

CA on appeal from Central London Civil Justice Centre (HHJ Serota QC) before Gage LJ; Mr Justice Bodey. 13th October 2006.

LORD JUSTICE GAGE:

1. This is an appeal against part of a judgment of HHJ Serota QC given on 14 December 2005 at the Central London County Court. The order of the judge was that the defendant, the appellant, should pay to the claimants the respondents £53,500 inclusive of interest. In this judgment, I shall throughout refer to the parties as claimant and defendant.
2. This sum comprised two separate claims for work done by the claimant for which only one is the subject of this appeal. In the proceedings as a whole there were three claims, two of which succeeded and one of which the judge rejected. The claim the subject of this appeal is the third claim described as the claim in respect of executive offices. To understand the issues in the appeal, it is necessary to sketch in a little of the background.
3. The first claimant, Mr Nasser Abadi, is a builder, trading as Atlas Builders. The second claimant is a company incorporated in May 1998 and is jointly owned by the first claimant and an architect, Mr Al-Tuhafi. It carried out architectural and construction work. The defendant is a doctor of medicine described by the judge as a distinguished Saudi businessman. Having set out in his judgment the defendant's business career the judge continued:

"In 1992 he joined the company Projects for Health ("PHP") and he remains there today, I believe as its principal director. One of the witnesses, a Mr Jacobs, produced a document during the course of the hearing relating to PHP. It is responsible for the running of some 16 hospitals and has an annual turnover in excess of £300 million.

"It was a feature of this case that the defendant has used a number of corporate vehicles and his personal business activities, including offshore companies. I hasten to stress that I do not say this in any critical sense. There is no suggestion the defendant has acted in any way unlawful or unethically but the use of these vehicles is important background to the dispute."

4. The judge made further reference to PHP in paragraph 10 of his judgment: *"PHP is a company incorporated in Saudi Arabia. The shareholders or the beneficial interest in the shares are held by the defendant and Dr Al-Sogair. There is an English company known as PHP (UK) Limited which acted as a recruitment agent for PHP in Saudi Arabia. It has two issues of £1 shares. It has played no part in these proceedings."*
5. Finally, for the purposes of this appeal it is necessary to refer to Stamford Hospital Limited. The judge said of that company: *"Stamford Hospital Limited is an English company which carried on the business at Stamford Hospital. The defendant became a director, I believe, in 1999. I have seen a statement of affairs of Stamford Hospital Limited, I believe dated 23 March 1999, which showed no assets to speak of that were not charged and a shortfall of nearly £7.5million in liquidation and £1.8million in an administration."*
6. The claim the subject of this appeal was in respect of work done by the claimants in respect of executive offices at Stamford Hospital to a value, as the judge found, of £26,432.39 plus interest, that being the balance due in respect of the work. The issue on this appeal is whether the judge was right to reject the defendant's evidence and contentions that the work had been carried out for and on behalf of PHP and not him personally. All the claims were very stale claims.
7. The Particulars of Claim detailing all three claims were served in November 2004. The first was for work done at the defendant's home, 19 Grove Park Gardens, in or about 1999. No invoice was raised until May 2004. The agreement was alleged to have been an oral agreement between the claimant and the defendant. The defendant disputed that the work had been carried out. In respect of that claim, a witness called by the claimant described the work carried out at Grove Park Gardens by him. The judge found that witness to be an honest and reliable witness and found that some work had been carried out and that the defendant was personally liable to pay for it. That was the subject of a ground of appeal; I refused permission in respect of that claim and it forms no part of the hearing today.
8. The judge rejected the second claim for essential work alleged to have been carried out at Stamford Hospital. The judge accepted that work had been carried out at the hospital but found that orders for maintenance after the end of March 1999 were on forms stamped "Stamford Hospital Limited in Administration", the company having gone into administration in March 1999. Accordingly, he found that the claimants were aware of this fact and that the defendant was not responsible for the sums due for the work carried out.
9. So far as the third claim was concerned, the one the subject of this appeal, the judge found that the defendant was personally liable for the work carried out to the executive offices after Stamford Hospital Limited had gone into administration it being his personal liability. At paragraph 102 of the judgment, which is at page 30, the judge said:

"I have gone through those documents in detail because there is no doubt that they demonstrate considerable confusion. The notepaper heading "Stamford Hospital" has been used variously, sometimes without reference to any particular company. Later on in small print Stamford Hospital Limited or Openlife appears. When the administrator is involved, documents are stamped Stamford Hospital Limited in Administration. It is clear that the claimant wrote indiscriminately to Stamford Hospital or Stamford Construction Limited. There is nothing in the documents that I have seen to suggest he believed he was dealing with any particular entity other than the defendant. Until the administrator was appointed, the defendant used notepaper which was only headed

Stamford Hospital making no reference to any company. Thereafter Stamford Hospital used notepaper with Stamford Hospital Limited in administration as well as Stamford Hospital Limited, as well as that of Open Life, at a time before Open Life took over the management of the hospital. There is only one reference to PHP and that was the letter of intent which referred to a further letter to be supplied and the instructions had first come on the notepaper of Stamford Hospital Limited. Even after Stamford Hospital Limited was placed in administration correspondence from Stamford Hospital Limited relating to the executive officer makes no reference to the administration. The clear inference that I draw is that there was a total absence of care, certainly before the appointment of the administrator as to the contracting party. This problem has been compounded by the insertion of the term "administrator", because Mr Foltynie and Mr Jacobs are also described as administrators, and further compounded as well by the use of different bills to effect payment such as Stamford Catering Suppliers.

- "103. I am unable to infer any knowledge or suggestion that the claimant knew or should have known they were not contracting with the defendant in the circumstances I have outlined from the letter at p.88 that came from PHP and the fact that the claimant's invoice by reference to this letter. It has to be seen against the background the defendant was clearly in charge, the executive offices were for his occupation, and he was funding the administrators. I have not heard from Mr Foltynie and Mr Greenhalgh or Mr Puckering, who was the operations director of PHP and the signatory of the letter of instructions about the offices at p.88. There is no real explanation or explanation at all as to why these gentlemen, who could have given important evidence, have not been called. There is nothing in the letter of intent to suggest to me that its recipients were perverse in concluding that the claimants had already entered into a contract verbally and that the contract remained with the defendant, unless and until it possibly was novated in some form of new construction contract. It is common ground that a novation never occurred. Further, the letter of intent does not even suggest the contract was to be with PHP. It does not purport to be a contract with PHP. So the so-called acceptance of this letter cannot in my opinion conclude a contract or lead to the conclusion of a contract between the claimant and PHP but it is neutral. I have no doubt in the circumstances I have underlined that the defendant is liable to payments for the work done on the executive offices. It is notable that Mr Sorsky believed that was the case, the defendant was funding the work for the offices himself, that Mr Jolag and Mr Greenhalgh had confirmed to him that the office works were the defendant's responsibility.
- "104. I have no doubt that, although the claimants may have expected that they were going to receive payments through one of a number of corporate vehicles, there was no reason for them to suppose that they were contracting with them. All the evidence points to the defendant being ultimate responsible for the executive offices. That is all the claimants knew, and even if the claimants knew they were going to be paid, or might be paid, through a corporate vehicle, they did not know which one. It is virtually impossible for the claimants to know who it was contracting with other than the defendant. It is clear that the claimants dealt with matters on the basis that the defendant was responsible. They knew the defendant might employ any number of corporate vehicles. They were not surprised by this. But in my opinion that would not be sufficient to enable me to conclude in the circumstances of this case that they had contracted with PHP for the executive offices. I think Mr Abadi was probably mistaken when he said he was paid by the defendant personally. On balance, I am inclined to the view that the executive offices were paid for on balance for Openlife but that would mean nothing to Mr Abadi and Openlife would simply be seen as another corporate vehicle for payment used by the defendant."
10. There are two grounds of appeal. The first is that the judge was wrong to find on the evidence that the contract for this work was an oral contract made between the claimant and the defendant. The second is that the judge's finding on the defendant's credibility was based on a clear error of fact.
11. The evidential background for these two grounds overlap; I shall first deal with the background to the second ground of appeal. It is clear that the credibility of witnesses was an important factor for the judge to assess in relation to these claims. Of the claimants he said: *"Let me say something now about my assessment of the witnesses. Generally, all the main players - and by the main players I mean Mr Abadi, Mr Al-Tuhafi, Mr Jolag and the defendant - were unable to recollect to a greater or lesser extent, clearly details of events that took place in 1998 and 1999. I reject suggestions that any of those witnesses were guilty of bad faith. But again, to a greater or lesser extent all of those witnesses evidence is now I think coloured somewhat by what they would like to remember as having occurred. Mr Abadi's recollection of detail is poor, perhaps more so in relation to Stamford Hospital where his evidence is coloured by what he has come to believe. Nonetheless, by and large I regard him as being a reliable witness whose evidence I accept. I say the same about Mr Al-Tuhafi."*
12. Of the defendant, the judge said that he was an influential and highly successful international businessman in the field of health administration, who used a number of corporate vehicles, offshore companies and trusts. The judge did not criticise him for this but said that it made for uncertainty for those with whom he dealt as to whom they were dealing with. He continued: *"He did, in fact, control the hospital which was responsible for management decisions and funding though, of course, in legal terms he was not the owner and only exercised control through a number of corporate vehicles. I am quite satisfied that he failed to make clear to the claimants that they would be working for a particular corporate vehicle and, in particular, he was not as clear as he should have been in relation to the division of responsibility between Stamford Hospital Limited administrator and his own responsibility for the executive offices which were for his personal use as a director general of PHP."*

13. Dealing with his credibility at paragraph 62 he said: *"Although the defendant left details to other people, in my opinion his credibility was seriously damaged by the radical change in his case. As I have already said, his original case was that the order for the executive offices came from Stamford Hospital Limited or Stamford Hospital Construction Limited. That was altered in October to his assertion that it was the responsibility of PHP. He asserted that the order for oxygen housing was the responsibility of Openlife. He changed that to his current stance of saying it was the responsibility of the administrator. He adopted a similar stance in relation to the first floor offices and the manhole cover. His explanation for the change of heart was the letter to which I have referred at A87 had only recently come to light but that is untenable. The letter is specifically referred to in the particulars of claim, and he was provided with a clean copy in December 2004. It is, in my opinion, therefore damaging to his credibility and the matter I have taken into account that there has been so radical a change in his case, and that the letter upon which it is based is a letter which I am satisfied was available to him considerably before October 2004."*

It is in this passage that it is contended there is a factual error by the judge which caused him to make the stringent comments which he did about his credibility.

14. The letter A87 is copied at A88 to which the judge referred in his judgment, and to which I now refer. It is dated 26 April 1999, addressed to the claimant Mr Nasser Abadi of Atlas Builders. It is written on Projects for Health Programmes Company Limited paper. I shall return to the precise detail when dealing with the first ground of appeal. Various invoices in respect of this work were also before the judge. Each were addressed to the accounts department, Stamford Construction. First in his defence the claimant pleaded:

"As to paragraph 18 of the Particulars of Claim:

"(a) The Defendant denies that he contracted with either of the Claimants in respect of the works referred to.

"(b) (i) The Defendant avers that the letter of instruction of 23 April 1999 as referred to at paragraph 18a of the Particulars of Claim was issued on behalf of The Stamford Hospital Ltd, and the letter of 26 April 1999 as referred to at paragraph 18a of the Particulars of Claim made it clear that the work in question was to be the subject of a formal order by 'the construction company which will be the client for this project'. Pending disclosure herein, the Defendant avers that the construction company referred to was Stamford Construction Ltd, a subsidiary of The Stamford Hospital Ltd, and that Claimants' invoices were issued to that company accordingly."

15. However, following a Part 18 request for further particulars of that allegation, it was alleged by the defendant, that PHP was the company which made the order and was party to the agreement. This was made the subject of a proposed amended defence for which leave was not granted, the district judge being of the opinion that it was unnecessary for the defence to be amended. It is this change which the judge referred to as a radical change which seriously damaged the defendant's credibility. He said, as I have already indicated, that the letter of 26 April 1999 had been available to the defendant since December 2004, when it was served with the Particulars of Claim.
16. In a witness statement dated 9 November 2005, the defendant asserted that when the defence was drafted he had not looked at all the documents and had relied on the letter accompanying the Particulars of Claim, namely the letter of 26 April 1999. He did not say, as the judge stated in his judgment, that the letter had only recently come to light. Accordingly, it is submitted that this was a very material error by the judge in making his assessment of the defendant's credibility. However, in the light of the judge's findings that the claimant and his witnesses' recollections were poor and coloured to some extent by "what they would like to remember as having occurred", it is submitted this error must have made a substantial difference to the judge's conclusion.
17. The second ground of appeal involved an analysis by both sides of the documentary evidence, the oral evidence and the pleaded case of each party. I shall set out a brief summary of the matters relied on by both parties.
18. First of all, on 11 April 1999, the claimant sent an estimate for work to be carried out on "the executive offices facility". It was addressed to Mr T Foltynie at the Stamford Hospital and was in the sum of £72,800. On 19 April 1999, Mr Foltynie sent a fax to the claimants stating:

"Dear Nasser,

"Thank you for your quotation dated 16 April. I shall shortly be sending you an official Purchase Order to undertake the refurbishments in Dr Abdullah's new office as detailed below and generally in your quotation. These works are covered by Cruickshank and Seward drawing no. 4731 A/01B."

The fax is on Stamford London paper; beneath at the bottom on the footer is the words "The Stamford Hospital Limited". It was, of course, in administration at that time.

19. On 23 April, Mr Foltynie faxed the claimant again. Again, the fax is on Stamford London paper with the footer the Stamford Hospital Limited. It reads:

"Dear Nasser

"Enclosed is a copy of the breakdown of your quotation which I have amended. Hopefully I have not taken out anything which is fundamental to the whole scheme. Dr Abdullah [a reference to the defendant] has given me his verbal consent to proceed with the works as long as I contain the cost to £60,000. You will receive a letter of intent early next week from Ian Puckering.

"Meanwhile, as discussed I look forward to your workmen starting here on Monday 26 April."

20. Reliance is placed by the claimant on that document and the expression "as discussed". It is submitted that that indicates clearly that there had been some oral discussion between the parties before 23 April, the result of which was that workmen were to start on Monday, 26 April. Next came the fax to which I have already referred. I say fax, but it is in the form of a letter. It appears to have been faxed. It is dated 26 April 1999, addressed to Mr Nassar Abadi of Atlas Builders, address set out, and reads:

"Dear Mr Abadi

With reference to the various discussions relating to the Executive Office Facility, including the bathroom area, I am pleased to inform you that this is a letter of intent to commence the work on this project immediately at a total cost of £60,000. It is expected that the work will take in the region of three months with a completion date of 30th July 1999, although it is hoped that the project can be finished sooner than the date mentioned.

A formal order will be given to you when all the formalities have been completed with the construction company which will be the client for this project.

I understand all the details of access, works, arrangements etc. have already been stated to you previously.

I should be grateful if you could confirm your acceptance of this letter of intent."

It is signed by Ian L Puckering, Operations Director.

21. Mr Walker, on behalf of the appellant, submitted that it is clear from this letter that no agreement had been entered into before that date. So far as the letter of 26 April is concerned, he made a number of submissions. He submitted first that it is clear that the contracting party was to be a construction company. He submitted that the only candidate for that entity was PHP. Secondly, he submitted that, together with the fax of 23 April, it forms a counter-offer to the claimant's offer to carry out the work for £72,800. There was, he submitted, therefore no contract up to that point. Thirdly, it described itself, that is the letter, as a letter of intent and, in the absence of the formal order referred to in the letter, must be taken to be the contractual document binding PHP. Fourthly, he submitted that the fact that the work started on 27 April meant that the counter offer was accepted on that date. Continuing from there, Mr Walker relied on invoices sent by the claimants to the Accounts Department of Stamford Construction. There is no need for me to refer to those in any detail other than to say that invoices were sent on 7 May 1999 and 12 May 1999 to Stamford Construction, Stamford Hospital.

22. From all those documents it is submitted, on behalf of the appellant, that the judge could not properly conclude first that a contract had been made orally between the parties before 26 April 1999 and, secondly, the documentary evidence pointed to the fact that the contracting party, so far as the defendant's organisation was concerned, was PHP.

23. Next I turn to passages in the evidence which are relied on by the appellant. Before referring to the evidence given orally, in a witness statement made by the claimant himself -- that is the first claimant -- the witness stated:

"68. I received a fax three days later on 26 April 1999 from Ian L. Puckering, Operations Director of Stamford Hospital. The letter was on PHP letterhead. He requested that we begin work on the Executive Office Facility and bathroom area immediately. He referred to our time estimate of 3 months and said that he hoped that we might be able to complete the work before that if at all possible. He also referred to an upper price limit for the work of £60,000.

"69. It has recently been brought to my attention that the letterhead is marked PHP, a company from Saudi Arabia rather than Stamford Hospital and I have heard for the first time in October 2005 that it is now said by the defendant that in fact PHP were the party that I contracted with. I disagree. Dr Al-Anizi (who is an extremely wealthy man) had personally commissioned me to work at his house, at the hospital and I believed at the time his executive office. It was he that personally met with me, approved variations and new works, sanctioned purchase orders, told me who to invoice and made the important decisions on the building and architectural works. I did not find his control unusual as I was of the understanding that Dr Al-Anizi owned the hospital. I understand he now says that he had already told me the work on the executive offices was to be the responsibility of PHP. That is untrue. He never said that to me. When I received the letter of intent, I did not think anything of the fact it was on a PHP letterhead. As far as I was concerned, my paymaster remained Dr Al-Anizi. Ian Puckering worked at the hospital for Dr Al-Anizi, I think he was a director, and so I would not have been surprised to see his name on the letter. I would not have agreed to enter into the contract with a company based in Saudi Arabia for obvious reasons."

24. In his evidence, reliance is placed on a passage at page 60:

"Q: So the position here on 23rd April is that you had discussions with Trevor Foltynie. As it happens, Trevor Foltynie, who is described as 'Facilities Manager [at] Stamford Hospital' is writing this letter on Stamford Hospital Limited notepapers, but none of these documents at this stage purport to be - in other words, represent themselves as - purchase orders - do you follow?"

"A: Yes.

"Q: In other words, this is just an agreement about the quotation, but does not yet form any contract between you?"

"A: Yes. It's not stamped or anything, it's just a letter saying 'We've agreed in principle'.

"Q: And it makes clear that you are going to receive what is called a letter of intent the following week - yes?"

"A: That's what it says."

25. Mr Walker submitted that in this passage the claimant was conceding that there was no contract made between the parties before 23 April, as the judge found. There is a further passage in his evidence, to which we have been referred at page 62, in which he is asked:
- "Q: The position is this, is it not, Mr Abadi - you are a businessman, you, yourself, as you have told us, have just set up your own company - you are not entirely indifferent the[sic] formalities of who you are contracting with?"*
- "A: Look, I've got PHP writing me a letter saying there's a construction company, I've got Trevor Foltynie who tells me he works for the Doctor, and I only know the Doctor. All this paperwork, to me I only work for the Doctor. I don't know anything else. I've never dealt with this company, I've never dealt with that construction company, whatever company it's called, and I've never dealt with PHP, whether they sent the letter or not. I know I received this letter, but that didn't matter to me. To me I was working for the Doctor."*
26. Mr Walker submitted that in these pieces of evidence it is demonstrated, first, that the judge was wrong to find that there was a contract made orally before 26 April 1999. Secondly, he submitted that the only proper inferences from all the evidence, documentary, oral and otherwise, was that PHP was the contracting party. He added that the factual error that the judge made in respect of ground one, to which I have already referred, on the defendant's credibility, was particularly significant in the context of the third claim since it was concerned with the crucial issue of the identity of the contracting party.
27. Mr Lewis, for the respondent, in his skeleton argument and orally, made a number of submissions. He accepted that the judge's description of the credibility error were, in his words, "not properly chosen". For that expression I would substitute the words "plain wrong". However, Mr Lewis went on to submit that, nevertheless, the purport of what the judge was saying, that the defendant's credibility was impugned, was accurate. He submitted that the reality was that the defendant did, as the judge found, change his version of events. First, he relied on the fact that, in his defence, the defendant pleaded that Stamford Construction Limited was the contracting party for the executive offices. Then, in the Part 18 further information of 10 October 2005, the defendant alleged that he had orally informed the first claimant that PHP would undertake the work. Thirdly, in his witness statement for trial, Mr Lewis referred to the fact that the defendant gave an explanation for his change of case, which was a little different to his version in evidence. Fourthly, he submitted in his explanation in evidence it was not clear from what documents he was refreshing his memory.
28. It is submitted that, whatever the explanation for the change in his case, the defendant's credibility was indisputably damaged by these changes. Further, Mr Lewis submitted that the contemporaneous documents do not once mention PHP as the contracting party. He relied on the fact that, even in the document of 26 April 1999, which is the only document on which PHP is referred to namely on the writing paper, there is no reference to PHP as being the party which was going to make the order. It is accepted, of course, that that letter was said to be a letter of intent.
29. In contrast, Mr Lewis relied on the correspondence, which on many occasions, referred to Dr Abdullah, the defendant, as the person who either gave instructions or was to give instructions. Some of the witnesses described the Executive Offices as Dr Abdullah's offices. Finally, it is submitted, on behalf of the claimant, that the letter of 26 April 1999 followed the fax of 24 April 1999, in which it was said that the defendant had given "verbal" instructions for the work to proceed. So it is submitted that there was ample evidence on which the judge could find, as he did, that the contracting party was the defendant personally.
30. For my part, I accept that, when dealing with the issue of credibility, the judge made the error to which I have referred in respect of the time when the defendant saw the letter of 26 April 1999. Nevertheless, in my judgment, he was entitled to find that the defendant's credibility was damaged. It is quite clear that the defendant did change his case. In his defence it was pleaded in the terms to which I have referred. In contrast, in the Part 18 request for particulars, he gave particulars in the following form. In response to a question asking him to specify the exact legal nature of the engagement to include how the instructions were provided by whom, on behalf of whom, and to whom, including the dates and the manner of the instruction and the gist of any words used, if oral, and what they were to do, the defendant replied, first of all alleging that it was PHP who were the contracting party, and continuing:
- "When showing the area to be refurbished the defendant informed the First Claimant that PHP intended to set up a separate company to be the Claimants' Client in respect of the work. The First Claimant said this was acceptable to him. In due course this was also confirmed to the Claimants in writing by the letter of intent dated 26th April 1999 from Ian Puckering, the Operations Director of PHP giving instructions to commence work."*
31. So far as those particulars are concerned, it is clear from that that the defendant was saying that he did indeed have an oral conversation with the first claimant. During the course of that conversation the works were discussed. In my judgment, there is force in the submission that it is difficult to see, in the circumstances, how it was that when it came to serving the defence in the first place that the defendant had forgotten or omitted to say that PHP was to be the contracting party. Indeed, the passage to which I have just referred does not say that PHP was to be the contracting party. It alleges that the defendant intended to set up a separate company to be the claimant's client in respect of the work. The defendant's final version was that PHP was to be the contracting party.
32. Further on at page 126 the following request for particulars is made: *"Please identify the said contracts giving the dates entered into, the contracting parties, which companies are responsible for which works, the form of each contract (eg written or oral) and the gist of each."*

To which the response was:

"The following are the contracts referred to:

"(i) the contract in respect of the Executive Office works, as referred to at paragraph 18a of the Particulars of Claim, was made between the Claimants and PHP as detailed above and evidenced by the letters of 23rd and 26th April 1999, as referred to in paragraph 18a(i) and (ii) of the Particulars of Claim."

33. In my judgment, it is clear from these documents that the defendant was substituting PHP for Stamford Construction. Indeed, there is no dispute about that. He was also saying that he discussed the matter with the claimant before 26 April and described to him the role of PHP. In circumstances, as I have said, it is difficult to see how it could have been said that Stamford Construction was involved. Next, his pleaded case was that the agreement was made either on 24 April 1999 or at least by 26 April 1999. Although this does not affect the judge's conclusion, before us, Mr Walker argued that the fax of 26 April was a counter-offer which was accepted by the claimant when work was started.
34. In my judgment, the differences clearly entitled the judge to find that the defendant's credibility was impugned. As I have already said, that part of the judgment starts by saying that the defendant's changes of case damaged his credibility seriously. In my opinion, the judge was quite entitled, on the material before him, to reach that conclusion. It is perhaps also relevant to note that on another matter, not connected with this appeal, the judge rejected the appellant's evidence. That appears at page 21 of the judgment at paragraph 74. I need not set it out.
35. Having had the opportunity of reading the skeleton argument and hearing the oral submissions by Mr Lewis for the claimants, I have reached the conclusion that this error of the judge's did not undermine his findings in respect of this claim. Further, in my judgment, none of the contemporaneous documents, apart possibly from the letter of 26 April 1999, show that PHP was the contracting party, as the defendant asserted in evidence.
36. That assertion was, in my judgment, simply inconsistent with the vast majority of the documents. There is evidence that, before the letter of 26 April was written, the defendant did give oral instructions for work to proceed. That was acted on by the fax of 23 April 1999. Again, in my judgment, the judge was quite entitled to come to the conclusion that there was a preceding oral agreement. The judge further found, as I have already said, that the defendant failed to make clear which, if any, particular corporate vehicle the claimants would be working for. So far as the Executive Offices were concerned, there was evidence in the documents and from witnesses that showed the defendant gave instructions that the offices were to be regarded as the defendant's offices. It was always Mr Al-Azani's evidence and case that the contract was made personally with the defendant and that was a finding which the judge made.
37. As Mr Lewis in his skeleton argument pointed out, this was essentially a finding of fact by the judge. This court only rarely interferes with a judge's findings of fact and only in the clearest cases. In this case, in my judgment, the judge has made no error of law.
38. I am quite satisfied, having considered all the submissions in this case, that the judgment cannot be impugned in any way and in the circumstances, for my part, I would dismiss this appeal.

MR JUSTICE BODEY:

39. I agree with the judgment which my Lord, Lord Justice Gage, has just delivered. The learned judge made three findings of particular significance, which are either of fact or else of inference based on his assessment of the facts, including of all the documents. My Lord has already read from paragraph 61 of the judgment, where the learned judge found that the defendant had failed to make clear to the claimant that he, the claimant, would be working for a particular corporate vehicle. Secondly, at paragraph 81, the learned judge said this: *"Mr Abadi [the claimant] said in evidence that the defendant said: 'I own the hospital, this is my facility'. This has a ring of truth. What the defendant may have said may represent a layman's approach and in loose and layman's terms may, in fact, be true. Mr Abadi told me, 'So far as I was concerned, he was the owner and everyone worked for him.' The defendant described himself as the owner and acted as such."*
40. Thirdly, at paragraph 95 of the judgment, the learned judge said this: *"Where a person acts as an agent but does not say for whom, or fails to make it clear which of a number of corporate vehicles he is acting for, an inference can be drawn that, viewed objectively, the parties intend he should accept personal responsibility. I am quite satisfied that is the case in the present case so far as concerns the executive offices ..."*
41. Those three findings are, in my judgment, impregnable and fatal to this appeal. I agree with my Lord, Lord Justice Gage, that it must therefore be dismissed.

Order: Appeal dismissed.

MR A WALKER (instructed by Messrs Arnold George & Co) appeared on behalf of the Appellant.
MR D LEWIS (instructed by Messrs Davies Battersby) appeared on behalf of the Respondent.