the Originating Summons and will not be determined by the Tel Aviv Court for at least a year and possibly as long as eighteen months. Unless and until the register of members is rectified by an order of this Court, whether in recognition of a judgment of the Tel Aviv Court or otherwise, IOG is entitled to be recognized as a shareholder. Indeed, it appears that it is probably inherent in ITC's decision to refuse to register the transfers, as explained in the e-mail transmitted on 26<sup>th</sup> April 2011, that ITC recognized IOG as a shareholder. Secondly, the enforceability of the Stockholders Agreement is an issue of mixed fact and law which does not arise on the Originating Summons. By relying upon IOG's alleged failure to comply with the provisions of Clause 5 of the Stockholders Agreement, ITC was asserting that the contract (or at least Clause 5) is valid and enforceable against IOG. It is inherent in the first part of paragraph 1 of the Originating Summons, by which IOG seeks a declaration that ITC unreasonably withheld its consent pursuant to the terms of Clause 5, that IOG accepts that the Stockholders Agreement is valid and enforceable. It follows that the

validity and enforceability of the Stockholders Agreement is not in issue on the Originating Summons. Alternatively, if I have misunderstood the way in which ITC puts its case and it is not in fact relying upon Clause 5, then IOG would be able to withdraw the first part of paragraph 1 and the case would turn upon Article 9 alone. In other words, its validity and enforceable is either agreed or irrelevant for the purposes of the Originating Summons. Thirdly, I do not see how the merits of the parties' respective claims and counterclaims in the Israeli proceedings has any bearing upon the reasonableness or propriety of the decision made by ITC on 26<sup>th</sup> April 2011. The outcome of the Originating Summons turns upon an analysis of Mr. Howard Cooper's reasons for refusing to register the share transfers as set out in his e-mail and further explained in his subsequent affidavit. The *existence* of the Israeli proceedings and the *existence* of the claims and counterclaims reflected in the pleadings, as they existed on 26<sup>th</sup> April 2011, is relevant in the sense that it constitutes the background against which Mr. Howard Cooper made his decision, but the relative merits and ultimate outcome of the Israeli proceedings is not relevant. If the Tel Aviv Court determines that ITC is entitled to have the original share issue rescinded, this will not have the effect of retrospectively validating the decision made on 26<sup>th</sup> April. Conversely, the opposite determination will not have the effect of retrospectively invalidating the decision. It also follows that there is no risk of inconsistent decisions.

19. It seems to me that the parties have already filed affidavits containing all the factual evidence relevant to the adjudication of the Originating Summons, although the Plaintiff has indicated that it may wish to cross-examine Mr. Howard Cooper on paragraph 15 of his affidavit. The Plaintiff has filed an affidavit of Delaware law which is relevant to the determination of the Clause 5 issue. Whilst it seems to me that Mr. Stephen Bigler's statement of the applicable law is inherently unlikely to be controversial, I shall give the Defendants an opportunity to file an affidavit in reply if they wish do so. Subject to giving any necessary directions on these two points, this Originating Summons is ready for trial which can take place later this month, if not immediately.

20. For these reasons, I came to the conclusion that the grant of a stay will not result in any case management benefit. Having reached this conclusion, it was not necessary to consider the disadvantages which a stay would impose upon the Plaintiff. Suffice it to say that the Plaintiff issued its Originating Summons in this jurisdiction as of right and to the extent that it seeks an order for rectification under section 46, it is a remedy which only this Court can grant. As counsel for the Plaintiff rightly pointed out, a stay ostensibly granted for case management reasons would have the same practical effect as an interlocutory injunction restraining it from voting its shares. Whether or not there are grounds for granting any injunctions against either or both parties for the purpose of preserving the *status quo* pending the outcome of the Israeli proceedings is a matter for determination by the Tel Aviv Court. In my judgment there are no compelling case management reasons why I should make an order having this effect as against the Plaintiff.
21. The Originating Summons was properly issued in accordance with GCR O.102, r.2(1)(b) and my reasons for refusing a stay inevitably lead to the conclusion that I must refuse to order that the proceeding should continue as if it were an action commenced by writ. I therefore dismissed the Defendants' interlocutory summons and ordered that the Plaintiff's costs of and incidental to the summons be paid by the Defendants in any event. I will give directions for trial at a later date, having given counsel time to consider how they wish to proceed.

DATED this 3<sup>rd</sup> day of October 2011



**The Hon. Mr. Justice Andrew J. Jones QC**  
**Judge of the Grand Court**