JUDGMENT : MR JUSTICE CHRISTOPHER CLARKE. Commercial Court. 10th October 2007

1. I have before me two applications. The first is an application of 7th August 2007 by Mr Kryton Lendoudis ("the defendant") to set aside an order of Mr Justice David Steel made on 24th May 2007 whereby he ordered , inter alia, (i) that E.D. & F. Man Sugar Limited, ("the claimant"), should have permission to enforce an arbitration award of 16th March 1994 and a supplementary award dated 14th April 1994 ("the Awards"); (ii) that judgment be entered in terms of the Awards for $ 295,461.39; (iii) that the defendant should pay interest on the judgment debt at 8% from 16th March 1994 until payment ; and (iv) that a Greek Court judgment turning the Awards into a Greek executable title should be registered for enforcement in England and Wales.

2. The second application was made on 19th September 2007 by the claimant, also seeking to set aside paragraphs 1 – 4 of the order of 24th May 2007, and asking for judgment to be entered for the claimant for $ 317,731.10

3. The reason for this paradoxical state of affairs, where both the claimant and the defendant seek to set aside an order that the claimant obtained, lies in the chequered history behind the two applications.

4. On or about 5th November 1987 the claimant entered into a contract with the defendant for the provision by him of a vessel to carry a cargo of 12,000 m.t. of sugar from Poland to Jedda. The contract, which was evidenced, by a conline booking note, named the carrier as "*Aquarius Red Sea Line*". It contained an arbitration clause providing for disputes to be settled by arbitration in London.

5. The claimant claimed that the defendant was liable under the contract and had breached it. It began arbitration proceedings against the defendant and appointed Mr Christopher Moss as its arbitrator. The defendant challenged the validity of the arbitration proceedings and the jurisdiction of the arbitrator on the grounds that he was not a party to the contract.

6. The claimant believed that the proper party to the contract was the defendant or, alternatively, a company of his named Evalend Shipping Co S.A. ("Evalend"). On 20th January 1988 the claimant applied to the High Court for declarations to give effect to those contentions and for a declaration that the arbitrator had jurisdiction to settle any dispute.

7. After a contested hearing, at which the defendant was represented and during which he was cross-examined, Mr Justice Evans concluded that he was party to the contract, and made a declaration to that effect. He also declared that Mr Moss had jurisdiction as sole arbitrator to settle any dispute between the claimant and the defendant arising under the contract. The defendant did not appeal that order.

8. On 16th March 1994 the arbitrator made the first of the Awards in which he held that the claimant's claim succeeded in full. He awarded and adjudged that the defendant should pay $ 171,268.62 to the claimant together with interest and costs. He corrected a typographical error in the first award by a supplemental award of 14th April 1994. The defendant did not seek to appeal the Awards, although he continues to deny any liability.

9. The claimant then took steps to enforce the Awards in Greece. On 12th May 1995, following a hearing on 30th March 1995, in judgment 2976/1995 the Court of First Instance in Athens considered an application by the Claimant asking "*for the recognition, and declaration as executable in Greece*" of the Awards. The dispositive part of the judgment records that the Court:

   "Accepts the application

   Recognises and declares as executable in Greece the London arbitration award of 16-3-1994 as amended by the supplementary award of 14-4-94 of the arbitrator Christopher Moss"

10. The defendant appealed against judgment 2976/1955. On 25th May 1999, the Athens Court of Appeal dismissed the appeal. The Defendant then appealed to the Greek Supreme Court of the Areopagus. On 27th June 2001 that Court dismissed the appeal to it.

11. On 23rd May 2007, less than six years after the decision of the Supreme Court, but more than six years after the decision of the Court of First Instance, the claimant issued a claim form under Part 8 in the form of an arbitration application. In it the claimant sought an order pursuant to CPR Part 62.18 (c) and section 26 of the Arbitration Act 1950 granting permission to enforce the Awards as a judgment and further or alternatively sought, pursuant to CPR Part 74.3 (c), to register the judgment of the Court of First Instance, as upheld by the Court of Appeal and the Supreme Court. In this respect the claimant relied on Council Regulation (EC) No 44/2001 of 22nd December 2000 ("the Judgments Regulation") alternatively the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters ("The Brussels Convention"). The arbitration application was supported by the first witness statement of Mr Nicholas Parton of 23rd May. On 24th May Steel, J made the order to which I have referred.

12. The order provided for service of the order, the arbitration application and Mr Parton's witness statement by first class post or courier at the offices of Evalend in Athens. Service took place in accordance with the order. The defendant applied to set aside service of the order within the time limit specified in it.

13. Each limb of the application was, as the claimant now accepts, defective. The application under section 26 of the Act had become barred pursuant to section 7 of the Limitation Act 1980 which provides that an action to enforce an award, where the submission is not by an instrument under seal, shall not be brought more than six years after the date when the cause of action accrued. The application to enforce the judgment of the Court of First Instance was misplaced. That judgment was a judgment giving judicial recognition to the Awards and thus fell within Article

1 (2) (d) of the Judgments Regulation ("*This Regulation shall not apply to: … (d) arbitration"*) alternatively Article 1(4) of the Brussels Convention. Neither of these matters was drawn to the judge's attention.

14. Faced with this problem, the claimant now contends that it is entitled to enforce the judgment of the Court of First Instance, as twice confirmed on appeal, at common law; and that it is entitled to summary judgment.

15. Neither the claim form nor Mr Parton's first witness statement in support of it gave any indication that the claimant was seeking to enforce the Greek first instance judgment at common law by an action on the judgment. What was sought was leave to enforce the Award under section 26 and recognition of the first instance judgment pursuant to the Judgments Regulation alternatively the Brussels Convention

16. In his skeleton argument Mr Stephen Robins for the claimant submitted that this does not matter. The claim is an arbitration claim under Part 8 of the CPR: CPR 62.3 (1). Although the claim form did not plead a claim at common law, it did plead the existence of the Greek judgments. But points of law do not have to be pleaded. If, as he put it, "*the Defendant persists in this line of argument"* (that the common law claim had not been pleaded) the claimant would seek the Court's permission to add the words "*or alternatively judgment at common law*". Mr Robins indicated in his oral submissions that he was making such an application, if it was necessary for him to do so.

17. In *Metall und Rohstoff A.G. v Donaldson Lufkin & Jenrette Inc* [1990] 1 Q.B. 391 the defendant applied to set aside an order for service of the writ out of the jurisdiction. The Court of Appeal, as the head note reveals, held that, on the submission by the plaintiffs that they had a claim against the defendants for maliciously instituting legal proceedings, the court would assume in their favour that there was such a tort and the plaintiffs could be said to have instituted such proceedings. but it would reject the submission on the ground that the issue could not be raised in the Order 11 proceedings as the plaintiffs had neither raised nor identified the issue in their pleadings.

18. The reasoning of the Court is set out in the judgment of Slade LJ in which he referred to the observations of Lord Denning, M.R. in ***In re Vandervell's Trusts (No 2)*** [1974] Ch 269, 321: *"It is sufficient for the pleader to state the material facts. He need not state the legal result. If, for convenience, he does so, he is not bound by, or limited to, what he has stated".*

19. He went on to say: *"We respectfully agree with this statement as a general proposition. However, it was not made in the context of a pleading intended to be served out of the jurisdiction, to which we think rather different conditions apply. In our judgment, if the draftsman of a pleading intended to be served out of the jurisdiction under Order 11, r. 1 (1) (f) (or indeed under any other sub-paragraph) can be reasonably understood as presenting a particular head of claim on one specific legal basis only, the plaintiff cannot thereafter, for the purpose of justifying his application under Order 11, r. 1 (1) (f). be permitted to contend that that head of claim can also be justified on another legal basis (unless, perhaps, the alternative basis has been specifically referred to in his affidavit evidence, which it was not in the present case). With this possible exception, if he specifically states in his pleading the legal result of what he has pleaded, he is in our judgment limited to what he has pleaded, for the purpose of an order 11 application. To permit him to take a different course would be to encourage circumvention of the Order 11 procedure, which is designed to ensure that both the court is fully and clearly apprised as to the nature of the legal claim with which it is invited to deal on the ex parte application, and the defendant is likewise apprised as to the nature of the claim which he has to meet, if and when he seeks to discharge an order for service out of the jurisdiction.",*

20. On the assumption that those observations have continuing validity under the CPR regime , the claimant in the present case is in a similar difficulty to that which faced the plaintiff in ***Metall & Rohstoff*** and also in *DSQ Property Co Ltd v Lotus Cars Ltd*, The Times June 28th 1990.

21. Mr Robins submits that that difficulty can be circumvented by the grant of permission to amend the claim form. There will then be no discrepancy between the pleaded claim and the basis upon which the claimant seeks to justify its claim to judgment. In this respect the claimant may pray in aid the fact that it is open to the Court, at least in some cases, to give retrospective permission to serve a document out of the jurisdiction, if permission for such service is required: ***National Justice Compania Naviera S.A. v Prudential Assurance Co Ltd (No 2)*** [2000] 1 WLR 603 – a case that was not cited in argument. In that case the document was a summons against a third party for an order under section 51 of the Supreme Court Act 1981 that he should pay the applicant's costs of an action. The primary basis for the Court's decision that the service of a summons was not caught by the Brussels Convention was that the application did not involve "*suing*" i.e. pursuing a substantive cause of action at all.

22. In ***Grupo Torras S.A. v Al-Sabah*** [1995] 1 Lloyd's Rep 374, 392-3 Mance J, as he then was, had to consider the circumstances in which points of claim could be amended when proceedings had been served out of the jurisdiction in accordance with leave given for that purpose, but an application had been made to set aside the order giving leave to serve. He recognised that in those circumstances a plaintiff could not amend his pleading to introduce a new cause of action but rejected the submission that a plaintiff could not make ancillary amendments which did not do so. The decision of the Court of Appeal in ***ABCI v BFT*** [2003] 2 Lloyd's Rep 145, 154 similarly confirms the rule against amending to introduce a new cause of action during the currency of a challenge to the order giving permission to serve out.

23. Mr Robins also contends that the judgment of the Court of First Instance only became final and conclusive when the Greek Supreme Court dismissed the defendant's appeal from the Court of Appeal. An action upon the judgment brought in May would have been commenced less than six years after the date of the Supreme Court's judgment and thus would not be caught by section 24 of the Limitation Act 1980, which provides that no action shall be

brought upon any judgment after the expiration of six years from the date on which the judgment became enforceable. An action brought now would be one brought after the expiry of that period. An amendment to the May Part 8 claim would, therefore, involve adding a cause of action after the expiry of the limitation period. But the case falls plainly within CPR 17.4. (2) which provides that, even where the limitation period has expired: "*The court may allow an amendment whose effect will be to add or substitute a new claim, but only if the new claim arises out of the same facts or substantially the same facts as a claim in respect of which the party applying for permission has already claimed a remedy in the proceedings*".

24. The defendant, Mr Robins submits, has always had full knowledge of the awards and judgments that have been made against him. He has no defence on the merits and should not be allowed to escape enforcement of the Greek judgments because of a failure to state in the claim form the correct legal basis for enforcing the judgment against him.

25. I accept that the circumstances fall within CPR 17.4. (2). But the course that Mr Robins invites me to take seems to me to be inconsistent with the principles set down by the Court of Appeal in *Metall & Rohstoff*, and those confirmed in ***Grupo Torras*** and ***ABCI v BFT***. If permission is now granted to the claimant to amend his claim form the court will have lent its aid to a circumvention of the procedure for granting permission to serve proceedings out of the jurisdiction - the very mischief at which the Court's judgment was directed. The claimant will have got round the fact that David Steel J was never apprised, either by the claim form or the witness statement in support, of any intention on its part to bring an action on the Greek judgment nor, until a matter of days before the present application, was the defendant apprised of the true nature of the claim which he had to meet. The claim form and the witness statement in support can only be reasonably understood as presenting a claim on the two specific legal bases referred to in it, namely section 26 of the Arbitration Act 1950 and the Judgments Regulation alternatively the Brussels Convention. Mr Parton's first witness statement made no reference to any part of CPR 6.20, let alone rule 6.20 (9) which applies where "*a claim is made to enforce any judgment or arbitral award*". For the claimant now to seek to amend its claim so that it becomes an action on the judgment would be to introduce a new cause of action and a new basis of claim.

26. The question remains whether or not the approach laid down in ***Metall*** is applicable under the CPR. The CPR regime is, of course, a set of new rules, albeit modelled on the former Rules of the Supreme Court. The Court is to seek to give effect to the overriding objective of dealing with cases justly in interpreting the rules: CPR1.1. (1) and 1.2. (b).

27. It seems to me, however, that the principles to which I have referred remain applicable. The new Rules do not reduce the desirability of preventing any circumvention of the proper procedure. I can see the force of a suggestion that, if permission to serve out can be granted retrospectively, the first mischief that ***Metall & Rohstoff*** was designed to preclude – that the court is not "*fully and clearly apprised as to the nature of the legal claim with which it is invited to deal*" – will still arise since, in those circumstances, the Court will never have considered the question of service out. But it does not seem to me right on that account now to ignore the principles laid down in ***Metall & Rohstoff*** and confirmed in ***Grupo Torras*** and ***ABCI v BFT***.

28. The position might be different if there was no basis upon which the defendant could hope to resist the grant of permission. Mr Robins submits that this is such a case. Mr Phillips for the defendant submits that there are two grounds for resisting an order for service out on a new basis. The first is that the claimant says – see paragraph 23 of Mr Parton's witness statement - that it has been unable to find any assets of the defendant in the U.K. in the defendant's name (but Mr Parton expresses a strong belief that he has taken all possible steps to avoid having any assets in his name in the UK or Greece). The second is that there is or may well be a limitation point available to the Defendant.

29. The first point appears to me to be weak, although it derives some assistance from a passage at paragraph 7.56 of *Briggs & Rees, Civil Jurisdiction & Judgments* (4th ed, 2005), which observes that the question of whether England is the proper place in which to bring the claim is extremely unlikely to be a significant issue "*unless the defendant can show the absence of assets, and the predictable continuing absence of assets within the jurisdiction*". A footnote (no 500) then adds: "*And, even if he can, it is far from clear that this would lead to a denial of permission to serve out*". The latter is, however, a point of substance, with which I deal below, and upon which more evidence is needed.

30. In those circumstances there seems to me nothing unjust in applying the principle in ***Metall & Rohstoff.*** On the contrary I regard it as appropriate to do so. Accordingly I decline to allow the amendment sought or to grant retrospective permission to serve the amended claim form out of the jurisdiction.

31. I am conscious that the effect of the refusal of an amendment may be that any fresh action may be time barred. I do not, however accept that that should cause the court to take a different approach. An approach designed to discourage circumvention of the procedure for obtaining permission should not be jettisoned simply because, in a particular case, the effect of refusing an amendment means that an action to enforce is time barred.

32. In case I am wrong on that I turn to consider whether the claimant is entitled to summary judgment. The conditions under which a foreign judgment may be enforced in England & Wales are set out in Rule 35 of Dicey. The judgment must be "*(a) for a debt, or definite sum of money (not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty) and (b) final and conclusive*".

33. Many legal systems, including our own, distinguish between a court judgment which orders the payment of a sum of money to the claimant in the amount of an award, and one which allows the claimant to execute an award as if it was a judgment. In England the distinction is contained in section 26 of the Arbitration Act 1950 and sections 66 (1) and (2) and 101 (2) and (3) of the Arbitration Act 1996. The distinction reflects the different provenance of the court's powers. Section 66 (1) is derived from section 12 of the Arbitration Act 1889. Section 66 (2) is derived from section 13 of the Arbitration Act 1934. The distinction between the two may be critical, e.g. as to whether or not a person subject to the order is in contempt: ***ASM Shipping Ltd v TTMI Ltd*** (2007) 2 Lloyd's Rep 155. An order allowing the claimant to execute an award as if it was a judgment is comparable to an *exequatur* as applicable in civil law systems: see *Dicey, Morris & Collins, The Conflict of Laws* (14th Ed 2006) para 16-160. .

34. It is not obvious that the judgment of the Court of First Instance falls into the former as opposed to the latter category. In form it "*recognizes and declares as executable in Greece*" the Awards. Taking the words at face value they signify that the Court is ordering that execution may take place on the Awards in the same manner as a judgment as opposed to the Court itself giving judgment for a money sum.

The evidence of Mr Sotiriadis

35. In this respect there is a conflict of evidence between the Greek law experts. Mr Constantinis Sotiriadis for the claimant expresses the opinion that the Awards have been "*turned into a Greek executable title*" by virtue of the judgment of first instance as confirmed by the two appellate judgments; and that the first instance judgment simply recognized the Awards and declared them enforceable but did not actually set out the calculations, the amount due being set out in a judgment ("the detention judgment") rendered in 1997, to which I refer below, in which the defendant was ordered to be detained in prison for non payment of the amount due. He goes on to say that "*when a foreign court judgment or arbitration award is declared enforceable in Greece what happens is that the Greek judgment and the foreign judgment/award merge into one. In practice this means that the source of the parties' rights is still the foreign judgment/award, but not in its original state: it acquires legal effect in Greece to the extent that the Greek judgment has allowed this.*"

The evidence of Mr Vernicos

36. On the other hand Mr Vassilis Vernicos, instructed by the defendant, draws attention to Article 904 of the Greek Code of Civil Procedure entitled "*Executable Titles*" which provides that "*Executable Titles"* are:

    "(f) The foreign titles that have been declared enforceable".

    Article 406 provides that "*the foreign arbitral awards are declared enforceable in accordance with article 905, para 1, if the conditions of article 903 are met".*

37. From this Mr Vernicos concludes that it is clear that the foreign arbitral award does not turn into a Greek executable title. "*Greek Courts merely declare that a foreign arbitral award is executable in the Greek jurisdiction. To that extent the Greek procedure is similar to that of an exequatur*". The foreign arbitral award is always the executable title, by virtue of which the compulsory execution procedure can be effected by the claimant within Greek jurisdiction. He says that it is incorrect to submit that the Greek and the foreign judgment/award merge. In consequence the first instance judgment is not for a "*debt or definitive sum of money*" but only a judgment declaring the award enforceable in Greece.

The detention judgment

38. The detention judgment was given by the Court of First Instance on 30th April 1997. By that judgment the defendant was ordered to be detained in prison "*as a means of necessary execution*" of the Awards. The defendant appealed. In 1998 his appeal was allowed on the basis that the provisions for detainment of a merchant were abolished in Greece on 5th August 1997. In March 2000 the claimant appealed against the judgment setting aside the detention order and in 2001 the Court of Appeal confirmed the validity of the detention order. The defendant then issued a further appeal against the detention order on fresh grounds. In 2003 the Court of Appeal held that the law providing for the detention of a merchant had not been entirely abolished. The Court invited the production of further evidence, which has happened, and the decision of the Court of Appeal is pending.

39. The detention judgment records the submission of the claimant that the defendant should be detained as a means of execution of the Award which was adjudged enforceable by "*decision 2976/1995 final decision of the court of first instance of Athens and by which the defendant was ordered to pay $ 267,976.27 and £ 30,466.35 sterling with interest until payment*". The judgment, which was decided in the absence of the defendant and which records that as a result of the defendant's absence the contents of the claimant's court documents were deemed to be admitted, orders the personal detention of the defendant as a means of execution of the awards, which it describes as "*executable in Greece*" by reason of the first instance judgment and goes on to say "*and the defendant was ordered to pay $ 267,976.27 etc".*

Judgment for a money sum?

40. Mr Robins relies on that as an indication that the decision of the Court of First Instance constituted a money judgment. That may be so but, in the light of the fact that it was a judgment in default on deemed admissions and in view of the opinion of Mr Vernicos I cannot be satisfied that it is. In addition the detention judgment has, itself, been successfully appealed, then restored, and is now under appeal again. It would not be right to grant summary judgment without sight of any of the subsequent judgments.

41. Mr Robins also submitted that assistance was to be derived from three authorities, the first of which is ***Stolp & Co v Browne & Co*** [1930] 4 D.L.R. 703. In that case, in the Ontario Supreme Court, Logie, J., was concerned with an award made pursuant to the rules of the Netherlands Flour Trade Association. The award was deposited by one of the arbitrators in the Chancery office of the Arrondissement Tribunal in Amsterdam with a request that it be made executory. The judgment records that the award was: "*duly made executory or a judgment of the Arrondissement Tribunal … whereupon, it was alleged by the plaintiffs, the same acquired the same executory force as a judgment of the Arrondissement Tribunal ..*"

42. The question for the court was expressed by the judge to be whether the judgment of the Arrondissement Tribunal could be sued on in Ontario. The argument for the defendants was that the judgment was not in reality a judgment of the court and that the order made was merely an order for execution.

43. The order of the Arrondissement Tribunal was appended to the award, which contained, inter alia, the arbitral sentence. The order was that "*this sentence shall be executed after its form and contents and in the ordinary way of execution*". Logie J had before him an opinion on Dutch law from a Dutch barrister who said that by virtue of the order the arbitral sentence "*acquired the same executory force as a judgment of the Arrondissement Tribunal*".

44. Logie J held that the order of the Arrondissement Tribunal was a final judgment that might be sued upon in Canada. In so doing he relied on a passage then in Dicey to the effect that *"an award of an arbitrator abroad does not come within the definition of a foreign judgment until the same is made an order of the Court; it is then merged in that order, which is in effect the judgment of the Court in the matter"*.

45. I am not wholly convinced that the judgment in ***Stolp*** adequately marks the distinction between an order permitting a claimant to enforce an award as a judgment and a judgment by the court for a monetary sum. I note also that, whilst the passage in *Dicey* relied on in ***Stolp*** was in similar terms to the evidence of Mr Sotiriadis, that evidence is disputed by Mr Vernicos. I also note that the current edition of *Dicey* contains in Rule 64 the following paragraph: *"Where, as is often the case, the foreign judgment upon the award has the character of an exequatur, a formal order giving leave to enforce the award comparable to an order under s.66 of the Arbitration Act 1996, that which is enforced in England will probably always be the award and not the order. It has been seen above that where a foreign judgment has been obtained on the award it is a matter of some doubt whether the award may be enforced. But the distinction between enforcing the award and enforcing the order declaring an award enforceable may be insubstantial"*.

46. I do not therefore regard ***Stolp*** as a case which compels the conclusion that the order of the Court of First Instance was a judgment for a definite sum of money.

47. The two other cases upon which Mr Robins relied were ***East India Trading Co Inc v Carmel Exporters and Importers Ltd*** [1952] 2 QB 439 and ***International Alltex Corporation v Lawler Creations Limited*** [1965] IR 264. In each of these cases, however, the action was brought on what was unquestionably a judgment of the foreign Court for a money sum.

48. There is a further reason why summary judgment would be inappropriate. If a foreign judgment is to be enforceable it must be "*final and conclusive*". But it need not be non-appealable. The position is explained in the speech of Lord Watson in ***Nouvion v Freeman*** (1889) 15 App Cas 1,13: *"in order to [have] its receiving effect here, a foreign decree need not be final in the sense that it cannot be made the subject of appeal to a higher court; but it must be final and unalterable in the court which pronounced it; and if appealable the English court will only enforce it subject to conditions which will save the interests of those who have a right of appeal"*.

49. If, therefore, the decision of the Court of First Instance is to be regarded as final and conclusive, the six year limitation period will have begun when it became so. If that was on 12th May 1995 the limitation period expired in May 2001, six years before the order of Steel J in May 2007. The limitation period would also have expired if the decision of the Court of First Instance only became capable of execution when the detention judgment was given. The expert evidence before me does not address this point with sufficient specificity. Mr Sotiriadis' statement of 10th May 2007 observed that the Supreme Court judgment is "*final, unappealable and enforceable*" and that the enforceability in Greece of the Award "*which has been turned into a Greek executable title by virtue of*" the first instance judgment cannot be further challenged. This begs the question as to when the first instance judgment became enforceable as opposed to unappealable.

50. I have considerable difficulty in understanding how the judgment of the Court of First Instance, or at the very least, that judgment taken with the detention judgment, was other than final and conclusive in the sense that that test is understood in English law. The judgment does not, on its face, indicate that it was stayed or suspended. (The detention judgment records that "*according to the summons there is no appeal/objection being considered*"). On the basis of it the defendant was sentenced to imprisonment. The Court of Appeal and the Supreme Court dismissed the appeals to them on the grounds that they had been filed out of time and the defendant had not established that the claimant had not followed the appropriate procedure for service of the proceedings before the Court of First Instance or had acted deceitfully.

51. In those circumstances I am far from persuaded that there is no limitation point available to the defendant. On the contrary it seems to me inherently likely that there is one.

52. Accordingly, even if I had granted permission to amend and given retrospective permission to serve the amended claim form out of the jurisdiction, I would not have given summary judgment. The fact that the basis of any claim to

enforce the Greek judgment by action rests on what may be shaky foundations because of the limitation position confirms me in my refusal of the permissions to which I have referred. This is a case which cries out for being dealt with in a proper and orderly way; and not in circumstances where, because of the claimant's necessary volte-face the claimant has come evidentially unprepared to deal adequately with the very real limitation problems and the defendant has had precious little time to do so. If an application for leave to serve out had been made without notice upon the basis that the claimant was pursuing an action to enforce the judgment, then, on my present understanding of the material, I would have been reluctant to grant permission without an adequate explanation as to why the limitation period did not begin to run until the judgment of the Supreme Court when execution in the form of imprisonment could take effect in 1997.

Public policy

53. Mr Phillips submits that it would be contrary to public policy to give effect to an action on the judgment. To do so would, he submits, circumvent section 7 of the Limitation Act which precludes the bringing of an action to enforce an award more than six years after the date when the cause of action accrued. I am not persuaded that this is so. The Limitation Act provides a six year limitation period (in most cases) for claims under an original cause of action, claims to enforce an award, and claims to enforce a judgment. It makes no provision that an action on a judgment may not be brought within six years of the judgment if the judgment is one which gives effect to an award. Nor do I think that the Court should be astute to produce the same result, when Parliament did not choose to do so, particularly when the reason for actions being brought on judgments or awards giving effect to causes of action is likely to be that a defendant, who owes money, has neither made compensation for the original breach, nor honoured the resulting award, nor satisfied the subsequent judgment.

54. That that is the correct view appears to me to be established by the decision of the Court of Appeal in ***E.D & F. Man (Sugar) Ltd v Harayato***, 17th July 1996 LTA 95/7245/B; Times Law Reports 9.8.96. The facts were that the present claimant had in 1989 obtained a judgment in the High Court giving effect to an arbitration award in its favour. That award itself ordered the payment of sums due but unpaid under a settlement agreement in 1986 in respect of causes of action which arose in 1982. In 1995 the claimant brought a fresh action on the 1989 High Court judgment. The defendant contended unsuccessfully before Longmore, J., that the Court had no jurisdiction to entertain an action on an earlier judgment of the court. On appeal it was contended that any supposed right to a second judgment would circumvent the Limitation Act, and open the prospect of an indefinite series of further actions on the judgments that had gone before.

55. The Court of Appeal held that the bringing of an action on a former judgment was a matter of right. As Leggatt. LJ. put it: *"Suing on a judgment, at all events for the first time, cannot be said to defeat legislative policy. That is plain from the very language of section 24 of the Limitation Act 1980 … Here the second action was, of course brought within [the] limitation period".*

The effect of the Court's decision was that original award would be enforced by an action on a judgment well beyond six years after the accrual of the cause of action on which the award was based.

Conclusion

56. In the result I propose to do no more than to set aside the order of Steel J.

Stephen Robins (instructed by Jackson Parton Solicitors) for the Claimant
S.J.Phillips and Jessica Sutherland (instructed by Swinnerton Moore Solicitors) for the Defendant