Neutral Citation Number: [2022] EWHC 1912 (Comm)

Case No: CL-2018-000827

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22/07/2022

Before :

LIONEL PERSEY QC SITTING AS A JUDGE OF THE HIGH COURT

- -

Between :

CHARLES RIDLEY	**Claimant**
- and -	
DUBAI ISLAMIC BANK PJSC	**Defendant**

- -
- -

Jack Watson (instructed by **LK Law LLP**) for the **Claimant**
Robert Anderson QC and William Edwards (instructed by **Baker & McKenzie LLP**) for the **Defendant**

Hearing dates: 14-17 February 2022 and 21 February 2022

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JUDGMENT

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:30 on Friday 22nd July 2022.

Lionel Persey QC (sitting as a Judge of the High Court): :

Introduction

1. In this action the Claimant ("**Mr Ridley**") seeks an injunction requiring the Defendant ("**the Bank**") to, in effect, take steps to procure his release from prison in Dubai. He is presently serving a sentence of 20 years, having already served a 10 year sentence in circumstances I shall describe below. Mr Ridley's case is that this 20 year sentence came about as the result of an impermissible request by the Bank made pursuant to Dubai Law No.37 of 2009 ("**Law 37**"). The request is said to be impermissible because it was made in breach of a Restructuring Agreement ("**the RSA**") that had been concluded by Mr Ridley together with others and the Bank in 2007. The RSA is governed by English law and subject to an English jurisdiction clause.

Factual background

2. The factual background is complex. I shall focus on the principal events that are relevant to the matters that I have to decide.

The fraud

3. The matter starts with a fraud committed upon the Bank by Mr Ridley and others. This fraud is described by Hamblen J. and Flaux J. (as they both then were) in their judgments in related proceedings between the Bank as Claimant, and (1) PSI Energy Holding Company BSC, (2) Ryan Cornelius, (3) Mr Ridley, (4) Eren Nil and CCH Europe GMBH as Defendants. The judgments are reported at [2011] EWCH 2719 (Comm) and [2013] EWHC 3781 (Comm). Flaux J found in the latter case as follows:-

> "… 11. From November 2002 onwards the Structured Finance Department of the Bank entered into a series of Agency Agreements with the fifth defendant and its associated company, CCH plc (referred to collectively as "CCH") as the means by which short-term trade finance would be provided to exporters. It is not in accordance with Islamic principles for the Bank to provide trade finance by way of short-term interest bearing loans. Accordingly the model used was so-called murabaha agreements whereby the Bank itself (through CCH as its agent) would buy the goods from the exporter, then, again through CCH as its agent, would sell the goods to the purchaser. The difference between the purchase price and the sale price represented the Bank's profit on the transaction. The agency arrangements with CCH succeeded similar arrangements dating back to the 1980s under which the third defendant (who had long-standing business interests in the Gulf) and his then business partner, Guvan Nil, the fourth defendant's father, did murabaha deals with the Bank. After Mr Nil senior died in 2000, the fourth defendant became the third defendant's business partner and they did murabaha deals with the Bank through CCH, which they incorporated at around that time.
>
> 12. Under the Agency Agreements, once CCH had put the contractual arrangements in place, the Bank was to remit the funds required into an account in the name of CCH. The fact that funds flowed through CCH, rather than directly between the Bank and the exporter and purchaser respectively, enabled the fraud to be perpetrated. The third defendant admitted the fraud and his part in it at meetings with Mr Hugh Lyons and Mr Neil Dooley of the Bank's solicitors, Lovells (to whom I will refer as Hogan Lovells, the name by which they are now known), on 26 and 28 November 2007. He admitted that the fraud on the Bank had started in about 2003. It was very simple: the third defendant had arranged with the second defendant for one of the second defendant's companies to generate fictitious requests for trade finance

> for ostensible but in fact non-existent supply contracts which were submitted to CCH's office in Germany. False documentation in respect of the transaction would be drawn up by CCH in Germany and submitted to the Bank for financing. The third defendant said he and the fourth defendant had agreed to divide the proceeds of the fraud between themselves equally …
>
> 17. … That there was a fraud and that the second, third and fourth defendants actively participated in it, is irrefutable …"

4. Both parties rightly accept that this judgment is binding on me.

The RSA

5. The fraud was discovered by the Bank in 2007. Negotiations thereafter took place between the Bank and the relevant parties with a view to making a global settlement under which terms would be agreed for the repayment of the US$501 million outstanding and owing to the Bank. All parties were represented by English solicitors in those negotiations, Hogan Lovells for the Bank, SJ Berwin for Mr Ridley and Mr Cornelius, Clifford Chance for Mr Fitzwilliam and Plantation, Howes Percival for Mr Nil and Field Fisher Waterhouse for CCH plc. The negotiations, which included detailed discussions in the week of 13 August 2007 between the solicitors about the drafting of the RSA, culminated in its signature on 19 August 2007.

6. The parties to the RSA were the Bank, CCH Europe, CCH International Plc (the Parent, the two CCH companies together being referred to as the Corporate Guarantors), Mr Ridley, Mr Cornelius, and Mr Nil ("the CCH Individual Guarantors"), Plantation and Mr Fitzwilliam. All parties to the RSA other than the Bank and Mr Fitzwilliam were referred to as "the Guarantors" under the RSA. I should at this stage mention that Plantation was a leasehold interest in Dubai over which the Bank took security as part of the RSA.

7. Although it was signed on 19 August 2007, the RSA was subject to a number of conditions subsequent. These were eventually satisfied by the making of a Supplemental Agreement dated 2 October 2007. The RSA became effective on that date.

8. The RSA lies at the heart of this hearing. I will deal with its terms later in this judgment.

Arrests and demands

9. Between 21 May 2008 and 6 June 2008, Mr Cornelius, Mr Ridley and Mr Fitzwilliam were all arrested by the Dubai authorities: Mr Cornelius on 21 May 2008, Mr Ridley on 27 May 2008, and Mr Fitzwilliam on 6 June 2008.

10. On 4 June 2008, barely a week after Mr Ridley was arrested, and despite the payments then due under the RSA having been made, the Bank served a notice of breach of the RSA on him. There then followed on 9 June 2008 a notice served on Plantation demanding repayment.

11. On 12 June 2008, the Dubai Public Prosecutor placed an attachment on Plantation effectively freezing it from being sold. It appears however that this was removed in 2015.

12. On 21 July 2008, the Bank served notices demanding repayment under the guarantee accelerating the time for payment under clause 18.4 such that the full amount of $440m was said to be due. On 28 July 2008 Al Tamimi and Associates on behalf of the Bank wrote to the parties to the RSA, referring to the notices of breach dated 9 June 2008 and demanding all sums due under the restructuring agreement immediately (amounting to c.$470m).

13. On 4 November 2008, the Bank took possession of the Plantation land.

Law 37 of 2009

14. Law 37 was issued on 27 December 2009 and took effect from that date. It is a Dubai, and not a UAE, law. It is common ground between the parties' experts on Dubai law that Law 37 was enacted as part of an anti-corruption campaign and was intended to (a) act as a deterrence against corrupt practices; and (b) facilitate the recovery of illegally obtained funds (and, in particular, "Public Funds") by incentivising defendants to return them.

15. Law 37 also lies at the heart of this hearing and was the subject of expert evidence of Dubai law. I will deal with the Law and the evidence about it below.

The 2010 Action (Hamblen J./Flaux J.)

16. On 6 October 2010 the Bank brought the proceedings to which I have already referred above in the Commercial Court against Mr Ridley and others. It claimed that there were events of default under the RSA for which, inter alios, Mr Ridley as third defendant was jointly and severally liable to the Bank for the outstanding amounts due under the RSA.

17. Hamblen J. held that the Bank was not entitled to summary judgment in October 2011, the second to fourth defendants having raised defences that had a realistic rather than fanciful prospect of success and which raised issues of fact that could only be resolved at trial. Flaux J. heard the trial and allowed the Bank's claims in December 2013.

Criminal proceedings in Dubai

18. Mr Ridley and others were prosecuted in Dubai for their part in the fraud on the Bank. On 27 April 2011, the defendants, including Mr Ridley but with the exception of Mr Fitzwilliam, were convicted. The convicted defendants were each sentenced to 10 years' imprisonment, and subjected to a fine of AED 1.8 billion and to an order to pay the same amount pursuant to Article 230 of the Dubai Penal Code.

19. There were then appeals to the Court of Appeal and then to the Court of Cassation. The Court of Cassation remitted the matter to the Court of Appeal, who after assigning experts to consider certain matters, amended the appealed judgment on 11 November 2014. I deal with these criminal proceedings in greater detail below.

The Plantation Action

20. Plantation Holdings (FZ) LLC commenced an action against the Bank in the Commercial Court. It was heard in late 2016 and Picken J. gave judgment in March 2017: [2017] EWHC 520 (Comm). He held that the Bank had not had reasonable grounds upon which to issue a notice of default against Plantation but, because there

would inevitably have been a Plantation Enforcement Event it followed that Plantation Holdings had suffered only a nominal loss and were therefore only awarded nominal damages. There is one important aspect of Picken J.'s judgment that is relevant to a matter raised before me. Picken J. concluded that it had not been established to his satisfaction that the Plantation land had any value. No evidence has been adduced before me at this trial to establish that Plantation does now have a value which it did not have before.

The 2018 Proceedings

21. In March 2018 the Bank made a Request under Law 37 to the Dubai court. On 15 May 2018 the execution judge passed a sentence of a further 20 years' imprisonment. This is the subject matter of the present trial.

The present action

22. This action was commenced in December 2018. The Bank attempted to set aside the order allowing service out of the original claim form but its application was dismissed in May 2020. This essentially became in large measure a hearing on the issue of whether Mr Ridley's claim had real prospects of success. Mr Hancock QC, sitting as a deputy judge, dismissed the Bank's application, holding that the matter should proceed to trial.

The witnesses

Witnesses of fact

23. Mr Ridley was the only witness called for the Claimant. He gave evidence by videolink from the Al Aweer prison in Dubai and was accompanied by a prison officer, who sat offscreen, for the duration of his evidence. He had been informed by the prison that he was not to criticise the conditions there. He did look to the prison officer for approval before answering questions on occasion but I formed the view that the evidence that he gave was given freely and was straightforward and honest. I reject the submission made in closings to the effect that the Dubai authorities had displayed a lack of comity in seeking to interfere with the taking of evidence before an English court.

24. A witness statement was also submitted for Mr David Mills, who had appeared pro bono for Mr Ridley in the 2010 proceedings and at earlier stages of the present action. The Bank did not require him to attend for cross-examination and it was accepted on behalf of Mr Ridley that his evidence is of relatively limited value to the issues that I have to determine. Neither party in fact made any point in relation to Mr Mills' evidence and I need say no more about it.

25. Two witnesses were called for the Bank, Mr Mohamed Saeed Al Sharif and Mr Khalid Rashid Al-Hamrani. They gave their evidence by video. Both spoke excellent English.

26. Mr Al Sharif is currently the Bank's Chief of International Business and Real Estate Investments. More relevantly, for present purposes, he is and has since 2007, been a member of the Task Force that was set up by the Bank to ensure collection of the receivables from the counterparties to the RSA. There were aspects of his evidence that I find were unsatisfactory. For example, he gave misleading evidence in his

witness statement to the effect that the Plantation land was subject to an attachment even though he had given evidence in the proceedings before Picken J. that the attachment had been lifted in 2016. Nor, as Mr Watson established in cross examination, had the Task Force been particularly assiduous in its efforts to collect receivables from the various defendants. However, when he was asked about Mr Ridley's financial position he said that he was a part of a group and that he could not quantify how many assets Mr Ridley had retained. This struck me as being true. It was put to him that the Bank was using Law 37 to punish Mr Ridley. He disagreed and said this:

> "… This is not our intention Mr Watson. Our intention is to get our money back …"

I am satisfied that it was at least part of the Bank's intention when making the Request to get its money back. I reject, however, Mr Al Sharif's evidence to the effect that the Request under Law 37 was made by the Bank's lawyers without reference to the Bank.

27. The second factual witness called by the Bank was Mr Khalid Rashid Al Hamrani, a lawyer and partner at Al Tamimi. He acts on behalf of the Bank. He had given expert evidence on the Bank's unsuccessful application to set aside. He said in cross examination that the decision to proceed with a Request under Law 37 had been taken in conjunction with the Bank (as I would have expected). I did not get much assistance from the rest of his evidence.

The expert witnesses

28. Each party called an expert to give evidence of Dubai law.

29. Mr Amre Bajamal was called to give evidence for Mr Ridley. He is a legal practitioner based in Dubai and is a partner at Amal Advocates and Legal Consultants. He has an English law degree and was licensed as a Dubai Legal Consultant since 2008.

30. Mr Ali Ismael Al Zarouni was called to give evidence for the Bank. He is a UAE qualified lawyer and the managing partner of Horizons & Co Law Firm. He has over 20 years of experience in criminal law, commercial law, civil litigation and arbitration.

31. The experts each submitted two experts' reports and prepared a Joint Expert Memorandum. I am satisfied that both of them are competent although neither of them had, it appeared, any direct experience of addressing the questions that they were asked to consider in this case. Mr Bajamal was prone to argue the case at points during his oral evidence. Mr Al Zarouni went further in his oral evidence than he had gone in his written reports. I have borne in mind what was said by Blair J in *Banco Santander v Companhia De Carris De Ferro De Lisboa* [2016] EWHC 465 (Comm) at [237] as to the approach of the English court in determining issues of foreign law. My conclusions about their evidence are expressed below.

The RSA

32. The RSA provided, insofar as relevant, as follows:-

(1) By clause 4.1, that the Rescheduling Amount due to the Bank was US$501,284,616.56.

(2) By Clause 5, that the Guarantors acknowledged that the Rescheduling Amount was due and payable to the Bank by the Company (CCH GmbH), in full, and from its parent (CCH plc), in the sum of US$50 million;
(3) By Clause 6, that the Guarantors would, in consideration of the various releases set out in Clause 12, jointly and severally guarantee the repayment of the Rescheduling Amount as an additional and independent obligor and jointly and severally indemnify the Bank as principal debtors in respect of any failure or inability to recover the Rescheduling Amount;
(4) By Clause 7.1, that the two CCH companies would repay the Rescheduling Amount by instalments as set out in Schedule 2. The first two payments (each of US$25 million) were to be made within 120 and 240 days and the third (of US$70 million) was due within a year;
(5) By Clause 8.2, Plantation and Mr Fitzwilliam were obliged to grant (or to procure the granting of) first ranking charges over the lease of Plantation and the Plantation Villa Receivables, Plantation Villa Proceeds and Earmarked Plantation Receivables.

33. Clause 12 contained extensive releases of the parties to the RSA. Clause 12.4 provides, inter alia, as follows:-

> "… the Bank hereby agrees to irrevocably waive and compromise any and all claims, whether existing or future, known or unknown, it has or may have against each of the Guarantors arising from or in connection with the Agency Agreements and the transactions contemplated by the Agency Agreements …"

Clauses 12.7 further provides:-

> "… No release, waiver or compromise in this clause 12 (Release from liability) shall apply to any of the Guarantors' obligations whether joint or several created or arising under or in connection with this Restructuring Agreement and any security, notice or document given or entered into in connection herewith …"

Law 37

34. Law 37 provides, in translation, as follows:-

a. Article 1 defines "Illegal Funds" to mean "the money collected, whether directly or indirectly, as a result of an act that constitutes a crime punishable under the law" and "Public Funds" to mean "the funds that are owned by the Government or the governmental bodies or the corporations or companies affiliated to the Government or the governmental bodies or wherein it is a shareholder, or the funds that are owed to any one of them."

b. Article 2 provides that:
"Should it be proven under a final court judgment that the convict (debtor) has got Illegal Funds, and failed to pay same for any reason whatsoever, the executive magistrate shall issue an order upon the request of the prevailing (creditor), on the imprisonment of the convict according to the following periods:
1 Imprisonment for a period of five years if the Illegal Funds requested to be paid is less than AED (500,000) five hundred thousand and not more than AED (1,000,000) one million.

2 Imprisonment for a period of ten years if the Illegal Funds requested to be paid is more than AED (1,000,000) one million and up to AED (5,000,000) five million.
3 Imprisonment for a period of fifteen years if the Illegal Funds requested to be paid is more than AED (5,000,000) five million and up to AED (10,000,000) ten million.
4 Imprisonment for a period of twenty years if the Illegal Funds requested to be paid is more than AED (10,000,000) ten million."

c. Article 3 provides that:
"Should it be proven under a final court judgment or a final payment order that the convict (debtor) got Public Funds and failed to pay same for any reason whatsoever, the executive magistrate shall issue an order upon the request of the prevailing party (creditor) of imprisonment of the convict, according to the periods and amounts provided for in Article 2 hereof."

d. Article 4 provides that:
"The convict (debtor) shall be imprisoned in accordance with the provisions hereof separately from detainees or convicts in penal cases, and the Prison Administration should facilitate his access to the suitable communication means with outside to be able to pay the Illegal Funds requested to be paid or make a settlement with the prevailing party (creditor) in respect thereof."

e. Article 5 provides that:
"Without prejudice to the execution by the convict (debtor) of any penalty prescribed under any other legislation, the convict shall be released before the expiry of his imprisonment period prescribed under the present Law, in the following cases:
1 - Payment of all the funds for which execution is made.
2 - Conclusion of an amicable settlement between him and the prevailing party (creditor)."

35. The above translation of Law 37 is taken from Lexis Middle East which was appended to the Defence and to Mr Al Zarouni's first report. There was initially no dispute as to its correctness by the Dubai law experts. Shortly before trial, however, Mr Bajamal produced a revised translation of Law 37. He said in cross-examination that this was produced late because he had not previously read the translation in detail. The main point of difference in his translation is that Mr Bajamal did not accept that the word "convict" appeared in Articles 2, 3, 4 and 5 of Law 37 and that it should instead read "Party against whom the judgment is issued". This was disputed by Mr Al Zarouni. Mr Watson accepted on behalf of Mr Ridley that this was not an issue that I could "easily resolve" and submitted that there was no objection to using the Lexis translation but that I should not place any significant weight on the term "convict" when construing Articles 2 and 3 of the Law. It is in my judgment wholly inappropriate for this new "issue" to be raised at such a late stage. The Lexis translation was, as I have said, appended to the Defence as well as to Mr Al Zarouni's first report and he expressly confirmed in the body of that report that the translation was accurate. No issue was taken with this in either the Experts' Joint Memo or in Mr Bajamal's supplementary report. That would have been the appropriate time at which to raise any questions as to the correctness of the translation. I shall proceed on the basis that the Lexis translation is correct.

The Issues

36. The case argued before me departed from that pleaded by both parties. Although my attention was drawn by each party to the ways in which it was said that the other's case had altered, neither party asked me to rule out consideration of the offending parts of the other's case. I shall therefore consider the issues as they were argued before me.

37. These issues are as follows:

(1) Is the Request under Law 37 prohibited by Clause 12.4 of the RSA?
(2) Issues as to Dubai law
  (i) Are the proceedings under Law 37 criminal or civil?
  (ii) Would the Bank have committed a financial violation or a financial and administrative offence if it had failed to take steps under Law 37?
(3) Is this an appropriate case for the grant of an injunction?

38. These issues are considered in the same order that the parties argued them before me. They were very ably represented by Mr Jack Watson for Mr Ridley and Mr Robert Anderson and William Edwards for the Bank. I am much indebted to them for the assistance that they gave me.

Issue 1: Is the Request under Law 37 prohibited by Clause 12.4 of the RSA?

39. The first issue that I must consider is whether, as a matter of contractual interpretation, the Bank is precluded by Clause 12.4 of the RSA from making its request under Law 37. The Claimant submits that it is so precluded because the request is a claim arising from or in connection with the Agency Agreements and transactions contemplated by the Agency Agreements. The Bank contends that the Request is concerned with the recovery of that which is contractually due to it under the RSA.

40. It is common ground that the ordinary rules of construction apply when interpreting the RSA and that my task is to identify the intention of the parties by reference to what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean: *Arnold v Britton* [2015] AC 1619 at [15] per Lord Neuberger.

41. In my judgment, upon the true construction of Clause 12.4 of the RSA:-

(1) The Bank agrees to waive and compromise any claims arising from the Agency Agreements and the transactions contemplated by the Agency Agreements;
(2) That waiver or compromise does not, however, apply to any obligations created by or arising under or in connection with the RSA. This is clearly stated in Clause 12.7 of the RSA;
(3) Any claim against the Guarantors (including Mr Ridley) for monies due under the RSA is not a claim that is waived or compromised by Clause 12.4.

42. The sentence imposed upon Mr Ridley and the other convicted defendants on 27 April 2011 was for 10 years' imprisonment, a fine of AED1.8 bn, and an order to pay the same amount to the Bank pursuant to Art 230 of the Penal Code. It is common ground between the experts that, given the nature of the conviction, the court had no discretion and was required to make an order under Art 230 of the Penal Code: see paragraph 10 of the Joint Experts' Memo:

> "Article 230 of the UAE Penal Code stipulates that whenever a defendant is convicted of one or more of the offences against public funds contained in the same chapter, the court must order restitution against the convicted defendant."

43. There were then various appeals, first to the Court of Appeal and then to the Court of Cassation. On 26 December 2011, the Court of Cassation gave judgment. In relation to the Art 230 sentence in respect of Mr Ridley, the Court of Cassation concluded that it was necessary to ascertain whether the RSA related to the "amounts mentioned in the current case" and to consider the position in relation to the Plantation project. The Court of Cassation therefore remitted this aspect to the Court of Appeal "to rule thereon again by a chamber formed from other judges".

44. On 20 March 2012, the Court of Appeal stated:

> "… before deciding the case on the merits, ordered the assignment of a three-member panel of accounting experts from the Expert Department, Dubai Courts in order to review the case file, the documents therein and any submissions made by the litigants. The expert panel is also assigned to move to the headquarters of Dubai Islamic Bank to review and inspect its books and figure out whether a settlement agreement was concluded between the DIB and the accused with respect to the seized amounts subject matter of the case, amounting AED one billion and eight hundred and forty-one million or not, whether these amounts are covered by such settlement or not, and whether the accused have paid any of the amounts seized from the said DIB or not ..."

The experts were also directed to investigate the position in relation to the Plantation project.

45. The experts appointed by the Dubai Court of Appeal concluded (among other things) that the RSA "relates to the seized amounts subject matter of the case" and that "the outstanding amount of the rescheduling agreement is USD 430,419,844 (equivalent to AED 1,580,932,085)".

46. The Court of Appeal gave judgment on 11 November 2014. It held that it "was convinced by the examination carried out by the panel of experts" and "that the outstanding amount of the rescheduling agreement is USD 430,419,844 (equivalent to AED 1,580,932,085)" and therefore

> "… amend[ed] the appealed judgement with respect to the value of the refund amount and obligates the accused jointly to refund the amount of AED (one billion five hundred eighty million nine hundred thirty-two thousand and eighty-five) (1,580,932,085) instead of AED (one billion eight hundred forty-one million) (1,841,000,000) ..."

47. It is common ground between the parties that following the hearing of the various appeals the result of the criminal proceedings was that Mr Ridley was sentenced to imprisonment for a term of 10 years; payment of a fine of AED 1,841,000,000 (jointly

with other defendants); and payment of a restitution amount of AED 1,580,932,085 to the Bank (jointly with other defendants).

48. On 27 March 2018 the Bank requested the Dubai Court of First Instance to issue a "writ of distress" for twenty years imprisonment against four Respondents, including Mr Ridley, pursuant to Article 2 of Law 37 and to enforce Article 9 of the same law, issuing an authorisation to keep the Respondents under an obligation to pay all executed amounts totalling AED 1,580,937,105. At a hearing on 13 May 2018 the judgment debtors appeared before the Court of Civil Execution. Mr Ridley was represented by advocate Michael Shalhoub. He and the other debtors answered "Yes" to the questions "Is the criminal judgment ordering recovery of the amounts final and unappealable?" and "Are the amounts ordered to be returned more than ten million Dirhams?". Following this hearing the Court of Civil Execution issued its ruling that the judgment debtors, including Mr Ridley, were liable to pay the executed amounts to the Bank and they were ordered to be imprisoned for twenty years.

49. It was submitted on behalf of Mr Ridley that the Court of Appeal's decision represented a debt due to the Bank "outside of the RSA". The Bank for its part submitted that the important point about the result after the Court of Cassation and November 2014 Court of Appeal judgments is that it was not the result of any enquiry into how much had been advanced under the Agency Agreements, but instead proceeded on the basis that because there was a settlement agreement in respect of what had been advanced, the defendants should be ordered to repay what was contractually due and owing under that settlement agreement; namely the RSA.

50. I consider the Bank's submission to be correct. It is common ground that the amount of the Article 230 sentence after the 2014 Court of Appeal decision was precisely the same amount that was contractually due under the RSA. The only way that the Dubai Court of Appeal could have arrived at the decision that it did was by taking the RSA debt as it stood. It could not have reached that decision by taking the monies advanced under the Agency Agreements and giving credit for the sums paid under the RSA. It is in any event clear from the decision of the Court of Appeal that it did not arrive at its decision in this way.

51. Mr Watson submitted that I should not draw such a conclusion in the absence of expert evidence of Dubai law on the point. I disagree. The interpretation of a foreign statute is a matter for an expert in the proper law of that statute. The interpretation of a foreign judgment is, however, a matter for me, informed by expert evidence as to how the Dubai legal system works and what the Articles of Dubai law relied upon mean. No issue was taken with the translations of the judgments and I found them to be clearly reasoned and perfectly comprehensible. I accept the Bank's submission that it is not for the experts to give their opinion on the process of reasoning of the Dubai courts. The present case is analogous to that considered by the Privy Council in *Alhamrani v Alhamrani* [2014] UKPC 37 at [19].

52. I am satisfied, and find, that Mr Ridley was found liable to pay the sum of AED 1,580,937,105 by the Dubai Court of Appeal because this was the sum due under the RSA. It was an obligation that arose under the RSA and was accordingly an obligation that arose within Clause 12.7 of that agreement. The Bank was not seeking payment,

and was not awarded payment, in respect of the Agency Agreements outside the contractual framework of the RSA.

53. It follows from this that the Request was not made in breach of Clause 12.4 of the RSA. This finding is fatal to Mr Ridley's claim.

Issue 2: Issues of Dubai Law

54. These issues are only relevant if I am wrong in my conclusions upon Issue 1.

(1)Are the proceedings under Law 37 Criminal or Civil?

55. It appeared at the beginning of the trial to be common ground that that if the Law 37 proceedings were criminal in nature then they did not involve a breach of Clause 12.4 of the RSA. A contractual stipulation not to report criminal conduct to the authorities or not to bring a prosecution is illegal and void: cf *Lewison: The Interpretation of Contracts* (7th Ed.), paras 7.119 to 7.125. It is not suggested by either party that Clause 12.4 should be construed in such a way as to fall foul of that principle.

56. The Bank relied upon the judgment of Devlin LJ in *Commissioners of Crown Land v Page* [1960] 2 Q.B. 274 in which he said this (at p.291):

> "… When the Crown, or any other person, is entrusted, whether by virtue of the prerogative or by statute, with discretionary powers to be exercised for the public good, it does not, when making a contract in general terms, undertake (and it may be that it could not even with the use of specific language validly undertake) to fetter itself in the use of those powers, and in the exercise of its discretion …"

The Bank submitted that Law 37 confers upon those able to invoke it with discretionary powers which are not only to be exercised simply in that person's interest, but in the wider interest as well. Clause 12.4 should not be construed as fettering those powers.

57. Mr Watson argued in his closing submissions on behalf of Mr Ridley that the criminal/civil distinction was not significant and even if Law 37 was characterized as a criminal process this did not mean that claims under Law 37 were not waived by Clause 12.4. He submitted that it is far from clear that an agreement not to bring a prosecution by an authority capable of making such an agreement would be void. He relied on *R v Croydon Justices, ex parte Dean* [1993] Q.B. 769. That was a case in which the Divisional Court quashed the committal of the applicant for trial in circumstances where the applicant had previously been told by the police that he would not be prosecuted. This was held to be a clear abuse of process. The case was "regarded as quite exceptional" by Staughton LJ (p.29). Mr Anderson QC submitted that it was concerned solely with the prosecuting powers of the CPS and the police and had nothing at all to do with whether a private person can enter into a contractual promise effectively not to bring a private prosecution. I agree. I proceed on the basis that the civil/criminal distinction is critical in resolving this second issue.

58. This issue depends upon the law of Dubai. Mr Bajamal considers that an application made under Law 37 is civil in nature. Mr Al Zarouni disagrees.

59. The starting point is Article 230 of the Penal Code. Both experts agree that it is mandatory for the Court to issue a fine and a restitution order when a defendant is convicted of a crime against state security and interests within Title 1 of the Penal Code. Mr Bajamal opines that the fine and the restitution order are nonetheless civil in nature. In support of his argument (his word) he relies upon Article 75 of Cabinet Resolution No. 57/2018 which he says renders restitution orders and fines arising from criminal judgments civil in nature. Article 75 provides that execution may only be carried out under a writ of execution and that a writ of execution is defined in Article 75(2)(a) as applying to

> "… Judgments and orders, including criminal judgments that include orders for restitution, compensation or fines **and other civil rights contained therein** …" (Mr Bajamal's emphasis)

Mr Al Zarouni disagrees with Mr Bajamal's conclusion that the words "and other civil rights contained therein" qualify the previous words such that they mean that all orders for restitution, compensation or fines are civil rights. His view is that they are inclusive words intended to make clear that all aspects of a judgment or order are enforceable and are not words intended to make a criminal judgment into a civil one.

60. I found Mr Bajamal's answers in cross-examination on this point to be unconvincing. He accepted that the public prosecutor could have had Mr Ridley committed for an extra year under Article 309 of the UAE Penal Procedures Code. That would definitely have been a criminal penalty. He nevertheless argued that Article 75 of Cabinet Resolution No. 57/2018 defined the criminal orders there referred to as being civil when it came to enforcing them. This argument seemed to be premised in part upon the fact that the enforcement judge sits in the civil division.

61. Were the proceedings under Law 37 civil or criminal? The Bank submitted that they were criminal and made the following submissions in support:

(1) Mr Bajamal accepted in cross-examination that the proceedings under Law 37 did not involve the bringing of new substantive civil proceedings. He said this "… Law 37 is not about filing substantive proceedings or substantive claims. It is a mechanism that comes into play once a judgment is already in place …";

(2) Mr Bajamal accepted that the consequence is that the 2018 proceedings did not involve the Bank asserting a civil cause of action against Mr Ridley based upon the Agency Agreements;

(3) The experts are agreed that Law 37 is triggered by way of an application to the execution judge;

(4) What therefore occurs when Law 37 is invoked is the enforcement of a sentence necessarily passed by a criminal court pursuant to the Penal Code. There is no coherent reason to regard that process as civil. The fact that the UAE court system directs the application to be made to a particular judge, the enforcement judge, cannot alter the proper categorisation of the application.

62. I find the Bank's submissions, supported by the evidence of Mr Al Zarouni, to be compelling and I accept them. The proceedings under Law 37 were criminal in nature. Clause 12.4 of the RSA cannot be construed in such a way as to prevent the Bank from proceeding under the criminal law of Dubai.

(2)Financial violation or financial and administrative offence

63. The second issue dealt with by the experts of Dubai law is whether the Bank would have committed a financial violation or a financial and administrative offence if it had failed to take steps under Law 37. The Bank asserts, through Mr Al Sharif, that if it had not taken action against Mr Ridley under Law 37 then it would have expected various regulators, including the Financial Audit Authority ("**FAA**"), to investigate why no action had been taken by the Bank and that any such investigation would probably have led to various "implications" being imposed upon the Bank and its responsible executives which would have been criminal in nature.

64. The Bank relies upon the so-called rule in *Ralli Bros v Compania Naviera Sotar y Aznar* [1920] 2 KB 287 which was described by Cockerill J. in *Magdeev v Tsvetkov* [2020] EWHC 887 (Comm) as being

> "… authority for the proposition that the Court will not enforce a contract if the performance of that contract necessarily requires an act in a friendly foreign state which would be unlawful by the law of that state. The rule does not require the parties to intend the illegality or even to be aware of the fact that what they have bargained for will involve an act unlawful by the place of performance. It simply requires it to be established that their bargain necessarily involves such an act ..."

The Bank argues that if it would have been illegal under Dubai law for it not to have taken the steps that it did take, and such that inaction would necessarily have taken place in Dubai and would have been unlawful as a matter of Dubai law. The rule in *Ralli Bros* therefore applies.

65. Mr Watson for Mr Ridley submits that *Ralli Bros* is not authority for the broad proposition described above. Cockerill J. herself observed that the basis for the decision had been somewhat controversial: *Magdeev* (above) at [299]. Mr Watson relied in particular upon the judgment of Lord Collins in the Hong Kong Court of Final Appeal case of *Ryder Industries Limited v Chan Shui Woo* [2016] 1 HKC 323 in which he said this at [59]:

> "… it would be extraordinary if it could be regarded as contrary to public policy in Hong Kong to enforce a contract because of breaches in the PRC which the judge found (a) not to be a very serious contravention of the law; (b) not to be conduct which could be described as iniquitous; (c) not to have resulted in actual criminal or enforcement proceedings in the PRC; (d) to have been mere administrative contraventions…There is no principle of law or public policy which would lead to such a conclusion, which would be contrary to commonsense and justice …"

66. Mr Watson submitted that the rule in *Ralli Bros* applied to acts which "*__would__*" be unlawful under the laws of a foreign state. The rule does not apply to a case where the act "*might*" be unlawful or where there is a "*risk*" (which is unknown) that the authorities might take a dim view of performance. I agree. It is, in my judgment, incumbent upon the Bank when seeking to rely upon *Ralli Bros* to show that it would in fact have been unlawful under the law of Dubai for it not to have taken steps under Law 37.

67. It was common ground when the case was opened to me that Law 37 confers discretionary powers upon those able to invoke it. The dispute between the parties was (a) whether a failure to invoke Law 37 would constitute a financial violation on the part of the Bank, and (b) whether the bank was required to have regard to the public interest. I did not find the evidence of the experts on Dubai law to be particularly helpful in addressing these questions.

(1) Mr Al Zarouni was, in my view, rightly criticised for developing a new theory in cross-examination to the effect that the Bank had no discretion under Law 37 and that its invocation was mandatory. This was contrary to a number of passages in his first report and also contrary to the case advanced by the Bank in its opening submissions. It was put to him that Article 3 of Law 37 did not impose an obligation upon a creditor to invoke it, a proposition with which he did not agree, although he provided no concrete support for his disagreement. He did, however, accept that Article 5 of Law 37 was expressly formulated in mandatory terms;

(2) Mr Bajamal, for his part, did not really address this matter in his first report. He accepted that Dubai Investment Corporation, a government sovereign investment entity, held a 27.97% stake in the Bank and that the Bank therefore fell within Article 18(2) of Dubai Law No.4 of 2018 ("**Law 4/2018**"), which grants the FAA (formerly known as the FAD) powers over it[1]. He stated that Articles 13 and 31 of Law 4/2018 provided the FAA with the widest possible powers to unveil and take action against matters the interest of public funds and interests. He did not, however, provide any guidance as to whether it would take action in the event that the Bank did not exercise its powers. When he did deal with this point in his supplementary report and in his oral evidence I found some of his evidence to be unsatisfactory. For example, he suggested that the non-invocation of Law 37 would not be a financial violation because of the value of the security granted to the Bank under the RSA. However, neither he, nor I, am able to assess the value, if any, of that security.

68. Both experts had no experience of the way in which the FAA's discretion to impose such sanctions is usually exercised – Mr Al Zarouni said that because of this lack of experience he was unable to comment upon exactly how likely it would be for such a sanction to be issued or what that sanction would be. Nor was I assisted by the evidence of Mr Al Sharif. There is no evidence that the FAA expressed any view as to what their attitude would have been in the event that the Bank decided not to proceed under Law 37. The Bank submitted that the view which the FAD had taken of the RSA back in 2008 was such that the idea that the FAA would in any way be persuaded by justifications for inaction against convicted fraudsters is fanciful. I think it dangerous, however, to compare the situation in 2008, when the bank had been defrauded by the actions of its own employees (amongst others), with that in 2018. The FAA does not appear to been concerned about what appears from the evidence to have been the Bank's failure to try to recover the RSA debt by alternative means.

69. I am not, at the end of the day, able to reach a firm view on this issue. It follows that the Bank has failed to establish that it would have been in breach of Dubai law if it had failed to take steps against Mr Ridley.

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[1] Law 4/2018 was preceded by Law No.8 of 2010. The experts agree that it is in broadly similar terms to its successor Law 4/2018.

Issue 3: The Injunction

70. I am unable to grant Mr Ridley any relief in light of my conclusions in relation to Issue 1 and Issue 2(1) above. I shall, however, briefly give my reasons upon the other issues that were raised. They only become relevant if the Bank's request under Law 37 is prohibited by Clause 12.4 because the claim was settled and because the proceedings under Law 37 were civil in nature.

71. Mr Ridley seeks an order that the Bank be required to inform the execution judge that the parties have reached a settlement under Article 5 of Law 37 and that Mr Ridley ought to be released. It is rightly accepted on his behalf that this is unusual territory but it is submitted that an order of this nature is the only means by which his contractual rights can be protected.

72. The Bank submits that I should not grant injunctive relief in any event because:

(1) There was no settlement between the parties within the meaning of Article 37;
(2) These proceedings are an abuse of process;
(3) There has been undue delay in bringing this action;
(4) An injunction would offend against considerations of comity.

1 No settlement within the meaning of Article 37

73. This issue is said to turn on whether a settlement for the purposes of Law 37 must come after the additional period of imprisonment is imposed or may come before it. It is an issue of Dubai law. It only becomes relevant if I were otherwise to find it to be appropriate to grant an order in the terms sought by Mr Ridley.

74. The Bank submits that Mr Al Zarouni is correct when he says that a settlement within the terms of Law 37 must come after the additional period of imprisonment is imposed. They rely upon two arguments. First, they contend that the additional periods of imprisonment under Articles 2 and 3 of Law 37 apply where payment has not been made. If there had been a settlement which had discharged the obligation to pay then there could be no further question of imprisonment because the judgment debt would no longer exist. Secondly, they say that the language of Article 5 of Law 37 is forward-looking: it is making provision for what is to happen in the future if a future event, whether payment or settlement, occurs. I consider that there is force in the Bank's arguments. However, if correct they would potentially give rise to an injustice in that if there had been a prior settlement of the claim and it had not, for whatever reason, been drawn to the execution judge's attention at the time he imposed the sentence, then a debtor would be subjected to the full term of imprisonment in any event. That would, in my view, be a surprising situation and one that seems to me to be inconsistent with the intention behind Law 37. Mr Bajamal was of the view that Law 37 did not make any stipulation as to when the settlement must be reached and the execution judge would therefore not consider how and when a settlement was made.

75. I do not consider it appropriate for me to attempt to resolve this issue. It seems to me to be a question for the Dubai Court. Had I come to the conclusion that the RSA did amount to a settlement of the claims that the Bank made in the Law 37 Request then I would simply have enjoined the Bank to write to the Court and say that as a matter of English law the claims had been settled.

2 Abuse of process

76. The next basis upon which the Bank argues that no relief should be given is that he should have raised this issue in the 2010 Action before Flaux J. and that his failure to do so means that it is an abuse now to pursue this argument on *Henderson v Henderson* grounds.

The law

77. The leading case in relation to *Henderson v Henderson* abuse of process is the decision of the House of Lords in *Johnson v Gore Wood (No1)* [2002] 2 A.C. 1 in which Lord Bingham (with whom Lord Goff, Lord Cooke and Lord Hutton agreed) stated at p. 30H:

> "… Henderson v Henderson abuse of process, as now understood, although separate and distinct from cause of action estoppel and issue estoppel, has much in common with them. The underlying public interest is the same: that there should be finality in litigation and that a party should not be twice vexed in the same matter. This public interest is reinforced by the current emphasis on efficiency and economy in the conduct of litigation, in the interests of the parties and the public as a whole. The bringing of a claim or the raising of a defence in later proceedings may, without more, amount to abuse if the court is satisfied (the onus being on the party alleging abuse) that the claim or defence should have been raised in the earlier proceedings if it was to be raised at all. I would not accept that it is necessary, before abuse may be found, to identify any additional element such as a collateral attack on a previous decision or some dishonesty, but where those elements are present the later proceedings will be much more obviously abusive, and there will rarely be a finding of abuse unless the later proceeding involves what the court regards as unjust harassment of a party. It is, however, wrong to hold that because a matter could have been raised in earlier proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive. That is to adopt too dogmatic an approach to what should in my opinion be a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before. As one cannot comprehensively list all possible forms of abuse, so one cannot formulate any hard and fast rule to determine whether, on given facts, abuse is to be found or not. …"

78. Lord Millett said at p.59A that the policy reasons behind the rule in *Henderson v Henderson* were "to bring finality to litigation and avoid the oppression of subjecting a defendant unnecessarily to successive actions", and continued at p. 59C:

> "… In *Brisbane City Council v Attorney General for Queensland* [1979] AC 411, 425 Lord Wilberforce, giving the advice of the Judicial Committee of the Privy Council, explained that the true basis of the rule in *Henderson v Henderson* 3 Hare 100 is abuse of process and observed that it "ought only to be applied when the facts are such as to amount to an abuse: otherwise there is a danger of a party being shut out from bringing forward a genuine subject of litigation". There is, therefore, only one question to be considered

> in the present case: whether it was oppressive or otherwise an abuse of the process of the court for Mr Johnson to bring his own proceedings against the firm when he could have brought them as part of or at the same time as the company's action …"

He further held that "The burden should always rest upon the defendant to establish that it is oppressive or an abuse of process for him to be subjected to the second action."

79. The relevant principles were helpfully summarised by Clarke LJ (as he then was) in *Dexter Ltd (In Administrative Receivership) v Vlieland-Boddy* [2003] EWCA Civ 14 at [49]:

> "… The principles to be derived from the authorities, of which by far the most important is *Johnson v Gore Wood & Co* [2002] 2 AC 1, can be summarised as follows:
> i) Where A has brought an action against B, a later action against B or C may be struck out where the second action is an abuse of process.
> ii) A later action against B is much more likely to be held to be an abuse of process than a later action against C.
> iii) The burden of establishing abuse of process is on B or C or as the case may be.
> iv) It is wrong to hold that because a matter could have been raised in earlier proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive.
> v) The question in every case is whether, applying a broad merits based approach, A's conduct is in all the circumstances an abuse of process.
> vi) The court will rarely find that the later action is an abuse of process unless the later action involves unjust harassment or oppression of B or C ..."

80. I agree with Mr Watson's submission that, in light of the authorities, the key questions are whether (a) in all the circumstances, the present claim both could and should have been brought before Flaux J in the 2010 Action; and (b) if so, whether it is now an abuse of process to bring the claim. The burden of proof is upon the Bank.

Could Mr Ridley have made this claim in the 2010 Action?

81. The Bank's Request under Law 37 was made in 2018 – it therefore postdates the 2010 Action by about 8 years and the trial before Flaux J by well over 4 years. Mr Ridley asserts that it is difficult as a matter of logic to see how it would be abusive to have failed to seek some form of quia timet injunction in circumstances where (a) the right to invoke Law 37 in fact did not accrue until August 2017; and (b) it may never have accrued.

82. I agree with the submission that it is possibly doubtful as to whether the court would have entertained an argument based upon clause 12.4 to restrain the presentation of a Request which at the time of the trial the Bank had no right to do and bore little relation to the pleaded issues in the 2010 Action. Nevertheless, I conclude that this claim could have been made in the 2010 Action.

Should Mr Ridley have made this claim in the 2010 Action?

83. It was accepted by Mr Ridley that he was aware during the course of the 2010 action of the possibility that Law 37 might be applied to him. The Bank submitted that he accepted in cross examination that he would have seen at this early stage that the additional sentence under Law 37 was something that could only be imposed upon the Bank's application. It further submitted that this additional knowledge was fatal to Mr Ridley's pleaded case that his failure to advance in the 2010 action the case that he now advances is explicable and justifiable because he incorrectly believed that a consequence of his failing to pay the criminal compensation was that an additional 20 year period of imprisonment would automatically be imposed.

84. In my judgment the Bank seeks to read too much into the evidence of Mr Ridley. He admitted that he had seen that the additional sentence of up to 20 years' imprisonment could be imposed on the application of the Bank as creditor. He was not, however, asked whether he appreciated that this additional sentence could only be imposed upon the Bank's application. Mr Ridley also stated that he could not see why he would have spent a lot of time on Law 37 at that stage. He said, and I accept, that he could not remember the details.

85. At the end of the day I was not convinced by the Bank's submission that Mr Ridley should have sought this injunction in the 2010 Action. Mr Ridley said that as far as he was aware he did not pursue a claim for an injunction in the 2010 Action because it was not felt that it was the right time to do it and that it "would be a waste of the court's time and the lawyers' expenses involved". He went on to say that the Bank had to wait until the end of the proceedings in the Court of Cassation before they could put in a claim and that that Court might well have turned round and said that the Bank could offset Plantation against the RSA outstandings in which case there would have been no claim under Law 37. I consider that Mr Ridley's evidence provides a reasonably satisfactory explanation as to why a claim for equitable relief was not maintained in the 2010 Action.

Is it an abuse for Mr Ridley now to pursue this claim?

86. In my judgment the short answer to this question is "No". The premise of Mr Ridley's claim is that because of the Bank's impermissible Request under Law 37 he faces imprisonment until he is 80. If I had found that the Bank had acted in breach of contract by making that request then I would not have found that it was an abuse for him to have pursued this claim. Mr Watson submitted, and I agree, that:-

(1) The Bank has provided no evidence of oppression or harassment;
(2) The Bank is not being required to relitigate the same issues as were previously before the court in the 2010 action.

It was not, in my judgment, an abuse for Mr Ridley to await the outcome of matters in Dubai before commencing this action. I also have very much in mind that Mr Ridley has been held in prison throughout the relevant period, that he has not had access to a computer since his arrest and that he has had to receive information and give instructions over the telephone.

3 Has there been undue delay in bringing this action?

87. The Bank submits that Mr Ridley has unduly delayed in seeking the relief that he does. It does so on the basis that an applicant for an anti-suit injunction is required to act promptly and that if he fails to act promptly relief may be refused on that ground

alone: see e.g. *ADM Asia-Pacific Trading Pte Ltd v PT Budi Semesta Satria* [2016] EWHC 1427 (Comm), at [31]-[48]; and *Ecobank Transnational Inc v Tanoh* [2016] 1 WLR 2231, at [120]-[137]. The Bank further submits that a person who wishes to obtain an anti-suit (or anti-enforcement) injunction is not entitled to adopt a "wait and see" approach, but is required to apply at an early stage if he is to apply at all: see *Ecobank* at [86]-[88], [129] and *Verity Shipping SA v NV Norex* [2008] 1 Lloyd's Rep 652, at [36]-[37].

88. I accept that the principles applicable to anti-suit injunctions are applicable to this case. The approach to delay is well summarised by Males LJ in *SAS Institute Inc v World Programming Limited* [2020] EWCA Civ 599 at [104]:

> "… In general, the greater the delay in seeking relief, the further foreign proceedings will have advanced, and the more justifiable will be the foreign court's objection to an order by the English court which is liable to frustrate what has gone before and waste the resources which have been expended on the foreign proceedings …"

89. It should be remembered, however, that all of the anti-suit cases referred to were civil cases. Their facts are far removed from those in the present case.

90. The Bank's primary submission was that the assessment of delay runs from the date of judgment in April 2011, when he was subjected to an order under Article 230. It asserts that Mr Ridley adopted a wait and see approach after this judgment. I reject this submission, essentially for the reasons given in paragraphs 84 and 85 above.

91. Final judgment was not handed down by the Court of Cassation of Dubai until August 2017. Prior to March 2018 the Bank did not give any warning that it intended to make a Request under Law 37. I agree with Mr Watson that Mr Ridley could not be expected to apply to restrain a request that he did not know would be made. The Bank made its Request on 27 March 2018 and sought a writ of distress on 16 April 2018. It is not clear to me that these documents were passed to Mr Ridley or, if they were, when he became aware of them. The Bank requested a hearing before the Dubai court to consider its application on 26 April 2018. On 1 May 2018 Mr Cakebread, counsel at that time representing Mr Ridley, wrote to the Bank to tell it that its proposed action would be a breach of the RSA and that if the Bank continued with it he was instructed to make an application to the High Court for appropriate injunctive relief. The Bank did not respond to this letter, the Request was heard on 9 May 2018 and the Court made its order on 13 May 2018. This action was commenced on 21 December 2018.

92. The only delay that I consider to be relevant is that between April/May 2018 and 21 December 2018. This is about 9 months. The reasons for this delay have not been explained in the evidence of Mr Ridley. I do not, however, regard this as delay that prevents him from seeking the relief which he claims in the present case. I agree with Mr Anderson QC that someone facing an anti-suit injunction does not generally have to show that he was prejudiced by delay in the making of the application it is nevertheless the case that delay is not necessarily a bar to relief: see *Ecobank* (above) at [137]. In the present case there was in fact no prejudice caused to the Bank by the delay in commencing the claim before this court. In any event, the matters

considered above are equally applicable here. I find that such delay as there was would not be a bar to relief, if Mr Ridley is otherwise entitled to it.

4 Comity

93. Finally, the Bank submits that it would be a serious breach of comity for this court to make an order dictating how the Article 230 sentence may be enforced in the Dubai court. I agree, but any order that I made would not begin to dictate how the sentence should be enforced. I would, if I had considered Mr Ridley's claim otherwise to have been meritorious, have granted an injunction requiring the Bank to inform the Dubai court that the Bank's claim had been settled as a matter of English law. It would then be up to the Dubai court to assess that fact and take its own course.

Conclusion

94. For the reasons given above I dismiss Mr Ridley's claim.