Chambers
9.8.94

IN THE GRAND COURT OF THE CAYMAN ISLANDS

HOLDEN AT GEORGE TOWN, GRAND CAYMAN

CAUSE #389 OF 1992

BETWEEN:

INTERNATIONAL CREDIT AND INVESTMENT COMPANY (OVERSEAS) LTD (In liquidation) and 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
(7) CONCORDE INTERNATIONAL TRADING SA

Defendants

For the plaintiff: Charles Purle Q.C. and Ewan McQuater of Counsel instructed by Hunter & Hunter

For the defendants: Richard McCombe Q.C., Ramon Alberga Q.C. and Anthony Trace of Counsel instructed by Myers & Alberga

HARRE C.J.

REASONS FOR RULING

This was a ruling on the summons by the Fifth and Seventh defendants for vacation of a trial date that has been fixed for the 1st of November 1994. The applicable rule is Rule 49 of the Grand

Court (Civil Procedure) Rules which I do not accept, as was suggested by the plaintiff, has any negative emphasis as far as the giving of leave to vacate is concerned. The application is made on the following broad grounds -

1. At present the issues are not fully formulated in that the pleadings are not closed;
2. The material before the Court is not fully ascertained. There is further discovery to be made and on any showing the documentary material will be voluminous;
3. There is simply not enough time for solicitors and counsel to prepare for the trial;
4. Pendingappeal proceedings make the issues in the trial and the course which it will tak uncertain.
5. There is no prejudice to the plaintiffs in the postponement of the trial.

It is a fact that when a trial date was fixed the pleadings were closed, although there was known to be an outstanding application for leave to amend the writ and statement of claim. One of the issues which I need to consider is the extent to which the amendments subsequently allowed have increased the work of preparing for trial. There is deep difference of view between the parties as to that. The situation as perceived by the 5th and 7th defendants is as set out in an affidavit by Mr. Sibley, their solicitor, dated 14th July.

The amendments already allowed have changed the position on record of the second plaintiff (formerly the sixth defendant) and

added claims for declarations as to the beneficial ownership of the share capital of the Attock Oil Company Ltd ("AOC"). The allowance of the amendment is under appeal. It is contended that if the appeal is successful preparatory work on dealing with the new claim would have been wasted without proper compensation of costs in that what was previously only a corollary to the main point previously in issue has now become a principal part of the defence to the plaintiff's new claim to shares in AOC. Moreover matters under appeal relating to the pleadings determine what the ambit of those proceedings will be and the appeal should not be rendered nugatory by the plaintiffs' insistence upon a trial date fixed in different circumstances.

The plaintiffs' answer to this is put in the following ways. The first is that the assets to which beneficial ownership of the AOC shares gives control are oil resources which are by definition wasting assets, so delays are in the interest of the defendants and prejudicial to the plaintiffs; and the past actions of the defendants have shown evasiveness. It is, of course, the plaintiffs' contention that the Fifth and Seventh defendants are, in effect, Dr. Pharaon. They say that the issues of fact will be much the same whether the pleadings stand in their original or amended form. They will concern the questions as to who owns the proportion of the FIIL shares which are in dispute; whether the transactions relating to those shares were genuine; was there a conspiracy to injure ICIC or FIIL or both; and what is the truth of the version given by the Fifth and Seventh defendants with regard to the history of the AOC shares. The changes in the pleadings, they argue, have a dramatic effect on the relief

claimed but little on the issues of fact. They also stress, on the matter of prejudice, that it is important that matters of accounting in relation to benefits alleged to have accrued to the fifth defendant, and particularly a dividend of L1,800,000 which OAC declared for 1991, be resolved as soon as possible. The plaintiffs seek an interim payment in respect of this, but this issue cannot effectively be addressed in advance of the main action.

On the understanding that it was done without prejudice to the defendants' contention that the trial date should be put back, a timetable for the completion of the preparatory steps was arrived at. Assuredly this court wants to make sure that the issues are fully formulated, that all material is available and that each party has time to prepare for trial, but it does not appear to me at this time to be impossible to achieve those goals in accordance with that timetable.

What concerned me most was the possibility - indeed the certainty if a special sitting of the Court of Appeal could not be arranged - of appeals relating to the pleadings still being undetermined at the time of commencement of trial. Fortunately the prospect of such a special hearing is good following an application to the Court during its current session.

This case involves a number of busy counsel from London and their instructing solicitors. Any postponement of trial will, I am told, involve many months delay. I believe that it is in the interest

of justice for all parties to continue to work towards the original trial date and I so order.

The defendants' summons to vacate is dismissed.

G.E. Harre

Chief Justice

9th August 1994