Munib Masri v (1) Consolidated Contractors International (UK) Ltd. (2) Said Tawfic Khoury (3) Consolidated Contractors Group SAL (Holding Company) (4) Consolidated Contractors International Co SAL (5) Consolidated Contractors (Oil & Gas) Co SAL

JUDGMENT : JUDGE MACKIE: Commercial Court. 25th May 2007

1. This has been an application by the claimant, Mr. Masri, for relief against the fourth and fifth defendants. He seeks an order that they be prohibited from commencing or pursuing proceedings in the courts of any other jurisdiction, including, in particular, the courts of Yemen, and that they be ordered to discontinue the proceedings which they have brought there. I am going to give my decision and brief reasons straightaway as I consider that the answer is clear.

2. This is, as I say, an application for an anti-suit injunction. I bear in mind, when dealing with the particular points which have arisen between the parties, the structure within which the court operates when dealing with these applications, which is summarised in CPR 25 and in CPR 25.1(12) in particular.

3. The evidence before the court consists of witness statements from Mr. Morgan, Mr. Khalid Tariq Abdullah (a lawyer in the Yemen) and a response to that from Mr. Barnard on behalf of the claimants. I also have files containing a mass of material generated by this substantial and long-running piece of litigation. With that in mind, at the outset I invited Mr. Hoyle, and those instructing him, to let me know whether they disputed what seemed to me, other than for a couple of contentious sentences, to be an objective summary of the complex litigation and of the events which preceded it, which is to be found in Mr. Salzedo's skeleton argument between paras. 3-16. As no objection has been taken to that summary it should be treated as incorporated in this judgment.

4. Against those facts and the procedural history, it is next instructive to compare, on the one hand, the order of the court made by Mrs. Justice Gloster, following her determination of the issues on liability in this case on 28th July 2006, with, on the other hand, the relief sought and the information available so far about the proceedings which the fourth and fifth defendants have brought in the Yemen.

5. The order of this court includes a declaration in para.1. These are 1.1: *"The parties to the written agreement dated 6 November 1992 were the claimant, the fourth defendant and the fifth defendant"*.

   And 1.2: *"The Agreement has not been terminated by any of the claimant, the fourth defendant or the fifth defendant and the Agreement therefore remains in existence"*.

   That is to be compared with the proceedings now brought in Yemen between, on the one hand, the fourth and fifth defendants as claimant/plaintiff, and, on the other hand, Mr. Masri as defendant. The case is described as *"In the matter of the claimant's termination of the arrangement agreement signed on November 6 1992. Object, declaration of the termination of the Memorandum of 6 November 1992 to the defendant"*. That has some eight pages, at the end of which a variety of relief is claimed, including an order that the arrangement of 6 November 1992 be declared to be terminated on the grounds of the defendant's breach of the same. There is also a Yemeni equivalent to further or other relief upon which Mr. Hoyle places some emphasis. On the face of the documents, the sorts of issues being raised in Yemen are precisely those which have already been decided by Mrs. Justice Gloster and which are currently under appeal to the Court of Appeal.

6. The first question that has arisen this morning is that of jurisdiction. Mr. Salzedo for the claimant relies upon the principles concerning the jurisdiction for anti-suit injunctions found in ***Airbus Industrie GIE v Patel*** [1998] UKHL 12 particularly in the speech of Lord Goff. In the course of submissions he developed that by referring to a case relied upon by Mr. Hoyle, that of ***Turner v Grovit*** [2001] UKHL 65, when it was in the House of Lords, before going to the ECJ, and, in particular, the speech of Lord Hobhouse. The speech of Lord Hobhouse contains a summary towards the end, when dealing with that particular issue, in these words:

   "Therefore, to summarise, the essential features which made it proper, under English law, for the Court of Appeal to exercise its power to make the order in the present case are -

   (a) The applicant is a party to existing legal proceedings in this country [which is the case here];

   (b) The defendants have in bad faith commenced and propose to prosecute proceedings against the applicant in another jurisdiction for the purpose of frustrating or obstructing proceedings in this country [that is at issue today];

   (c) The court considers that it is necessary in order to protect the legitimate interest of the applicant in the English proceedings to grant the applicant a restraining order against the defendant [also in issue today]".

   That is an encapsulation of the position which Mr. Salzedo developed by reference to passages in ***Glencore*** and ***The Kapetan Markos.*** These led him to the submission that, when properly read, the conclusion one draws from these cases is that the jurisdiction to grant this injunction is the very jurisdiction which gave rise to the proceedings in the first place. The fact that these proceedings were properly brought against the defendants, who later acknowledged service, and jurisdiction established in the first place, is of itself sufficient to give rise to a jurisdiction to bring an anti-suit injunction in order to protect the integrity of the underlying proceedings.

7. That is a position with which Mr. Hoyle, for the defendants, disagrees. He contends that the claimants must establish a jurisdiction based on a legal or equitable cause of action. There has got to be a foundation for that jurisdiction. Where does it come from? It does not come from the original CPR Part 6 jurisdiction. He says the claimant's claim must be the subject of a full jurisdiction assessment, with the burden on the claimant to show why there is jurisdiction over two foreign companies exercising their right to lodge a suit in Yemen, before being

allowed to proceed. He says that the original jurisdiction against the defendants was based on grounds now found to be misconceived following the judgment of Mrs. Justice Gloster. That of itself is accepted to be correct, subject to one qualification. He then goes on to say that no part of the original discussion on jurisdiction canvassed the pursuit of the alleged equitable right of seeking an injunction to prevent CCI taking proceedings overseas. There is therefore no basis for jurisdiction here.

8. I disagree. It seems to me that Mr. Salzedo is right, essentially for the reasons set out in the authorities to which he has taken me. As I say, the jurisdiction over the defendants as regards this application is that of the underlying action which it seeks to protect. I can see no reason why applications against existing defendants to protect the integrity of an action should have to leap a new jurisdictional hoop. If that were required some defendants could avoid anti-suit injunctions by simply changing address.

9. The jurisdiction having been established, the next question that arises is the purpose of the Yemeni proceedings and whether the defendants' actions fall within the categories recognised by English authority as justifying an anti-suit injunction. The defendants deny that they are in any sense abusing the court, or acting vexatiously. They claim to have entirely legitimate reasons for having brought their action in Yemen, they are simply resisting enforcement as they are entitled to do. At first this was their only point. The defendants argue that the claimant is seeking to use the English High Court to prevent a foreign court, that might be seised of enforcement, applying its own laws and practice to the issue. They submit that an order, as sought by the claimants, trespasses on the sovereignty of the foreign court. The claimant will have to go to the foreign court to enforce his judgment and any argument about enforcement should take place in the foreign court without an English court interfering with the process.

10. That then begs the question of what the Yemen proceedings actually are because, as Mr. Salzedo points out, there is a distinction between two activities: (1) Opposing enforcement on grounds available on enforcement which is legitimate and will not be restrained by the English court, and (2) commencing proceedings for the collateral purpose of creating a ground of objection to enforcement. That is not legitimate where the proceedings are duplicative and could not possibly succeed except by contradicting the English judgment. There is, it seems to me, an obvious distinction to be drawn between attempts to resist enforcement, which of course the defendants are entitled to take, and attempts to re-litigate what has already been decided in a case as part of a plan of campaign to make enforcement more difficult. Such attempts at relitigation are not legitimate. The action in Yemen falls, and clearly falls, into the second category and not into the category of legitimate steps to resist enforcement in a foreign court.

11. That then brings me to the second and more recent ground upon which it is contended by the defendants that they have a legitimate reason to do what they are doing, despite the fact that the action in Yemen appears on its face to be a re-run of the issues decided by Mrs. Justice Gloster. The foundation for this second and more recent submission is the evidence of Mr. Khalid Abdullah, who is a lawyer and the owner of the law firm in the Republic of Yemen, which has brought the suit before the primary commercial court in that country. The evidence of the witness is that: "*The purpose of the suit filed by my firm is to protect the rights of CCC and other parties under the production sharing agreement for the Mazilla field",* at the heart of all this and known to everybody in this litigation as the PSA. This is the agreement whereby CCC and others have developed and can continue to exploit the Mazilla field. He says: *"It is my professional opinion that the court and Ministry of Oil and Minerals would regard the 1992 Agreement and condemnation of the judgment of the English court as to its continuing effect, as an assignment of a beneficial interest and the concession given the clear wording in the 1992 Agreement".*

He then sets that out. He also says that in the absence of the suit being brought by his clients in Yemen there is a clear danger that the 1992 agreement, in combination with the judgment issued by the Commercial Court, will be regarded under Yemeni law as tantamount to an ongoing assignment of an interest in the PSA without the Oil Ministry's consent and thus a breach, which could lead to termination of the PSA to the enormous disadvantage of the defendants. The witness statement goes on to describe the purpose of those proceedings as being to achieve three things. One purpose is for the court to deem the 1992 Agreement to have ended by virtue of Mr. Masri not fulfilling the conditions precedent therein. The witness goes on to say that the suit was drafted as it was, drawing on the format of the English proceedings as a preliminary process for the purpose of registering the suit before the court. Further information and amendments will be made during the course of the proceedings after receiving the response of the defendants to the suit.

12. The defendants urge that as the underlying purpose of the Yemen action is to protect the right of the parties under the PSA, and that was not the subject of the litigation in England there is no sensible basis for an injunction being imposed. It is also suggested that the Yemeni court is the best place to decide upon the consequences of the PSA, a special agreement created by a Yemen statute. This is a submission which I doubt would be shared by other parties to the PSA bearing in mind its clear provisions both as to the applicable law and also as to who is to decide disputes, that is to say arbitrators, and where they are to do so, that is to say, London. The defendants add that it is hardly surprising that Yemen regards the exploitation of its natural resources as subject to public policy considerations. It is therefore submitted that the ends of justice do not require the injunction sought.

13. That submission is resisted by Mr. Salzedo. He submits that there is nothing in the point. He says that the agreement does not amount to an assignment of CCC's interest in the concession under English law. It is an agreement for payments to be made calculated by reference to the expenses and income of the concession. The PSA is governed not by Yemeni law but by international principles. If Mr. Abdullah is correct to say that the

Government of Yemen might have such an argument under Yemen law to terminate the PSA, it is, as he puts it, "*truly bizarre*" that the defendants have chosen to advertise the matter in the courts of Yemen in a way that, according to Mr. Abdullah, will inevitably cause the Government to become involved. He makes other points to that effect.

14. It seems obvious and to be accepted by Mr. Abdullah, that, at least in the form they now take, the proceedings in Yemen are an attempt to re-litigate the central issues in the English litigation. It is not a question of, to use an old fashioned expression, a writ with a two line endorsement being issued in order to preserve some position. The Yemeni proceedings run to a number of pages and make it very clear what they are about. On the face of the documents, one thing they are not about is the PSA, which is not even mentioned, and which, at least on one reading of the suit, is specifically excluded from the list of documents centrally relevant to the litigation. I am unconvinced that Mr. Abdullah's opinions disclose his clients' real purpose. Mr. Abdullah may have been misinformed or under-informed about the English litigation. On the basis of the clear resemblance between the two sets of proceedings and on the evidence before me, looking at the background of this litigation and having regard, as one is entitled to do, the experience of this court in similar situations over a long period of time, I do not believe that the reasons put forward by Mr. Abdullah are the reasons why the defendants themselves have chosen to take this course. It seems to me abundantly clear that what they are doing is seeking to have decided instead in Yemen something which they are obliged to have decided here. Even if there were substance in what Mr. Abdullah says I would still grant the injunction. The position put by Mr. Salzedo is that England is clearly the appropriate forum. That forum has been determined. The defendants have submitted, in the sense that I have discussed earlier in this judgment. Even now the defendants are seeking to use the English court where it suits them by appealing on liability. This, as he puts it, is a case where it is hard to imagine a clearer situation for the exercise of the court's jurisdiction to restrain the carrying on of foreign proceedings. I agree.

15. A couple of other issues that have arisen are these. First, it is suggested that a reason not to grant an injunction is the fact that this is not a race to judgment because matters have already been determined in England, and that element of the difficulty caused by duplication of proceedings is not present. That is correct so far as it goes, but it leaves outstanding all the other vices that go with duplication of proceedings which are too well known for it to be necessary for me to enumerate. I also reject the suggestion that somehow because a judgment has been given jurisdiction falls away, or there is some other reason why the court should not exercise its jurisdiction. It seems to me, in a position where a case is under appeal and where it is an international case at the sophisticated end of the Commercial Court scale, the precise moment at which a judgment is given in one court or the other is for this purpose neither here nor there.

16. I therefore conclude that the grounds for an injunction being granted are made out and, indeed, it seems to me are overwhelmingly clear. The defendants are before the English court. They are trying to have matters which are partly before this court tried somewhere else. That is going to cause all manner of difficulties if it is permitted to continue, and it is with no hesitation that I will grant an injunction in terms which I will now discuss with counsel.

LATER:

17. The points which arise on the order are, first, this use of the word *"status"* where I have sympathy with Mr. Hoyle's submission. That will be replaced by "*existence, validity and/or termination*".

18. The next question is whether it should be worldwide or not. The factors were relatively balanced until I asked the defendants if they were in a position to say what their intentions were as regards seeking to bring proceedings in other countries. I received the discouraging response, *"No instructions"*. It, therefore, seems to me appropriate, and proportionate, to make it worldwide. If there is some reason for the defendants wishing to sue Mr. Masri in say the Virgin Islands, there is no harm in requiring them, before taking that step, to come here and ask.

19. The next issue that arises is the defendants' request for some sort of proviso permitting them to come back to this court should they wish to reformulate their proceedings as against Mr. Masri in order to safeguard their position under the PSA. I am not going to grant that. At the moment there is an enormous chasm of credibility between what the defendants and their lawyers say the proceedings are intended to be, and the form they currently take. On the basis of the information and material that I have before me, I do not consider that the PSA point was a legitimate reason for bringing these proceedings and I am not going to dignify it further by agreeing to some proviso.

MR. S. SALZEDO (instructed by Simmons & Simmons) appeared on behalf of the Claimant.
MR. M. HOYLE (instructed by LeBoeuf, Lamb, Greene & MacRae) appeared on behalf of the Defendants.