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IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
CAUSE NO. 389 OF 1992

CAUSE 389/92

BETWEEN (1) INTERNATIONAL CREDIT AND INVESTMENT COMPANY OVERSEAS LTD. (In liquidation)

(2) FINANCE AND INVESTMENT INTERNATIONAL LIMITED

Plaintiffs

AND (1) SHAIKH KAMAL ADHAM
(2) FAISAL SAUD AL FULAIJ
(3) GHAITH RASHAD PHARAON
(4) PHARAOH HOLDINGS LIMITED
(5) LHASA INVESTMENTS LIMITED
(6) FINANCE AND INVESTMENT INTERNATIONAL LIMITED
(7) CONCORDE INTERNATIONAL TRADING S.A.

Defendants

For the plaintiffs: Charles Purle Q.C., and Mr. Timothy Shea.

For the 5th and 7th defendants: Ramon Alberga Q.C., and Mr. Edward Sibley

HARRE C.J. **RULING**

I shall first have to go into some matters of history before dealing with that part of the summons dated 10th August 1994 which seeks a partial stay of these proceedings.

Among the matters with which I sought to deal in a ruling dated 24th June were prayers for the following relief, which appeared in a summons dated 21st February filed by the fifth and seventh defendants ("the defendants") -

> "In the event that leave be granted to the Plaintiff in terms of paragraphs (i) and (ii)

and/or (iii) of its summons herein dated 25th November 1993, which leave is resisted by the said defendants -

(1) An order that all proceedings under heads (10) and (11) of the prayer to the Re-Amended Writ of Summons and under paragraphs 17 and 18 of the heads (7) and (8) of the prayer to the Statement of Claim be stayed on the grounds that -

(a) (i) leave to serve proceedings claiming such relief out of the jurisdiction would not have been granted on 28th October 1992 or at all,

(ii) the Cayman Islands is not the appropriate forum for the trial of the claims so made:".

The reliefs sought in the plaintiffs' summons dated 25th November 1993 which are there referred to were the striking out of Finance and Investment International Ltd. ("FIIL") as sixth defendant and its addition as a plaintiff and the amendment of the writ and statement of claim. I granted these reliefs and in the course of reaching my conclusions expressed the view that the question as to which is the appropriate court for the resolution of the proposed claim is a matter for consideration in the exercise of the discretion to give leave to amend. I determined that Cayman was clearly the most appropriate forum for the determination of the ownership of the

shares of the Attock Oil Company Ltd, a company registered in England in which FIIL, a company registered in Cayman claims beneficial ownership of all the shares.

I also considered argument as to whether the seventh defendant, a company incorporated in Panama, could properly be served with the amended pleadings out of the jurisdiction. The issues there were whether the proposed claim would fall within the guidance provided by English Order 11 rule 1 (i) (c) and whether it was a proper case for such service. The question of which is the appropriate court is also a matter for consideration in that context.

The principles applicable, and the extent to which they apply also to an application for a stay on forum non conveniens grounds, are set out in note 11/1/7 of the Supreme Court Practice 1993, with particular reference to the decision of the House of Lords in Spiliada Maritime Corp. v Consules Ltd, the Spiliada 1986) AC 460, where the authorities were comprehensively reviewed.

These matters were referred to as "The Jurisdiction Questions" in the defendants' arguments. The thrust of their submission with regard to a stay was to be found in the first paragraph in the written submission dated 25th February 1994 by Mr. McCombe. It is this -

> "If the correct procedure is to allow the amendment and to consider jurisdiction questions thereafter, the proceedings should be stayed on the application of Lhasa and Concorde, in accordance with their summons of

21st February 1994.".

As I had sought to deal with the jurisdiction questions I had nothing more to say about the stay, other than to express the view that what I had already said addressed it.

I have gone into all this because the defendants, in support of the further summons to which I shall now refer, have submitted that I did not give reasons for declining to grant a stay on the earlier application.

The further summons is dated 10th August 1994 and seeks an order that all proceedings in relation to the determination of the shares in the Attock Oil Company Ltd. ("AOC") be stayed. The relief sought was expressed as being an alternative to the vacation of the trial date but I have accepted that it is not a true alternative at the present time and deal with it accordingly. The summons is supported by an affidavit dated 4th August by Mr. S. Naeem Bokhari, an attorney of the Supreme Court of Pakistan, who represents the Attock Oil Company in proceedings in Pakistan, and by the tenth and eleventh affidavits of Mr. Edward Sibley of Berwin Leighton & Co., London. These affidavits refer extensively to the Pakistan suits in which assertions are made that the Pakistan Courts have no jurisdiction with regard to the beneficial ownership of the AOC shares, that jurisdiction vests exclusively with the English Court and that that issue has been decided in favour of FIIL by Mr. Justice Harman in his order of 12th March 1993. I was referred extensively to the records of these proceedings.

It has always been the defendant's case that the introduction into the pleadings of the issue relating to the AOC shares will call for oral and documentary evidence about policy and operational matters in relation to the company which can most readily be obtained in Pakistan.

In his submissions Mr. Sibley has, in my view quite rightly, urged me to consider, in relation to a decision whether or not to grant a stay, the desirability of avoiding conflicting decisions in different jurisdictions and duplication of costs, delay and inconvenience and the inappropriateness of considering and investigating the different procedures and reputations of different jurisdictions. He says that the nature of the dispute, the legal and factual issues, matters of local knowledge, the availability of witnesses and evidence, and the expense of the respective proceedings all point to Pakistan as the appropriate forum, to the extent that a stay should be granted here pending determination of the proceedings in Pakistan.

I have considered, but shall not refer at any length, to the authorities which Mr. Sibley cited, namely two appeals numbered 23 of 1993 heard by the Cayman Islands Court of Appeal and both involving a company called Insurco International Limited as plaintiff, with different defendants in each case; Ameen Rasheed Shipping Corporation v Kuwait Insurance Company (1984) 1 AC 50; and Trade Indemnity Plc. v Forsakringsaktiebolaget Njord. I say that because in my judgment the sole issue to be determined is whether new matters have been raised which justify revisiting the matter of the stay at all. It was on the basis that the introduction of grounds previously available but

not advanced would not suffice that I was urged not to entertain the application. The authority for that is to be found in Chanel Ltd. v F. W. Woolworth & Co Ltd. (1981) 1WLR 485. Even in interlocutory matters the party cannot fight over again a battle which has already been fought unless there has been some significant change of circumstances, or the party has become aware of facts which he could not reasonably have known, or found out, in time for the first encounter.

Mr. Sibley adopted a number of submissions which had been made by Mr. Alberga in his application for vacation of the trial date. There was evidence of the comparative cost of preparing for the trial here, including or excluding the AOC issue; further evidence as to whether or not delay in resolving the issues prejudice the plaintiffs, and of the effect of certain orders and decisions made since the last application which, it was said, would add to the difficulty of effectively preparing for the trial.

I need to make an observation about the proceedings in Pakistan. Reliance is placed in Pakistan by the present plaintiffs on the decision of Harman J in England in support of the the position of the directors of AOC appointed pursuant to that decision. They seek declarations here with regard to the share ownership of AOC, and they will undoubtedly call in aid the English proceedings also on that issue. What is being done in Pakistan on the basis of the English judgment does not seem to me to go to the question of which is the most convenient forum for dealing with the declarations. Having looked at the voluminous evidence about the Pakistan proceedings, I accept the evidence about them contained in the tenth affidavit of Mr.

Sheedy dated 16th August 1994.

Although much additional detail has been put before me, including evidence as to costs which are, as ever, a matter for concern, I find no new issue which could not have been previously before the Court which should lead me to reopen this matter of the stay.

I decline to do so and dismiss the application for that relief in the defendants' summons dated 10th August 1994.

Costs of the summons as a whole will be in the cause and leave to appeal against my decision on the stay is refused.

G. E. Harre
Chief Justice.

3rd October 1994.