[2011] UKPC 29
Privy Council Appeal No 0077 of 2010

JUDGMENT

Consolidated Contractors International Company SAL (Appellant) *v* Mr. Munib Masri (Respondent)

From the Court of Appeal of Bermuda

before

Lord Walker
Lord Mance
Lord Collins

JUDGMENT DELIVERED BY
Lord Mance
ON

9 August 2011

Heard on 26 May 2011

Appellant
Charles Hollander QC
Adrian Briggs

(Instructed by S C Andrew LLP)

Respondent
Simon Salzedo QC
Colin West

(Instructed by Simmons & Simmons LLP)

LORD MANCE:

Introduction

1. By judgment dated 28 July 2006 in English proceedings, Gloster J [2006] EWHC 1931 (Comm) held that the appellant, Consolidated Contractors International Company SAL ("CCIC") a Lebanese company domiciled in Greece, was, together with Consolidated Contractors (Oil and Gas) Company SAL ("CCOG") a company incorporated in the Lebanon as an offshore company, party to and jointly and severally liable on a subsisting agreement dated 6 November 1992 with the respondent, Mr Munib Masri. Following that judgment, Gloster J issued a series of final judgments on quantum: on 15 June 2007 for US$38,689,761, on 5 October 2007 for US$13,428,479 and on 11 February 2008 for US$3,861,645. On 18 April 2008, all these judgments were (without objection by CCIC) certified by the English High Court under section 10 of the Administration of Justice Act 1920 for the purposes of enforcement abroad.

2. Mr Masri registered the judgments in Bermuda on 13 June 2008. After service (which had to be effected in Greece) CCIC on 25 November 2008 applied to set aside the registration. The principal ground was that the English judgments were "obtained by fraud", within the meaning of section 4(1) of the Judgments (Reciprocal Enforcement) Act 1958. The allegation of fraud was of an unusual nature. It related not to any aspect of the substantive judgments issued by Gloster J on liability or quantum. Rather it related to the basis upon which the English High Court came to assume jurisdiction to determine the claim against CCIC. The Committee will assume, without deciding, that a fraud leading to the wrongful acceptance by a court of jurisdiction is capable in principle of being relevant fraud under section 4(1). A supplementary ground was that "it is not just or convenient that the judgment should be enforced in Bermuda or that there is other sufficient reason [the judge] may order that registration be set aside" within rule 12 of the Judgments (Reciprocal Enforcement) Rules 1976.

3. The application to set aside the registration came before Kawaley J, who dismissed it in a full and careful judgment dated 11 February 2009. It came then before the Court of Appeal, which dismissed the appeal in a judgment given by Evans J describing it at the outset as "an unmeritorious appeal" and focusing on an absence of any evidence of fraud, coupled with the absence of any other ground for setting aside the registration. The present appeal comes to the Board as of right, formal leave being given by the Court of Appeal on 18 March 2010. After considering the papers, a Committee of the Board on 15 December 2010 ordered that the appeal be struck out as an abuse, unless CCIC showed cause to the contrary. Upon CCIC seeking to show

cause, the Committee directed a hearing which took place on 26 May 2011. At the hearing, Mr Masri submitted that CCIC's case on fraud had no properly arguable basis, and was an abuse on that ground. He also submitted that the appeal should be struck out as an abuse of process, on the further ground that CCIC had no intention of complying with any judgment, whether or not the registration was set aside. The Committee's power to strike out an abusive appeal is not challenged.

Obtained by fraud

4. The Committee starts with the allegation of fraud. CCIC being a Greek company could only be sued in England under one of the special heads of jurisdiction set out in Council Regulation (EC) No 44/2001 (the Brussels Regulation on civil jurisdiction and judgments). Mr Masri relied upon two special heads to justify suit against CCIC in England. They were article 5(1), providing that a person domiciled in a Member State may, in another Member State, be sued: (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question", and article 6(1), providing that a person domiciled in a Member State "may also be sued …. where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgements resulting from separate proceedings". Mr Masri's case on article 6(1) depended upon proceedings brought against an English associate company of CCIC, Consolidated Contractors International (UK) Ltd ("CCUK").

5. Mr Masri's claim to establish jurisdiction over CCIC in England was challenged by CCIC at the outset of the English proceedings. At the same time, CCUK applied for summary judgment in respect of the claim against it, on the ground that there was no basis for asserting that it was party to the November 1992 agreement. Success by CCUK in that application would have undermined the basis for any reliance by Mr Masri against CCIC on article 6(1). By judgment dated 17 May 2005, Cresswell J dismissed CCUK's application [2005] EWHC 944 (Comm). He went on to reject CCIC's challenge, holding that Mr Masri had met the requirements of both article 5(1) and article 6(1). On 15 September 2005 Moore-Bick LJ [2005] EWCA Civ 1270 dismissed CCUK's application for permission to appeal against the dismissal of its application for summary judgment. On 24 October 2005 the Court of Appeal [2005] EWCA Civ 1436; [2006] 1 WLR 830 determined an appeal by CCIC against the dismissal of its challenge to the proceedings against it. In holding that article 6(1) justified such proceedings, the Court of Appeal proceeded on the basis (which followed from Cresswell J's judgment and Moore-Bick LJ's dismissal of CCUK's application for permission to appeal) that Mr Masri had a serious case to be tried as to whether CCUK was party to the November 1992 agreement: see paras 20 and 40. The claim against CCIC was regarded as a legitimate additional or alternative claim, primarily to cover the possibility that the case against CCUK might fail. The Court of Appeal saw significant problems as arising under article 5(1), but, having

formed no final conclusions on them, found it unnecessary to say more about that possible head of jurisdiction.

6. The fraud alleged by CCIC against Mr Masri in the Bermudian proceedings relates to the basis upon which, it is said, Mr Masri persuaded the English court to accept that Mr Masri had a sufficient case to be tried against CCUK, to justify the pursuit in England of his further or alternative case that CCIC was liable. The November 1992 agreement was written on CCUK notepaper, with CCUK's name at its top and "A member of Consolidated Contractors Group of companies" underneath this. The agreement gave Mr Masri a 10% participation in "CCC's 10% interest", or a 1% overall interest, in rights in the Masila oil concession in Yemen. CCIC's case was that the agreement was with it as owner of the interest in the concession, and that CCUK's notepaper had been used because the agreement happened to be made between Mr Khoury acting for it and Mr Masri in the CCC group's London office. Mr Masri in his witness statements stated in contrast that he believed that CCUK was a party to the contract. Further, as Cresswell J recited, CCIC did "not say that Mr Masri either knew or should have known which company owned the interest, and in fact he did not" (para 63) and Mr Masri's evidence was "that he had no idea which company owned it" (para 71(3)).

7. The fraud alleged against Mr Masri relates to his statements that he believed that CCUK was party to the November 1992 agreement. In alleging fraud, CCIC relies upon later evidence which he gave before Gloster J. As recited by Kawaley J (para 60), Mr Masri said, in answer to a question when he first knew "that the original contracting party on the CCC side was CCIC", that:

> "A….. I know I signed the thing on CCUK, but I did not know, at the time, really the structure of the CC group of companies. I was not aware.
>
> Q. Yes, it is not so much the structure of the group companies I am asking you about. It is your knowledge of which company within that structure was the original contracting party to the concession.
>
> A. I did not know. It was – to me it was the CCC so far as I am concerned.
>
> Q. May I put a more specific question? Did you know that CCIC was the original contracting party as at 6th November 1992?
>
> A. Definitely not."

8. CCIC further relies upon findings made by Gloster J in her judgment in the liability trial:

> "72. In my judgment the suggestion that Mr. Khoury was contracting on behalf of CCUK, an English company with a limited role within CCC, merely because its writing paper was used for the purpose of setting out the terms of the 1992 Agreement, has an air of total unreality about it. Although I consider, on the basis of Mr. Brawley's evidence that Mr. Khoury would have had actual authority to contract on CCUK's behalf (and not merely ostensible authority), it was not the legal or beneficial owner of any interest in the Concession and an identification of it as the contracting party would have been wholly inconsistent with the express terms of the 1992 Agreement, as Mr. Aldous submitted, and indeed with the factual matrix which I have set out above. Not only was Mr. Masri aware that the entity that held the legal interest in the Concession was CCIC and that it was the contracting party under the PSA, but he had never suggested at any time, prior to serving his proceedings in June 2004, that CCUK, the English company, was in any way involved or liable to him. Nor is there any basis for suggesting that Mr. Khoury, in his personal, individual, capacity was a party to the 1992 Agreement. He clearly contracted as an officer, and on behalf of, the relevant CCC entities and there is no reason to suppose that he was assuming any personal liability thereunder.
>
> 73. In my judgment, the correct analysis, given the facts which I have set out above, was that Mr. Khoury, as the controlling shareholder in the CCC group, with Mr. Sabbagh's blessing, had the necessary actual authority to enter into the 1992 Agreement on behalf of whichever one or more company, or companies, within the CCC group was the appropriate corporate entity to agree to grant Mr. Masri an interest in the Concession. It was simply not a matter that concerned Mr. Masri or Mr. Khoury which precise corporate entity was the appropriate corporate entity; as far as they were concerned, Mr. Khoury was agreeing on behalf of 'CCC' and that was enough. …."

9. Accordingly, the kernel to the alleged fraud is that Mr Masri only succeeded in establishing that he had a case against CCUK (and so in establishing jurisdiction against CCIC as a necessary or proper co-defendant) by lying about his belief that CCUK was a party to the agreement, and/or, in support of that lie, by falsely denying that he knew that CCIC held the legal interest in the concession. It is submitted, in the light of the above material, that a *prima facie* case of fraud has been shown, and that the Bermudian courts should have ordered an issue to be tried to determine whether fraud actually existed, in accordance with the guidance under (for this purpose at least) similarly worded provisions of section 9 of the Administration of Justice Act

1920 by the Court of Appeal in *Owens Bank Ltd v Bracco* [1992] 2 AC 443, 468E. That this guidance applies in Bermuda does not appear to have been in issue before Kawaley J, and was not challenged before the Committee.

10. Kawaley J held that whether or not a *prima facie* case existed for impeaching the registration for fraud depended on an analysis of the fraud relied upon. He concluded that it was wholly misconceived to use the term fraud to characterise the evidence said to have been false (para 56). He noted three points: first, the assertion that CCUK was a party was only advanced as one of alternative claims and Cresswell J fully appreciated that it might be rejected at trial; second, Gloster J's rejection of the assertion was not based on any express or implied finding that the assertion when advanced at the outset was known to be false; and, third, the assertion was to a significant degree based on undisputed independent evidence, namely that the contract was written on CCUK letterhead, and was not wholly or substantially based on Mr Masri's own written or oral evidence.

11. In the result Kawaley J held that CCIC had "failed to establish a prime facie case that Mr Masri (a) deliberately and/or recklessly misled the English Court …. before Cresswell J; and (b) (in any event) misled the Court on a matter which was material to the interlocutory ruling on jurisdiction and [CCIC's] subsequent voluntary submission to the jurisdiction of the English Court" (para 69). He went on: "It follows that neither the jurisdiction nor fraud grounds for setting aside registration have been made out. I decline to order a trial of the fraud issue" (para 70).

12. Taking the three points mentioned in paragraph 10 above, the first does not itself negative fraud. Cresswell J had only to be satisfied that there was a properly arguable case against CCUK, but, if he was only satisfied of this by reason of fraudulently given evidence, then jurisdiction at least could be said to have been obtained by fraud. The second and third points correspond with points (b) and (c) mentioned in paragraph 11 above. They are independent points, one going to Mr Masri's state of mind, the other to causation. Point (b) relating to Mr Masri's state of mind was the point on which the Court of Appeal focused. There are therefore concurrent decisions of the two courts below on this point, which depends upon an evaluation of the factual evidence now available. The Board will rarely allow an appeal in such circumstances. The Court of Appeal gave three particular reasons for concluding that there was no basis for regarding Mr Masri as having lied.

13. The first reason, at para 30, was that there were, as Cresswell J held, objective grounds for the belief (the use of CCUK's notepaper for an agreement made and signed in CCUK's offices and CCUK's membership of the "CCC group, which on one view was the contracting party". To this reason, it may however be said that merely because there were, on the facts known to Cresswell J, objective grounds for such belief, it does not follow that Cresswell J knew all the relevant background

against which to evaluate such facts (indeed one of the points he made was that he did not) or that Mr Masri actually held such belief.

14. The second and third reasons given, at paras 31 and 32, by the Court of Appeal were, in summary, that Mr Masri's belief was irrelevant to Gloster J's reasoning and conclusion. True though that is, all that it may be said to show is that Gloster J did not find, or have to find, any deceitful intention in this respect. She did find that she could not trust Mr Masri's credibility and that his evidence was self-serving on some occasions, but she said that on other occasions he gave his evidence frankly and truthfully. The question is not of course whether the findings she made regarding his case that CCUK was a party to the November 1992 agreement, themselves establish fraud, but whether they raise a *prima facie* case, which ought to have led to a direction for trial of the issue of fraud on oral evidence in Bermuda. Viewed in this way, the Committee accepts that the issue may be more nuanced than the way in which the Court of Appeal addressed it. Nevertheless, Gloster J was focusing upon the different issue, with whom the agreement should as a matter of objective legal analysis be regarded as having been made, and it is a strong thing to derive even a *prima facie* case of fraud from reasoning not directed to any issue of fraud.

15. One element which led Gloster J to describe an analysis whereby CCUK was party to the agreement as having "an air of total unreality" was that this would be "wholly inconsistent with the express terms of the 1992 agreement". But a different view was taken on this by both Cresswell J and Moore-Bick LJ. They had no major difficulty about accepting that one company in the CCC group might be party to obligations measured by reference to oil concession profits and expenses made and incurred by another group member having an actual interest in the concession. Another element was that Mr Masri was aware that CCIC held the legal interest in the concession, having actually received a farm out proposal in March 1991 showing this and a cash call from CCIC in October 1992 (Gloster J's judgment, para 71(vi)). Mr Masri had denied any such knowledge before Cresswell J. Nevertheless, it does not by any means follow either than he was lying on this point before Cresswell J or, even if he was, that he was lying when he said that he believed that CCUK was party to the November 1992 agreement. Again, as was submitted before Cresswell J and as Moore-Bick LJ accepted (see paras 15-18 below), it was possible to think that one CCC group company was party to obligations measured by another group company's interest in the concession. A third element mentioned by Gloster J was that Mr Masri had not asserted the CCUK was a party before serving his proceedings on CCUK in June 2004. But this was an element which must always have been known, and it did not prevent Cresswell J and Moore-Bick LJ from reaching the conclusions they did. For these reasons, there is in my view no properly arguable basis for taking issue with the concurrent decisions below that there was no case for regarding Mr Masri as having lied when he said that he believed that CCUK was party to the November 1992 agreement. That alone would be sufficient to justify the Committee in striking out as abusive the present appeal. However, the matter does not stop there because of point (b), causation.

16. In relation to point (b), causation, the question is whether, assuming that Mr Masri lied, his lies can be said, even *prima facie*, to have been the cause of his obtaining jurisdiction over CCUK and so CCIC. The Committee will, in considering this, leave aside the possibility that jurisdiction could in any event have been established over CCIC under article 5(1), with which any such lies could have nothing to do. The Court of Appeal did not decide the argument raised under article 5(1), recognising that it raised difficulties. The Committee will assume, for present purposes, that a full examination of the merits of reliance on article 5(1) would have led to a decision (contrary to that reached by Cresswell J) that article 5(1) did not apply. Point (b) therefore turns on article 6(1). It depends in that context upon objective analysis of the hearings and decisions before Cresswell J and Moore-Bick LJ, rather than upon investigation into Mr Masri's state of mind. Kawaley J developed point (b) in his paragraphs 57 to 59 with reference to exchanges between the judge and Mr Masri's then counsel, Mr Jonathan Sumption QC. Mr Sumption submitted that "the question of who is the contracting party …. is a question which depends on the objective construction of the contract. It is not one which depends on the subjective intention of the parties involved".

17. In his judgment (para 71) Cresswell J emphasised that importance could attach to "the background knowledge …. reasonably …. available to the parties …. at the time of the contract" (*Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 WLR 896, 912, per Lord Hoffmann), and cited in this connection with disputes about Mr Masri's knowledge as to the CCC structure and as to which CCC company was interested in the concession. It appears from Moore-Bick LJ's judgment dated 15 September 2005, para 19, that this reflected evidence from Mr Masri that it was "his understanding, which no one sought to dispel, that the UK company was the vehicle through which the group administered some of its activities in relation to the concession". Cresswell J concluded that Mr Masri had a real prospect at trial of showing that the 1992 agreement was between Mr Masri and CCUK, because the agreement was made on CCUK notepaper and because the references in the agreement to "CCC" were capable of referring to CCUK or the whole CCC group including CCUK.

18. On the application for permission to appeal, which was refused by Moore-Bick LJ, Moore-Bick LJ made no reference to Mr Masri's assertion that he believed that CCUK was liable. While he too accepted that it would be "likely to be important to have a clear insight into the background in order to understand the parties' true intention" (para 26), he noted that "the fact that the agreement was drafted on headed paper of the UK company was accepted by Mr Aldous [counsel for CCIC] as providing some prima facie evidence that the agreement was intended to be made with that … company" (para 19), and found it difficult to believe that Mr Khoury could not have found and used unheaded paper, had he wished (para 26). He went on to note that the agreement might be read as simply providing a measure of benefit to and liability on the part of Mr Masri, without him acquiring any formal interest in the

concession, and so without the agreement necessarily being made with any company having or capable of giving any such formal interest.

19. In the light of this reasoning, point (b) which Kawaley J identified is in my opinion made good. Mr Masri's stated belief that the agreement was with CCUK was, so far as appears, irrelevant to the ultimate decision – in particular to that of Moore-Bick LJ to refuse permission to appeal against Cresswell J's judgment. Mr Masri's statement that he did not know that CCIC was the concession owner also appears tangential, once it was accepted, as Moore-Bick LJ did, that the agreement may have been no more than the measure of liability by a CCC company having no necessary interest in the concession. CCIC has failed to establish a case on causation which would justify a further appeal to the Board. The present appeal should be struck out on that ground alone.

20. These conclusions are in my view reinforced by a consideration of the way in which the present point has emerged. In a further judgment given in the English proceedings on 20 December 2007 [2007] EWHC 3010 (Comm), para 107(v), Gloster J recited a submission made by Professor Nuyts on behalf of CCIC in opposition to an application for the appointment of a receiver. The submission was that there was no sufficient connection with the English jurisdiction "as it is not enough that a foreign company has been brought before the court under a special jurisdiction (which is now known to be a false basis) where that foreign company otherwise has no connection with the jurisdiction". The same phrase was used by Mr Alexander Layton QC on 11 April 2008 in a revised skeleton argument in opposition to an application by Mr Masri for an anti-suit injunction. Mr Layton submitted that the court should not strain to extend its ancillary jurisdiction "in the unusual circumstances of this case, where it is now known that the Court obtained its jurisdiction on a false basis" (para 41). It and was recited by Lawrence Collins LJ as representing CCIC's submission in the judgment given on such application on 6 June 2008 [2008] EWCA Civ 625, para 14. On 13 June 2008 Gloster J's judgments, the subject of the present Bermudian proceedings, were registered under the 1920 Act for the purpose of enforcement abroad without objection by CCIC. On 24 November 2010 Gloster J made an order in the English proceedings, upon an application by Mr Masri which CCIC did not appear in order to resist, reciting that CCIC had contended that the English court did not have jurisdiction and/or that subsequent events had invalidated its jurisdiction, and declaring that none of the Court's subsequent judgments, and in particular its dismissal of the claim against CCUK, invalidated its determination that it had jurisdiction over inter alios CCIC.

21. At no stage in this course of events, did CCIC make a case of fraud in the English jurisdiction. "A false basis" does not mean fraud - it is no more than a complaint that Gloster J's judgment on 28 July 2006 showed that the case that CCUK was a party (which Cresswell J and Moore-Bick LJ concluded was appropriately arguable) had on full argument failed. And at no stage did CCIC attempt to set aside

any of the English judgments. If Gloster J's judgment on 28 July 2006 really gave rise to a *prima facie* case that Mr Masri obtained jurisdiction over CCIC fraudulently, by lies directed to showing that he had an arguable case against CCUK, one can be confident, in view of the history of this litigation, that CCIC would not have been shy in pursuing that case or at least raising the allegation in the context of the English proceedings at an early stage. Kawaley J was prepared to put their failure to do so as giving rise to an estoppel or as an abuse of process, arising from the failure to apply with reasonable diligence to set aside the English judgments before they were certified for registration abroad (para 71). It can be said to be unclear whether a party could after a trial on liability apply first to set aside a judgment establishing that the court had jurisdiction over the defendant as having been obtained by fraud, and then on that basis have the judgment on liability set aside because the court should never have been exercising jurisdiction over the defendant. Further, any allegation of estoppel in the Bermudian registration proceedings based on failure to take such a course in the English proceedings raises questions regarding the scope and application of the House of Lords decision in *Owens Bank Ltd v Bracco* into which it is unnecessary for the Committee to go in order to decide this application. However, the Committee does regard CCIC's failure even to allege fraud in the years from 2006 to late 2008 as affording factual confirmation of the unreality of the allegation now made, a factor to which Kawaley J also referred (para 66).

Abuse of process resulting from CCIC's contempt

22. Abuse of process of another nature is of the essence of Mr Masri's submission that the Privy Council should refuse to entertain any appeal, since CCIC has manifested the clear intention never to meet any judgment against it, has committed a number of serious contempts in the course of its efforts to avoid meeting such judgment and is, by the present appeal, seeking to have its cake and eat it by resisting the Bermudian jurisdiction without any intention to comply with any Bermudian judgment if such resistance fails. That CCIC has not met the judgments given against it by Gloster J is clear. That it has resisted and sought to appeal at every stage when enforcement proceedings have been taken is also clear. It has refused to put up monies to cover the judgment debt, when this has been made a condition of leave to appeal by the House of Lords, although having the means to comply with such condition.. As long ago as 20 December 2007, Gloster J was able to say in her judgment, para 82, that:

> "Since the date of the liability judgment, the actions of the Defendants have demonstrated in a patently obvious fashion that they propose to take advantage of any opportunity open to them to resist enforcement of the judgments of the English courts, to evade their responsibility to pay Mr Masri what is due to him, as found by the English courts, and to put every obstacle in his way to prevent him from enforcing judgment against them."

23. Kawaley J, reciting Gloster J's words, came to the same conclusion in his judgment on 11 February 2009, saying (para 79) that:

> "The present application is demonstrably part of a wider litigation strategy by the Applicant in various parts of the world (including the jurisdiction where the registered judgments were first obtained) to frustrate the Judgment Creditor's legitimate efforts to obtain the fruits of his hard-earned judgments".

More recently, in the English proceedings on 21 September 2010, CCIC's attitude has been expressed by Mr Seamus Andrew of SC Andrew LLP (CCIC's solicitors) in these terms:

> "[They] have …. failed to make voluntary payment of the judgment debt, while seeking, on advice, to take more or less every legitimate point that was open to them, including appeals on procedural matters, to resist enforcement" (para 22).

Mr Andrew cited a statement by HHJ Mackie in a judgment of 25 May 2007 distinguishing between "attempts to resist enforcement, which of course the defendants are entitled to take" and "attempts to relitigate [in the circumstances before HHJ Mackie, in the Yemen] what has already been decided in a case as part of a plan of campaign to make enforcement more difficult" (para 23), and went on to say that in September 2010:

> "The Companies are resisting enforcement by all legal means as instructed by the Lebanese Court which also prohibits payment of the judgment debt unless and until the Applicant obtains an order for *exequatur* in the Lebanon" (para 25).

24. Yet more recently, in an illuminating judgment in contempt proceedings brought against CCIC by Mr Masri [2011] EWHC 1024 (Comm), Christopher Clarke J said that "It is clear that they [CCIC and CCOG] have no intention of paying anything unless forced to do so" (para 79), and went on to outline steps taken, in the Lebanon and elsewhere, to put assets out of Mr Masri's reach. Mr Andrew's reference to the Lebanese Court reveals the current obstacle faced by Mr Masri in his attempts to enforce the judgments against CCIC, the convoluted history of which is described in detail by Christopher Clarke J in paragraphs 81 to 132. CCIC is a Lebanese company, but it has never claimed to trade or have its central management or control there. An order of the Lebanese court provides no reason for non-compliance with the

English judgments. However, in proceedings begun in the Lebanon CCIC sought a declaration that the English judgments were issued without jurisdiction and as "a subterfuge against the jurisdiction of the Lebanese courts", and following interventions and applications by Mrs Samir Sabbagh (described as being at that stage a partner in and a member of the Board of CCIC, the Lebanese court on 14 April 2008 refused recognition of the English court's order appointing a receiver and prohibited CCIC and its then directors from giving any information about CCIC in execution of the English judgments pending the obtaining of *exequatur* in respect of such judgments in the Lebanon. The directors of CCIC and CCOG have subsequently resigned, and on their application the Lebanese court has on 14 January 2009 appointed a judicial administrator (Mr Joujou). The Beirut Court of Appeal has, on his application (apparently of his own motion), on 8 April 2010 overruled an earlier decision made by its chairman on 22 December 2008 to grant *exequatur* against CCOG and CCIC. Mr Masri has appealed the decision of 8 April 2010 to the Lebanese Cour de Cassation. Mr Joujou has on 4 October 2010 been instructed by the court to defend those companies' interests and not to make any payments, disclose information or co-operate in any way with the English courts, pending a grant of exequatur in the Lebanon.

25. Christopher Clarke J accepted evidence to the effect that:

> "If the shareholders had appointed new boards for the judgment debtors and they had decided to honour the English judgments, the judicial administration would, in all probability, have been put to an end by the judge" (para 129(i));

He held that CCIC and CCOG were in contempt of various of the English court's orders - in the case of CCIC, orders relating to the provision of documents or disclosure of information for the purposes of enforcement of the English judgments. At the end of his judgment he also said this:

> "429. I must not be understood as passing any judgment on the decisions of the Lebanese Court on matters of Lebanese Law, which are entirely a matter for them. What I do say is that when this court is faced with a deliberate refusal to honour a judgment obtained from it after a full trial, which the judgment debtors could have appealed, followed by breaches of further orders made with a view to securing that that judgment, and subsequent orders giving effect to it, are honoured, and when, as I am sure is so, the controlling shareholders could readily regain control of the judgment debtors and cause them to honour the judgment, it should give little weight to the protestation of the contemnors that they are bound by restrictions obtained at the behest and with the approval of themselves and their shareholders. A party cannot suffer himself to be

bound in chains, from which he could, if he wished, release himself and rely upon those chains as a restraint which should mitigate his failure to comply with the orders of the court. I also regard it as in the highest degree unlikely that the judgment debtors or their administrators or their officers would in practice suffer any prosecution or incur any penalty under Lebanese law if they were to comply with the orders of this court.

430. I should also add that it is not clear to me that the Lebanese Court has had all the relevant considerations put before it. Mr Chedid told me, I am sure correctly, as did Professor El Khoury, that under Lebanese Law it was the duty of the judicial administrator to act in the best interests of the companies and not, if there was any difference, the shareholders. If there was a conflict of interest between the shareholders and the companies it was his duty to prefer the interests of the companies. There was, also, no practical or legal impediment to the judgment debtors honouring the orders of this court when they were made. The stance that has been taken by the judgment debtors in deciding not to pay the judgment debt, and in resisting any attempt to secure payment, coupled with the running down of their respective businesses in order to avoid enforcement against the assets thereof, appears to me to be in the interests of the shareholders, whose desire it is that Mr Masri should never be paid a cent, but not of the companies. I accept Mr Chedid's evidence that there is, indeed, a conflict of interest between the shareholders and the companies.

431. It would appear to me, although this is a matter for the Lebanese Court, that it is incumbent on the judicial administrator to lay these considerations fully before the Lebanese court, with a full explanation of all the steps that the companies have been and are taking to avoid enforcement and the actual and likely future effect of that on the companies, in particular in relation to new business, expressing his opinion as to what, in the light of that explanation it is in the interest of the companies (as opposed to their shareholders) to do, and to seek directions as to whether, in the light of that, he should procure the companies to pay the judgment debts. I note from Mr Joujou's report of November 2010, that the dispute has already caused the companies to be severely hampered in their attempts to obtain new business and reputationally, and, as is common knowledge, they are not taking new business. Other companies in the Group have taken over. Employees have been moved to other companies. The overall picture is of prosperous companies being run down in order not to pay a particular judgment debt, which its shareholders insist on not honouring."

26. The Committee was informed by Mr Hollander QC representing CCIC that, since Christopher Clarke J's judgment, the judicial administrator has applied to the Lebanese court to be allowed to purge the contempt by CCIC which Christopher Clarke J found proved, and to pay the judgment debt, and that a decision on this application was awaited during this summer. Mr Salzedo QC for Mr Masri observed that any such application was only under the pressure of Christopher Clarke J's judgment, that, as Christopher Clarke J noted in paras 429-431, any impasse which currently exists as a result of the Lebanese proceedings was of CCOG's and CCIC's own making, that the shareholders of CCOG and CCIC could if they wanted regain control of CCOG and CCIC and meet the judgments and that there was no basis for accepting the current averments of willingness to pay if authorised by the Lebanese court with anything but a pinch of salt. The whole issue of *exequatur* is, he submits, a diversion, raised in order to delay. The proven contempts have hampered, and been designed to hamper, enforcement outside Lebanon, not within the Lebanon where CCIC has no significant assets. As Christopher Clarke J found, CCIC was in contempt in various respects in failing to provide documents and information, relevant to such enforcement.

27. Mr Salzedo referred the Committee to the robust principle accepted by the House of Lords, per Lord Bridge of Harwich, in *X Ltd v Morgan-Grampian (Publishers) Ltd* [1991] 1 AC 1, 46-47, to the effect that:

> "Certainly in a case where a contemnor not only fails wilfully and contumaciously to comply with an order of the court but makes it clear that he will continue to defy the court's authority if the order should be affirmed on appeal, the court must, in my opinion, have a discretion to decline to entertain his appeal against the order."

That statement is not precisely applicable to the present situation, since the contempts which have been established do not relate to the registration of the English judgments in Bermuda or to the judgments of the Bermudian courts upholding such registration, but to orders of the English courts designed to facilitate enforcement of the English judgments. But the statement is in the Committee's view still of some relevance. CCIC, as a judgment debtor, is a proven contemnor in relation to the enforcement of the English judgments against it. The Bermudian registration is only necessary because CCIC has by its contempts and conduct in England hampered the enforcement of the English judgments wherever and as far as it could. CCIC now attempts to challenge the Bermudian registration by reference to Mr Masri's supposed fraud in obtaining jurisdiction over CCUK and so CCIC in England. It is not credible to think that CCIC has any intention of complying with the Bermudian judgments, even if the Bermudian registration of the English judgments stands. If there were otherwise any doubt about the appropriateness of striking out this appeal on the merits, the Committee considers that the appeal should be struck out as abusive in the light of the history of CCIC's contempt and conduct in relation to the English

judgments and its lack of any real intention or willingness to comply with the Bermudian judgments if the appeal fails.

Conclusion

28. For these reasons, the Committee considers that CCIC's appeal should be struck out as an abuse of the process.