Neutral Citation Number: [2011] EWHC 1024 (Comm)

Case No: 2004 FOLIO 124 AND 831

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 05/05/2011

Before :

MR JUSTICE CHRISTOPHER CLARKE

- -

Between :

Munib Masri	**Applicant/Judgment Creditor**
- and -	
Consolidated Contractors International Company SAL **Consolidated Contractors (Oil and Gas) Company SAL**	**First and Second Respondents/Judgment Debtors**
Wael S Khoury	**Third Respondent**

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- -

Gavin Kealey QC, Stephen Philips QC, MP and Colin West (instructed by **Simmons & Simmons LLP**) for the **Judgment Creditor**
Alan Boyle QC, James Lewis QC, Dan McCourt Fritz and Ben Brandon (instructed by **SC Andrew LLP**) for the **Judgment Debtors**
Ian Mill QC, Andrew Hunter and Tom Cleaver (instructed by **Jones Day**) for the **3rd Respondent**

Hearing dates: 31st January, 1st, 2nd, 3rd, 7th, 8th, 9th, 10th, 14th, 15th, 16th, 17th and 18th February 2011

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE CHRISTOPHER CLARKE

MR JUSTICE CHRISTOPHER CLARKE :

1. Mr Munib Masri ("Mr Masri"/"the judgment creditor") applies for a declaration that the first and second respondents ("the judgment debtors") are in contempt of this court by reason of several breaches of orders made following a judgment on liability given by Gloster J on 28th July 2006 ("the liability judgment") and for an order that they be fined on that account.

2. He also seeks the committal of the third respondent, Mr Wael S Khoury, on the ground that he is a de facto or shadow director or officer of the judgment debtors and has participated in the breaches relied on and/or wilfully failed to take reasonable steps to ensure that the orders were complied with. In January it became clear that the time estimate previously given for the hearing was woefully inadequate and that it would not be possible to deal with the case against all the respondents within such (extended) time as the Court was able to make available. I directed that the case against Mr Wael Khoury should only be dealt with after I had delivered judgment in respect of the judgment debtors.

3. This is a further round in the long drawn out feud between Mr Masri, on the one hand, and the Khoury and Sabbagh families on the other. The allegations of contempt and the defences thereto cannot be understood without reference to the complicated history of that feud and of the litigation that has followed in England, the Lebanon and elsewhere[1].

The cast

Individuals

4. The Sabbagh family was headed by Mr Hasib Sabbagh, prior to his recent death. He has two sons – Samir Sabbagh and Suheil Sabbagh.

5. The Khoury family has at its head Mr Said Tawfic Khoury. He has three sons – Tawfic Khoury, Samer Khoury and Wael Khoury. He has two daughters one of whom is Salwa Khoury. She is married to Samir Naef Khoury. Khoury family members reside in both London and Athens. *[Note that Wael Khoury lives in London]*.

Companies

6. The Khoury and Sabbagh families are the owners of the Consolidated Contractors Companies Group. This Group is often known by the initials "CCC". At the head of the Group is Consolidated Contractors Group SAL (Holding Company) ("CC Holding"). It is beneficially owned as to 60% by the Khoury family (in part through Consolidated Investment Company, a Khoury family company) and as to 40% by the Sabbagh family. It is incorporated in Lebanon. CC Holding owns almost all the shares in two Lebanese offshore companies – Consolidated Contractors International Company SAL ("CCIC") and Consolidated Contractors (Oil and Gas) Company SAL ("CCOG"). These are Lebanese offshore companies. Such companies pay practically

[1] I am conscious that this is an exercise carried out by other judges in earlier proceedings. I take the view that it is necessary, or at any rate desirable, to set out the history in order to make this judgment self-contained and inclusive of matters that are particularly pertinent to this application.

no tax in Lebanon but may not carry on business there[2]. They may, however, manage from Lebanon businesses carried on elsewhere. According to the evidence of Mr Nassib Chedid, the judgment debtors' Lebanese lawyer, CCIC and CCOG have now about 100 employees in Beirut distributed over several offices of the Group and have bank accounts there. They have, however, several bank accounts elsewhere.

7. Two shares out of 500,000 in CCIC are directly held by Mr Samir Sabbagh and 2 shares out of 100,000 shares in CCOG are directly held by Mrs Salwa Khoury. These were allocated to, or acquired by, them in order that they might act as directors. Lebanese law requires a director to be a shareholder but one share will suffice. A number of other individuals who have in the past acted as registered directors of the companies, also hold such nominal shareholdings.

8. CCIC was the main group company. It has been a very successful company which has carried out a large number of construction projects mainly for government entities in the Middle East, where it enjoyed a great deal of success and a long standing reputation. CCOG operates in the oil and gas field and held the oil and gas interests of the Group.

9. In 2004, CCIC had its principal office in Athens. It was described by Mr Said Khoury in his 1st witness statement of 18 November 2004 as "*based"* there. As late as 21 March 2010 CCIC described itself in Swiss proceedings as having its "*siege*" *i.e. seat* in Athens. In March 2008, CCIC's central accounting system was held on computer in its principal place of business in Athens: see para 5 of the third witness statement of Suheil Nasser, who was then the Chairman of the judgment debtors. The number of employees in Greece reduced from about 600 to about 75 by February 2010. The affairs of the Group were also managed from London.

10. In late 2004, CCOG had no physical office or physical presence in Lebanon; its financial accounting was carried out by CCIC personnel at CCIC's offices in Athens where all its financial records were; and it had no employees of its own: para 5 - 9 of the 1st witness statement of Walid Noureddin. According to the same statement the majority of the shareholders of CC Holding were based in Athens, being Said Khoury, Hasib Sabbagh, Suhail Sabbagh, Samir Sabbagh, Tawfic Khoury, and Samer Khoury. Wael Khoury was based in London.

The Masila oil field.

11. Block 14, otherwise known as the Masila Oil Field, in the Yemen has turned out to be a very profitable oil field. CCIC obtained a 10% interest in that field by virtue of:

    i) an Agreement for Petroleum Exploration and Production between the Yemeni Minister of Energy and Materials, Canadian OXY Offshore International Ltd ("Canadian Oxy") and CCIC dated 15 September 1986; and

[2] Article 2 of Law No 46 of 24 June 1983 governing offshore companies provides that they "*shall be forbidden to engage in industry, banking operations, insurance or holding or undertaking any commercial activity on the Lebanese territory*" other than as mentioned in Article 1, which permits the "*negotiation and signature of contracts and agreements in respect of operations and deals where the implementation shall be effected outside the Lebanese territory and relevant to merchandize and products situated abroad or in the customs free zone*".

ii) the Masila Joint Operating Agreement between Canadian Oxy and CCIC of 27 April 1987.

CCIC's interest was assigned to CCOG on 25 October 1992. For many years the Masila oil field was the only project which produced profitable revenues for CCOG.

The 1992 Agreement

12. By a one page agreement dated 6 November 1992 ("the 1992 Agreement"), written on the notepaper of Consolidated Contractors International (UK) Ltd, an English company ("CCUK"), and signed by Mr Masri and Mr Said Tawfic Khoury, Mr Masri was granted a 10% share of CCC's interest in the Masila Concession in exchange for payment of 10% of the costs in respect of the concession.

Mr Masri's proceedings

The first action

13. Mr Masri brought two actions. The first was commenced on 18 February 2004 ("the first action"). The Defendants were CCUK and CC Holding. CCUK and CC Holding were served within the jurisdiction. In the first action Mr Masri claimed that CCUK was a party to the 1992 Agreement, being the principal, or, in the alternative, the agent of CC Holding. In para 6 of his Particulars of Claim, Mr Masri pleaded that at the time that the Concession was originally granted in 1985 he had not known that CCC's interest in the Concession was owned by CCIC. He also referred to the fact that the interest had subsequently been transferred to another CCC Group subsidiary, CCOG. At para 12, Mr Masri pleaded that Mr Khoury was signing the 1992 Agreement on behalf of CCUK and that this was consistent with the fact that the agreement was recorded on the letterhead of CCUK. On 28 July 2004, CCUK applied in the first action for reverse summary judgment on the basis that it was not a party to the 1992 Agreement and that the claim against it had no reasonable prospect of success. CC Holding applied for an order to set aside the order made by Morison J on 11 June 2004 permitting service on it at the registered office of CCUK in London.

14. On 17 September 2004, for the purpose of resisting that application, Mr Masri served a witness statement stating that he believed that Mr Said Khoury signed the 1992 Agreement on behalf of CCUK and that it was an agreement between himself and CCUK. In his witness statement he said (para 36) that until recently he had no idea which CCC company held the interest. He also said (para 57) that Mr Said Khoury must have known that he did not know which company held the interest.

The second action

15. On 8 October 2004, Mr Masri commenced a second action ("the second action") against CC Holding, Mr Said Khoury, CCIC, and CCOG. The Particulars of Claim stated that it remained Mr Masri's case that the 1992 Agreement was made with CCUK. It was his alternative case that Mr Said Khoury made the 1992 Agreement as agent for CC Holding, or CCOG or CCIC, or as agent for CCUK acting as agent for CC Holding, CCOG or CCIC. None of these defendants was domiciled in England. As against CCIC, jurisdiction was asserted under the Judgments Regulation on the basis that it was domiciled in another Member State, namely Greece. As against

CCOG, Mr Masri sought permission to serve out of the jurisdiction on the basis that it was not domiciled in a Member State but in Lebanon. CCIC and CCOG both disputed the jurisdiction of the English court. CCIC asserted that jurisdiction in the second action could not be founded upon the jurisdiction claimed against CCUK in the first action or on the basis of article 5.1 Judgments Regulation. CCOG asserted that there was no serious issue to be tried against it and that England was not the appropriate forum. The first action was discontinued against CC Holding on 16 March 2005.

Cresswell J's judgment of 17 May 2005

16. On 17 May 2005, Cresswell J gave judgment in respect of the jurisdictional challenge in the second action and the summary judgment application by CCUK in the first action. He dismissed the latter. Relying substantially on Mr Masri's written evidence, he held [71] that: "*Mr Masri has a real prospect of succeeding at trial in showing that CCUK was party to the 1992 Agreement*" or, alternatively, that the agreement was with the CCC Group including all corporate defendants in both actions including CCUK.

17. In reaching that conclusion, Cresswell J referred to Mr Masri's evidence that he did not know which company held the group's interest in the Concession: [63], [64 (iii)] and [71(1)(iii)][3]. He went on to rule that the English court had "special jurisdiction" over CCIC under Article 6 (1) of the *Judgments Regulation*, which allowed it to take jurisdiction over a defendant domiciled in another EU Member State which was a co-defendant to an action properly brought against an English domiciliary. It was common ground before Cresswell J that the relevant test of whether there was a good arguable case that CCIC was domiciled in Greece was met.

18. Cresswell J determined that the first and second actions were sufficiently closely related that the "anchor" jurisdiction against CCUK in the first action could also constitute the anchor for jurisdiction against Mr Said Khoury and CCIC in the related second action. This was a previously unsettled proposition of law. Cresswell J also ruled that, even if he were wrong about the applicability of Article 6(1) of the Judgments Regulation, the court had jurisdiction over CCIC under Article 5(1) of the Judgments Regulation, another rule of "special jurisdiction", on the footing that there was a good arguable case that England was the place where CCIC's payment obligations were to be performed because Mr Masri was ordinarily resident in England at the time of the 1992 Agreement.

19. Having reached these conclusions, Cresswell J then accepted that service out of the jurisdiction against CCOG was justified on the basis that one or more of the heads of CPR Rule 6.20 applied; that there was a serious issue to be tried against CCOG and CC Holding; and that England was the most appropriate forum. In respect of the forum conveniens arguments he stated that: "*If the former claims* [against CCUK and CCIC and Mr Said Khoury] *are to proceed in England, England is the appropriate forum to try the latter claims* [against CCOG and CC Holding]". Cresswell J ordered the two actions to be consolidated.

[3] There is an issue, which I do not need, nor do I purport, to decide – but which may fall to be determined by the Privy Council in CCIC's appeal to the Privy Council against the refusal of the Court of Appeal of Bermuda to set aside recognition of the English judgments – whether Creswell J relied on that evidence, which Gloster J later held to be untrue, in reaching his conclusion.

The appeal from Cresswell, J

20. CCIC and CCOG appealed to the Court of Appeal. On 25 October 2005, the Court of Appeal upheld Cresswell J's decision that the court had jurisdiction over CCIC under Article 6(1) of the *Judgments Regulation*. It ruled that the first action against CCUK provided the jurisdictional anchor for bringing CCIC into the jurisdiction as a co-defendant in the second action. Having done so, it did not rule on the Article 5(1) point, although it observed [43] that "*significant problems potentially arise under Article 5(1)"*. On 24 November 2004 the defendants to the second action petitioned the House of Lords for leave to appeal the Court of Appeal's decision.

CCIC and CCOG are joined to the first action

21. On **6 January 2006**, Mr Masri belatedly applied to join the defendants to the second action to the first action. This radically changed the position of CCIC and CCOG. Since Cresswell J had found that there was a good arguable case that CCUK was party to the 1992 Agreement, there was now unquestionably an "anchor" defendant in the first action and, if joinder was permitted, there was no basis on which CCIC could successfully resist the inevitable application of Article 6(1) of the Judgments Regulations to it as a co-defendant to the first action. Once CCUK and CCIC and CCOG were sued in the same action, it was clear that England would be the appropriate forum to hear the consolidated claim.

22. In the circumstances, the defendants to the second action (Mr Said Khoury, CCIC and CCOG) took the view that they had no option but to consent to being joined in the first action, which on 13 January 2006 Colman J allowed on terms limiting such joinder "*to such of [Mr Masri's] claims against them in the Amended Consolidated Particulars of Claim as had not become time barred before 13 January 2006.*"

23. Herbert Smith, who were then acting for the defendants to the second action, wrote to the Judicial Office of the House of Lords on 17 January 2006, explaining that:

"*The petitioners have always accepted that it was open to the respondent, Mr Masri, to apply to join them as defendants to the first action, in which case the court would have jurisdiction to hear the claim against all defendants…*"

They went on to explain that joinder would have limitation consequences and that in the first action, Mr Masri would only be able to bring such claims against the defendants to the second action as were not time barred at the date of joinder.

24. In relation to the joinder of the two actions, Hebert Smith wrote:

"As a result……. it is now agreed by all parties that the court has jurisdiction over all the defendants. To that extent, the petitioners' appeal, if allowed to proceed, will no longer be determinative of whether or not a trial against them takes place in this country".

25. It was only in those circumstances, the judgment debtors emphasise, that they submitted to a consolidated action. Once there had been joinder in the first action the question whether Article 6(1) of the Judgments Regulation applied where an anchor

English defendant in one action was said to found jurisdiction against defendants domiciled in another Member State in another action was rendered moot, save as to limitation. It then became inevitable that the court would take jurisdiction over CCIC and CCOG, the court having held that there was a real prospect that Mr Masri would establish at trial that CCUK, an English company, was a party to the 1992 Agreement.

The appeal to the House of Lords

26. On **27 February 2006,** the House of Lords granted leave to appeal to all the defendants in the consolidated action save CCUK. On 25 May 2006, CCOG withdrew its appeal to the House of Lords, on the basis that the actions had now been joined. CCIC alone pursued the appeal[4], in view of the limitation implications of determining at what stage the English courts had obtained jurisdiction over it. In June 2008, CCIC served its Case and lodged an incidental petition seeking to expand the scope of its appeal but the petition was dismissed in a ruling dated 26 June 2008 and the appeal was struck out for failure to comply with conditions requiring the payment in of significant sums of money.

The liability judgment

27. In the end the suggestion that CCUK was a party to the 1992 Agreement was rejected. In her liability judgment of **28 July 2006,** Gloster J found that Mr Masri had been an unreliable witness and ruled that CCUK had patently not been party to the 1992 Agreement. She said (at [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.*" (Emphasis added in bold in this as in all other instances).

[4] The appeal by Said Khoury and CC Holding became moot following the dismissal of the action against them by Gloster, J in the liability judgment: see para 27.

She held that CCIC and CCOG were in breach of the 1992 Agreement. On **19 September 2006,** she dismissed the action against CCUK, Mr Said Khoury and CC Holding.

28. In those circumstances CCIC and CCOG claim, and have subsequently asserted before the Lebanese courts, that jurisdiction was established on a false basis, namely that CCUK was a party to the 1992 Agreement. If it was not a party, there was no basis for invoking Article 6 of the Judgments Regulation, nor would the conclusion that England was the appropriate forum for a claim against CCIC or CCOG have been available.

29. These considerations do not alter the fact that the English Court had jurisdiction over the judgment debtors. They have submitted to that jurisdiction and have taken a full part in the hearings of the case against them. They have exercised the rights of appeal open to them save where they have been ordered to make payment into court of the judgment debt (as opposed to costs) as a condition of permission to appeal. I infer that that is so because they object to having to pay Mr Masri in any circumstances.

30. On 14 November 2006, the judgment debtors were given permission to appeal the liability judgment by Waller LJ.

The procedural history after the liability judgment

31. In the liability judgment Gloster J held that the judgment debtors were in breach of the 1992 Agreement in having failed to pay Mr Masri his share (10% of 10%) of the revenues of the Masila oil concession. She rejected the contention that the 1992 Agreement had been terminated by the judgment debtors in about May 1993 as a result of Mr Masri's failure to meet his payment obligations under the Agreement.

32. On **14 March 2007,** Gloster J gave a judgment on quantum. She ordered an account of what sums were due and owing to Mr Masri up to 31 December 2006, made a declaration as to the judgement debtors' continuing obligations to make quarterly payments under the 1992 Agreement, and ordered an interim payment of $ 30 million in respect of damages and £ 722,841.11 in respect of costs provided that Mr Masri procured a bank guarantee in favour of CCIC and CCOG. This was the subject of further argument and finally confirmed in an order of 4 May 2007. These amounts were due by 16 May 2007.

33. In **April 2007,** the parties agreed the amount of the final account to 31 December 2006 to be $ 37,532,909.99. On **15 June 2007,** Gloster J ordered the judgment debtors to pay $ 38,689,761.37 (which included interest) by 4.00 pm on 29 June 2007 (which sum was deemed to include the interim payment ordered, but unpaid, of $ 30,000,000). She also ordered an interim payment of $ 1,175,915.69 in respect of the first quarter of 2007 to be paid by 6 July 2007.

34. The judgment debtors did not make the interim payments that were due on 16 May 2007. On **12 June 2007,** the Court of Appeal (Lloyd, LJ) imposed a condition on the earlier grant of permission to appeal against the liability judgment that the payment required by the two interim orders (for $ 30 million and costs of £ 722,841.11) be made by no later than 4.00 pm on 14 June 2007 failing which the appeal should be struck out. That condition was not complied with and the appeal was struck out.

Proceedings in Yemen

35. Meanwhile the judgment debtors had commenced proceedings in Yemen for a declaration that the agreement had been terminated by Mr Masri's breaches of it – the very issue which Gloster J had decided against them in the liability judgment. On 25 May 2007, Mr Masri obtained from HHJ Mackie QC, an injunction restraining the proceedings in Yemen. On 6 September 2007 permission to appeal that injunction was granted by Sir Henry Brooke, sitting as a judge of the Court of Appeal, conditional on the judgment debtors by 1 November 2007 paying costs totalling £ 108,500, failing which the appeal would be struck out. That sum was paid. The appeal proceeded, but was dismissed by a judgment of 6 June 2008: [2008] EWCA Civ 625.

Non payment

36. No payment was ever made towards the interim orders dated 4 May and 15 June 2007. This was not for want of funds. The judgment debtors could at any time have made payment of what the court has held to be due and could at any time do so now. They have never paid Mr Masri any sum in respect of the Masila Concession or the judgments of this court. On the contrary they have made it plain that they have no intention of doing so and will resist any and every attempt to compel them to do so or to enforce the judgment: see para 24 of the judgment of Gloster J of 20 December 2007 (para 41 below). As Rix, LJ put it in his judgment of 15 January 2008 (para 44 below), their refusal to honour the judgments of the court is a "*determined and deliberate contempt*".

Further appeals

37. The judgment debtors petitioned the House of Lords for permission to appeal against the order of the Court of Appeal of 12 June 2007. On **7 November 2007,** the House of Lords refused the judgment debtors permission to appeal this order. As a result there remained no further possibility of any appeal against the liability judgment.

38. On **27 June 2007,** Gloster J made a further order for specific performance of the judgment debtors' obligations to make quarterly payments. On **6 September 2007,** Sir Henry Brooke granted the judgment debtors permission to appeal the order for specific performance on condition that by 1 December 2007 they paid all the sums which Gloster J and the Court of Appeal had ordered, failing which their appeal would be struck out. No such payment was made.

39. On **11 July 2007,** the Court of Appeal allowed Mr Masri's cross appeal against a construction issue relating to operational costs as a result of which the quantum of his claim was increased.

40. On **5 October 2007**, in the light of the decision of the Court of Appeal on Mr Masri's cross appeal, Gloster J declared that the amount due to Mr Masri as at 31 December 2006 was $ 49,533,302.60 and that interest down to 5 October 2007 was $ 2,584.938.86. She ordered the judgment debtors to pay Mr Masri $ 13,428.479.79 being the additional amount due.

The 3 orders of 20 December 2007

41. On **20th December 2007,** Gloster J made three orders:

a) the CCOG Receivership Order;

b) the Affidavits Order; and

c) Freezing Order No 1.

The CCOG Receivership Order and the appeal from it

42. The Receivership Order included the following provisions:

"1. This is an order for the appointment of a receiver made against [CCOG] on 20 December 2007 by Mrs Justice Gloster on the application of the Claimant ….

2. Subject to para 16 below, Mr Lee Manning of [address] be and hereby is appointed to receive all amounts due to the fifth defendant [CCOG] from Nexen Marketing Singapore PTE Ltd ("Nexen Singapore") or any other entity to the extent that they relate to the proceeds of the sale of the oil from the concession known as Block 14 (or the Masila Block) Yemen, to which [CCOG] is entitled pursuant to [the agreements referred to in para 11 above]and/or any further broking, sales or other agreements to which [CCOG] is a party regarding the sale of such oil (such amounts to be referred to as "Oil Revenues").
……

7. That from the date hereof until further order [CCOG] and its directors or officers, including Fouad Asfour and Samir Nayef Khoury, shall cooperate with the receiver in the following ways:

(a) Providing within a reasonable time such information and documents falling within the following categories as the receiver may reasonably require:

(i) the whereabouts at any time of the Oil Revenues or any assets representing the proceeds of the same;

(ii) the arrangements, whether contractual or based on instructions given from time to time, in place at any time for the sale of the oil referred to in paragraph 1 above and realisation of the proceeds of the same;

(iii) the identities of (and any other details concerning) all entities involved in the sale of the said oil and realisation of the proceeds of the same

(iv) the amounts due to [CCOG] in respect of the Oil Revenues from time to time.

(b) Providing within a reasonable time such written confirmation to third parties anywhere in the world as the receiver may reasonably require of the receiver's rights under this order to act on behalf of [CCOG] for the purpose of carrying out his functions as set out above, and of his rights under this order to receive the Oil Revenues in that capacity, and providing to the receiver copies of such confirmation.

(*c) Within three days of making any agreement for the sale of oil, or any sale of oil, providing to the receiver the following information in relation to any such agreement namely:*

i. if it is in writing, a copy of such agreement. If it is not in writing, a written description of its terms and conditions.

ii. The identity of the purchaser under this agreement or sale including the purchaser's name, registered office, address and contact details of the office of the purchaser involved in the purchase.

iii. If an agent acted for [CCOG] in making such agreement or sale, the agent's name, registered office address and the address and telephone and fax numbers (if any) of the office of the agent involved in the making of such agreement or sale.

iv. The details of the bank account to which any monies due to [CCOG] have been or are to be remitted in accordance with such agreement or sale, including the name of the bank, the address of its branch involved, the name of the account and the number of the account.

9. If the receiver shall make a request in relation to paragraph 7 above which the recipients believe is unreasonable [CCOG] shall have the right to apply to the court for directions in respect thereof before being obliged to comply.

INTERPRETATION OF THIS ORDER

10. A Defendant who is an individual who is ordered not to do something must not do it himself or in any other way. He must not do it through others acting on his behalf or on his instructions or with his encouragement.

Persons outside England and Wales

15. Nothing in this order shall, in respect of assets located outside England & Wales, require the Defendants and/or their directors to disobey the order of any court of competent jurisdiction in relation to such assets.

16. This order is stayed until 23.59 hrs (GMT) on 15th January 2008."

The Order was endorsed with a Penal Notice which, so far as third parties are concerned, said:

> *"Any other person who knows of this order and does anything which helps or permits the respondent to breach the terms of this order may also be held to be in contempt of court and may be imprisoned, fines or have their assets seized"*

43. The purpose of the stay was to allow CCOG time for permission to appeal. The essential basis of the proposed appeal was that the CCOG Receivership Order, made by way of equitable execution and not interim protection, fell outside the jurisdictional competence of the court at any rate insofar as it involved foreign assets of foreign companies.

The Appeal from the CCOG Receivership Order

44. On **15 January 2008,** the Court of Appeal granted CCOG permission to appeal. That permission was conditional on, inter alia:

i) CCOG setting up within the jurisdiction an account ("the nominated account") for receiving payment of all oil revenues earned by it under its concession pending the appeal and instructions being given to the buyers of oil to make payment to that account. CCOG was required to open an account in the name of Olswang, their then solicitors, but held on their behalf, at a branch in England of a first class bank on terms that no sums should be paid out of the account without the written consent of Mr Masri or his solicitors or an order of the Court;

ii) Payment of £ 1,024,694.39 in respect of past costs orders;

iii) Payment of £ 130,000 as security for the costs of the appeal;

iv) Payment into the nominated account by no later than the end of the second business day after 22 January 2008 of such payment in respect of Oil Revenues as it may have received between 14:00 on 15thJanuary 2008 and 16:00 on 22 January 2008;

v) Within 3 days of making any sale of oil or any agreement for sale or transferring any oil to a purchaser, to the extent that such agreement, sale or transfer was made after 14:00 on 15 January 2008, CCOG was to provide Mr Masri's solicitors with specified information as to the sale or agreement;

vi) After 16:00 on 22 January 2008, CCOG was to direct any paying party to pay any amount in respect of Oil Revenues which it became liable to pay to CCOG into the nominated account, save where any paying party was by the date of the order irrevocably committed to paying CCOG and no other payee.

vii) If and to the extent that any paying party paid any amount to CCOG otherwise than into the nominated account, notwithstanding any instruction, CCOG was to transfer such amount into the nominated account within 2 business days of receiving it.

In the event of failure to comply with, or breach of, these conditions the appeal from the CCOG Receivership Order was to be struck out. The Order also provided that if Mr Masri felt that certain specified conditions of the order, including those in (i) and (iv) – (vi) above, had not been satisfied or were breached he could, by his solicitor, serve a notice on Olswang identifying the breach, in which case CCOG would have to file an application to the Court of Appeal for a ruling that the alleged breach had not taken place or did not justify striking out the appeal, failing which the appeal would be struck out.

45. The Order also provided that the CCOG Receivership Order should be stayed until 23:59 on the day upon which the appeal against it was dismissed by order of the Court of Appeal.

Misleading the Court of Appeal?

46. In February 2008, the Court of Appeal heard the appeal. By **2 April 2008** the parties had been informed that the appeal would be dismissed. On that day Collins LJ gave a ruling on costs following an application which had been made by CCOG for a ruling that it was not in breach of the order of 15 January 2008. That application arose because no notification of any oil sales had been made to Mr Masri's solicitors in accordance with that order and Mr Masri had given notice that he believed that there had been a failure to comply with it. CCOG then produced evidence that there had been no sales of oil, which Mr Masri was not in a position to refute.

47. From the evidence before Collins LJ, it was apparent that there had indeed been no sales after 15 January 2008. In late January 2008 it had been agreed between the operator of the field and CCOG that the operator would not allocate any oil to CCOG for the time being on the express understanding that there would be no forfeiture of CCOG's entitlement to oil. Liftings of oil continued to take place approximately monthly throughout the second half of 2007 with the last lifting occurring on 24 December 2007 for which the contract was made in early November. The payment date for this sale was 23 January 2008. In the event payment was made early on 11 January 2008 in exchange for an early payment discount. It was not clear whether this was a deliberate attempt to ensure that the money did not find its way into the nominated account (which had been under discussion before 15 January 2008). Collins LJ very much doubted whether CCOG had been frank about this payment.

Mr Burgan's 13th witness statement of 19 December 2007

48. Collins LJ recorded that this state of affairs was inconsistent with Mr Burgan's 13th witness statement dated 19 December 2007 which was before Gloster J at the hand down of her judgment on 20 December 2007. That statement had indicated (a) that sales had to be arranged 2 or 3 months before extraction; (b) that one month's production was normally sold to one buyer but CCOG and its buyers often preferred multi shipment deals of 3-4 month entitlements; and (c) that it would be disastrous if this were prevented because the terminal had capacity only for storage for 8-10 days' production. If the oil had to stay at the terminal in shared storage pending a buyer being able to perform his side of the contract, which normally took a minimum of around two months, it would cause, at the lowest, severe operational difficulties and potentially cause oil production to be shut in at Masila and other concessions. Mr Burgan indicated that he did not believe the terminal would allow CCOG to stockpile.

His statement also indicated that disclosure of the existence of the Receivership order to 3rd party purchasers would be likely to provoke a very serious adverse reaction. It was acceptable to store up credits to a limited extent but wholly unacceptable for parties to store up credits in large amounts and for longer periods. The terminal had repeatedly made clear that parties should lift their oil reasonably quickly and, he believed, it would be a breach of the JOA to seek to stockpile oil. In fact, as Collins LJ held, Mr Burgan knew that no contracts had been concluded since early November and that there were no 2-3 month advance sales for January, February and March.

49. CCOG's solicitor accepted that Mr Burgan's statement of 19 December 2007 might have been more comprehensively drafted but said that Mr Burgan was only addressing a possible injunction to prevent sales prior to extraction and was not asked to address how CCOG might adapt or be forced to adapt its trading pattern in the light of the proposed orders. Nor was he considering what CCOG had in fact been doing. The statement was prepared at speed. Collins, LJ found this explanation inadequate.

Mr Burgan's 14th witness statement of 10 January 2008

50. Collins LJ, also drew attention to Mr Burgan's 14th witness statement of 10 January 2008, filed in support of an application for a stay of the CCOG Receivership Order, in which he said:

i) that the Receivership order would deter buyers;

ii) that CCOG's entitlement was 4,000 barrels a day ($ 12 million a month);

iii) that in 2007 CCOG's revenues were $ 100 million but production levels were decreasing;

iv) that there would be likely to be one lifting per month; and

v) that the withdrawal of a buyer because of the receivership would cause serious disruption in CCOG's sales stream and CCOG would be left with unsold oil at the terminal which could cause operational difficulties.

There was, Collins LJ held, no good reason for his omitting to refer to a suspension of sales.

51. He also referred to the skeleton argument for the 15 January 2008 hearing which had said that "*the evidence relevant to CCOG's application for a general stay*" was contained in the 13th and 14th witness statements of Mr Burgan and that the purpose of the proposed undertaking to pay oil revenues into a bank account was:

> *"to achieve pending the appeal against the receivership order equivalent protection for Mr Masri as might be obtained by the receivership order taking effect during that period, but without the adverse consequences to which Mr Burgan refers. Subject to one point its effect will be to ring fence the oil revenues until the propriety of the appointment of the receiver can be determined by the court".*

52. Collins LJ summarised the content of the 13th and 14th witness statements and said this:

> *"40. These witness statements and the skeleton argument would have led any reasonable reader in the position of this court, or Mr Masri, to believe that the defendants would have had no opportunity to avoid monies being received within a month or so of January 15, 2008 (and thereafter), because sales would already have been arranged, that they could not be postponed for commercial reasons and oil could not be stockpiled for long periods, **and that this position would continue.***
>
> *41. Consequently, I am satisfied that this court was misled by CCOG on January 15, 2008 when the court imposed conditions on CCOG's permission to appeal. In particular I accept that CCOG led the court to believe that if CCOG were made to ring-fence oil revenues it received from the date of the order, the nature of the operations of CCOG were such that CCOG would not be able to avoid having to pay monies into a nominated English account. I cannot accept the argument for CCOG that Mr Burgan did not mislead the court because the witness statements were not prepared for use on an application for permission to appeal, and on a hearing about conditions for permission. It is the duty of the clients and their advisers to ensure that a true picture is put before the court. Had the court not been misled, it is at least possible that it would have imposed different conditions for permission to appeal.*

He ordered CCOG to pay £ 50,000 in costs (assessed summarily on the indemnity scale).

The judgment debtors' submission in respect of the allegation of misleading the Court of Appeal

53. Mr Alan Boyle QC for the judgment debtors submitted that the finding that Mr Burgan misled the Court of Appeal was misplaced. His 13th witness statement was addressed to the issue whether the court should in December 2007 make an order restraining CCOG from concluding any agreement to sell oil still in the ground ("Issue 1"). His evidence was that this would effectively stop CCOG doing business because it had to sell the oil well in advance of lifting and because it would cause problems at the terminal. His 14th witness statement was intended to address the issue of the irreparable harm that would be suffered by CCOG if it was forced to tell its purchasers to pay the Receiver ("Issue 2"). His evidence was to the effect that purchasers would not buy oil from CCOG once they knew about the Receivership Order. It was in that context that he deposed that, as he had said in his 13thstatement, if one were to expect one sale a month, the effect of a buyer withdrawing from purchasing CCOG's oil would be very substantial pending appeal if there was no stay.

54. At the hearing on 15 January 2008, the Court of Appeal focussed on the offer made by Mr Alex Layton QC in his skeleton argument that CCOG would ensure that oil revenues were paid into a nominated account, which Mr Layton indicated would be in Lebanon during any stay. It was only in **late January 2008** that an agreement was reached between Nexen and CCOG whereby CCOG would be relieved temporarily of its obligation to lift oil. This was explained in Mr Suheil Nasser's witness statement of 22 February 2008, in which he stated that buyers who had previously purchased oil from CCOG had indicated a reluctance to consider entering into purchase contracts with CCOG following reports in the media about the orders made by Gloster J, in the following terms:

> *"12. The possibility of no allocation being made by the operator to CCOG for the time being was the subject of specific discussion in **late January** between the operator and CCOG. The operator was notified that CCOG did not have a buyer available for a shipment and confirmed that the operator would not therefore allocate any oil to CCOG for the time being. This was agreed on the express understanding that there would be no forfeiture of CCOG's entitlement to oil which it is contractually entitled to take but merely a postponement for the time being, with CCOG to notify the operator as soon as CCOG obtained a buyer and was in a position to nominate a loading vessel. There is therefore no stockpiling at the storage facility of oil that nominally belongs to CCOG. Instead, oil is not being allocated to CCOG for the time being for lifting purposes.*
>
> *13. I should note that the operator does not have to agree to postpone CCOG's allocation in this way. Allocation and crediting is an informal process which is not directly regulated by the JOA but is instead handled pragmatically by the parties in order to make the Concession and the JOA work effectively. I do not know how long the operator will be willing to agree to postpone accrual of CCOG's allocation, but I have some doubts as to whether the operator would be willing to do this for lengthy periods of time;…"*

55. The explanation in Mr Burgan's 13th and 14th witness statements that sales were arranged several months in advance was, it is said, put forward to address Issues 1 and 2 and not to persuade the Court that a stay was acceptable because all proceeds of oil sales would end up in an English account in the meantime. Mr Layton had made plain that CCOG was suggesting a Lebanese account. The Court of Appeal ordered that all proceeds should be paid into an English account. When Simmons & Simmons complained by letter of 19 January 2008 that no money was coming into the nominated account CCOG volunteered the information in Mr Nasser's statement that Nexen (the operator) had agreed to allow CCOG not to lift oil for the time being.

56. Mr Boyle submitted that it was unnecessary for me to express any view on these matters. Since, however, Mr Boyle has submitted that the Court of Appeal was not misled, and the question of the judgment debtors' behaviour towards the English courts is of some relevance in deciding what, if anything, to do in respect of any contempt that I may find proved. I propose to set out my conclusions on the point.

57. I do not accept that the Court of Appeal was not misled (as it clearly regarded itself to have been). The impression given by the 13th and 14th witness statements was as described by Collins LJ. In the former statement it was said that "*it would be wholly unacceptable for parties to store up credits in large amounts and for longer periods*" (para 15), that the terminal had repeatedly made clear that the parties should lift their oil reasonably quickly, and that Mr Burgan believed it to be a breach of the terms of the Concession and the JOA for CCOG to seek to stockpile oil. The impression given was that sales would already have been arranged months before in respect of which liftings and payment would take place in the opening months of 2008. In fact it was possible to sidestep the application of the Receivership entirely by an informal agreement that there should be no allocation, to the possibility of which neither witness statement had alluded. The submission that the 13th and 14th witness statements can be regarded as only relevant to Issues 1 and 2 is ill founded. They were deployed as the relevant evidence on the stay application on 15 January 2008.

The judgment of the Court of Appeal in relation to the CCOG Receivership Order

58. On **4 April 2008,** the Court of Appeal dismissed the appeal against the CCOG Receivership Order, granted permission to appeal in relation to the Freezing No 1 order and the Affidavits Order, but dismissed the appeal.

59. In his illuminating judgment Collins LJ, with whom the other members of the Court agreed, held that there was no rule that the court cannot make a receivership order by way of equitable execution in relation to foreign debts. Such an order had no proprietary effect but acted *in personam* against the judgment debtors. Since the nineteenth century the courts had recognised the legitimacy of the appointment of receivers in relation to foreign property. The fact that in the reported cases the receivers had been appointed on the application of debenture holders or prior to judgment did not affect his conclusion in relation to receivers appointed by way of equitable execution. He cited with approval a passage from *Snell,* Equity, 31st edition, which at para 17-25 includes the following:

> *"The effect of such an appointment 'is that it does not create a charge on the property, but that it* ***operated as an injunction against the judgment debtor receiving the income or dealing with the property*** *to the prejudice of the judgment creditor".*

60. He went on to say:

> "*53. The authorities bear out the proposition, important in this case, that the appointment does not have a proprietary effect. It has effect as* ***an injunction restraining the judgment debtor from receiving any part of the property which it covers,*** *if that property is not already in his possession, but it does not vest the property in the receiver****.*** *As Cotton LJ said in* ***Re Sartoris****[1891] 1 Ch 11, 22 (CA): "It operates as an injunction restraining the defendant from getting in money which the receiver is appointed to receive." See also* ***Stevens v Hutchinson*** *[1953] 1 Ch 299, 305. The judgment creditor receives no interest in the received property until it is transferred to him in satisfaction of the judgment debt:* ***Re Potts****[1893] 1 QB 648, 661*

61. He made it plain that the fact that the court had *in personam* jurisdiction was not determinative as to whether the order exceeded the permissible territorial limits. In the present case CCOG's connection with the English jurisdiction was that it had submitted to the English court, defended the case on the merits, and had a substantial English judgment outstanding against it. He "*did not consider that the court exceeded the bounds of international jurisdiction"* by ordering CCOG not to receive the proceeds of oil, or in ordering it to cooperate with the receiver and to give notice of his appointment to its customers and added:

> *"Nor do I consider that the effects on third parties show that the exercise of jurisdiction is exorbitant. CCOG accepts that the third party is protected by the Babanaft provisos from being found in contempt by interfering with the order. I do not consider that there is anything in the point that the effect of the order may be that, because the judgment debtor (if he complies with the order)* ***has to decline to receive payment,*** *the third party will be put in a quandary in*

that he cannot pay his creditor, who is refusing payment. Oil contracts are high value, and it will not take many customers or many shipments to clear the judgment debt. The number of potential purchasers is limited and they will be well able to take advice."

62. He also considered that the receivership order did not infringe any of the principles of the judgment in ***Société Eram Shipping Co Ltd v Cie International de Navigation*** [2004] 1 AC 260. There the House of Lord held that a garnishee order could not be made against a Hong Kong bank with a branch in London in respect of an account held in Hong Kong because:

> *"71. First, it is not a proprietary remedy. It does not change the title to the debts, nor impose any charge. Second, the third party is not required by the order to pay the receiver, and there is no question of any discharge of the debts being effected by the order. Third, the consequence is that the third party debtor is not in danger of being compelled to pay twice. Fourth, the only person who is directly subject to the order is CCOG, which is subject to the jurisdiction of the court, and is being ordered to perform certain acts which have a genuine connection with England, namely compliance with an English judgment against it. Fifth, the third party debtors are protected from being put in the position of having to choose between being in contempt and having to dishonour their obligations under the applicable law by the Babanaft provisos in the order. Sixth, the right of the receiver to sue for the debts in a foreign country is limited to cases where his title to sue will be recognised by the foreign court.*

63. The effect of the dismissal of the appeal was that the Receivership Order came into effect. This led to an ex parte application in the Lebanon on 11 April 2008 for interim orders to the effect that neither CCOG nor CCIC should provide any information sought by the Receiver under the order. Such orders were made on 14 April 2008: see para 95 below.

The Affidavits Order of 20 December 2007

64. By the Affidavits Order CCIC and CCOG were to serve affidavits identifying each and every asset owned by either or both of them the value of which was equal to or greater than the following amounts by the following dates:

i) $ 1,000,000 21 January 2008;

ii) $ 500,000 4 February 2008; and

iii) $ 100,000 25 February 2008.

"*Assets"* were defined so as to include assets of whatever nature including choses in action and contractual rights to payment, whether or not such rights, conditional or unconditional, had accrued due, and whether located within and/or outside the jurisdiction.

Freezing Order No 1

65. Freezing Order No 1 provided that CCOG must not assign any of its rights in the Concession pursuant to the Concession Agreements to any other person or entity or otherwise dispose of or diminish the value of such rights without the consent of Mr Masri. The Order provided that it should not prevent CCOG from selling oil in the ordinary course of business for its market value. For that purpose an agreement for the sale of oil was not made in the ordinary course of business if it provided for delivery more than 3 months after its date or the due date for payment of the oil or if it was made with an affiliate of CCOG.

66. On 31 January, 4 February and 25 February 2008 the judgment debtors served affidavits from Mr Suheil Nasser and Mr Ibrahim Ghoneim purporting to comply with the Affidavits Order. On 14 March 2008 CCIC served a further affidavit. Flaux J concluded that these affidavits did not provide all the information required by the Affidavits Order and that the judgment debtors were in breach of it in certain respects.

The Affidavits (No 2) Order

67. On 19 March 2008, Flaux J made an order which, after reciting the facts set out in the previous paragraph, provided, inter alia, as follows:

> *"Receivables*
>
> *8. CCIC must provide a schedule giving up to date information concerning all receivables due to the company…*
>
> *Joint Ventures*
>
> *10. Each Defendant must serve a further Schedule providing up to date information concerning all joint ventures in which it is involved … The following provision shall apply:*
>
> *(i) The Schedule must provide all categories of information which are currently provided in the schedule set out in Exhibit SSN 7 to the Fourth Affidavit of Suheil Salim Nasser.*
>
> *Bank Accounts*
>
> *11. Each Defendant must serve a schedule setting out any amount standing to its credit in any individual bank account, if that sum exceeds $ 100,000. The said schedule must identify:*
>
> *(i) the name of the bank and the address and sort code of the branch where the account is held;*
>
> *(ii) the account name and account number of each account identified.*
>
> *12. The [judgment debtors] must identify the sums standing to their credit in each such bank account. The information provided must be no more than 48 hours out of date.*
>
> *Financial Statements*

14. The Defendants shall serve upon the Claimant copies of their respective audited accounts for the year ended 31 December 2006 and their respective unaudited accounts for the half year ended 30 June 2007. The Defendants shall each serve a copy of their respective audited accounts for the year ended 31 December 2007 within 14 days of those accounts being signed.

Shareholdings

15. Each Defendant must state whether it holds a beneficial interest in any shares whether or not the value of that beneficial interest exceeds $ 100,000."

The judgment of Steel J on the construction of para 15 of the CCOG Receivership Order."

68. A dispute arose between Mr Masri and the judgment debtors as to the proper construction of paragraph 15 of the CCOG Receivership Order which, it will be remembered, provides:

> *"15. Nothing in this order shall, in respect of assets located outside England & Wales, require the Defendants and/or their directors to disobey the order of any court of competent jurisdiction in relation to such assets".*

69. The dispute arose because of an order made by the Lebanese Court on 14 April 2008 at the suit of Mrs Salwa Khoury. This prohibited CCOG from "*giving any information about [CCOG] .. in execution of the three British decisions*" i.e. the CCOG Receivership Order, the Affidavits Order, and Freezing Order No 1. An order in similar terms was obtained on the same date in relation to CCIC at the suit of Mr Suheil Sabbagh.

70. On 23 May 2008, Steel J decided that para 15 was not, as Mr Masri had argued, limited in its application to ensuring that the courts of the jurisdiction where an asset was located had priority in relation to any issues of title to, or seizure of, that asset. It had been submitted, that the order of 14 April 2008 had no effect on CCOG's obligation to provide information under paragraph 7 of the CCOG Receivership Order since that order was not a ruling on the status or disposition of any asset *within the jurisdiction of the Lebanese Court*. He declared that the effect of paragraph 15, in the light of the 14 April 2008 order, was that, unless and until it was set aside or materially amended or *exequatur* of the CCOG Receivership Order was granted [5], neither CCOG nor any of its directors or officers was obliged to provide any information to the Receiver pursuant to the CCOG Receivership Order including

[5] In accordance with Article 1010 of the Lebanese Civil Code which provides that:

> *"Foreign judgment cannot be executed **in Lebanon** by means of enforcement measures on assets or by coercion measure unless they are granted exequatur in conformity with the provisions of this Chapter But they may serve, before having been granted exequatur, as an element of evidence or as ground for an interim measure".*

without limitation pursuant to paras 7 (a), (b) or (c), nor to provide any written confirmation or other information to any third party pursuant to para 7 (b).

The appeal from Steel J

71. On **6 February 2009,** the Court of Appeal dismissed Mr Masri's appeal against Steel J's order. The Court held that *"individuals should not be exposed to potential liability for imprisonment on the basis of an implied limitation upon an express exception to the Order's requirements".* In the course of his judgment Sullivan, LJ said as follows:

> *"23. The Respondent's assets, which the receiver is appointed to receive, are the "Oil Revenues" as defined in paragraph 2 of the Order. While the Respondent is restrained from* ***receiving the Oil Revenues****, the only positive obligations imposed by the Order upon the Respondent "in relation to" those assets are to provide the Receiver with information about them (paragraph 7(a)) and to give third parties written confirmation of the receiver's rights to receive them on behalf of the Respondent (paragraph 7(b)). Paragraph 15 qualifies this, limited, obligation. It is common ground that the Lebanese Court is a court of competent jurisdiction for the purpose of paragraph 15 of the Order. The words "in relation to such assets" are very broad, and are certainly broad enough to include the Lebanese Court Order prohibiting the Respondent from giving information about the Oil Revenues as required by paragraph 7(a) of the Order. In ordinary language, in the context of an order requiring the provision of information about assets, the Lebanese Court Order prohibiting the provision of that information is an order "in relation to such assets".*

The orders of Tomlinson J of 21 October 2008

72. On **21 October 2008,** Tomlinson J (as he then was) made four orders, three of which are relevant for present purposes:

a) The CCIC Receivership Order;

b) Freezing Order No 2 (Bank Accounts); and

c) Freezing Order No 4 (Shares).

The CCIC Receivership Order

73. This Order was in similar, but not identical, terms to those of the CCOG Receivership Order. It appointed Mr Lee Manning as Receiver to receive all amounts due or payable to CCIC after the date of the order from any of the entities set out in the attached Schedule B in relation to the projects described therein (such amounts to be referred to as "Contract Revenues"), and to hold such Contract Revenues for the account of the action and to the order of the Court. The Order recorded that at its date the amount due in respect of principal and interest on the judgment debt was $ 65,646,251.19 plus £ 236,895.49 in respect of costs. The order contained in paras 7 (A) – (D) terms about the provision of information and written confirmation to third parties in similar terms to para 7 of the CCOG Receivership Order.

74. The Order contained a paragraph 15 but in different terms as follows:

> "*Nothing in this order shall, in respect of assets located outside England & Wales, require the Defendants and/or their directors or officers to disobey the orders of any court of competent jurisdiction* ***in the jurisdiction in which those assets are located****."*

75. Schedule B contained a long list of CCIC projects with columns headed "*Project Name*", "*Client*", "*Registration No*", "*Location*", "*Jurisdiction of Incorporation*", "*Address*" and "*Receivables*".

76. One of the entries in the Schedule recorded the Project as the "*BTC – BTC Crude Oil Line & SCP Gas Line Project*", the Client as "*Baku-Tbilisi-Ceyhan Pipeline Company (BTC Co)*", the Location as Azerbaijan, and the Jurisdiction of Incorporation as "*Azerbaijan Co".*

Freezing Order (No 2 Bank Accounts)

77. This order provided that the judgment debtors must not dispose of, deal with or diminish the value of certain Bank accounts of theirs in Cairo, Egypt, the UAE, Doha, Dubai, Qatar and Lebanon.

Freezing Order (No 4 Shares)

78. This order, originally made by Steel J on 4 June 2008 and continued by Tomlinson J on 16 July 2008, provided that CCOG must not in any way dispose of, deal with or diminish the value of any legal or beneficial interest which it owned in shares in other companies and in particular (i) CC Oil and Gas Nigeria Ltd and (ii) CCC Energy Nigeria Ltd ("the Shares"). It also provided that CCOG must by 4 pm on 4 November 2008 and to the best of its ability inform the judgment creditor's solicitors of CCOG's estimate of the value of the Shares (separately for each of the two companies) and state the basis upon which the value has been estimated.

Events in Lebanon after the liability judgment.

79. I have set out in the previous paragraphs the sequence of events in England after the liability judgment of 28 July 2006. Faced with that judgment and the judgments requiring actual payment which followed it – the amount due being now in excess of $ 75,000,000 - the judgment debtors and their controlling shareholders have taken whatever steps they thought necessary to ensure that no payment whatever was paid to Mr Masri and to frustrate any attempt at execution. It is clear that they have no intention of paying anything unless forced to do so. There is no secret about this. In the words of Mr Seamus Andrew, their solicitor (in para 22 of his 10th witness statement), 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"*

80. These steps have included the following;

i) The incorporation on **20 June 2006** of two new companies in Lebanon - *CC Energy* and *CC Energy Development* - to take on oil and gas business that was otherwise within CCOG's remit;

ii) The transfer of the shares in both those companies to another Lebanese company incorporated on **23 May 2008** called *CC Energy Holding SAL* which, in turn, is wholly owned by a further Lebanese company called *S & K Holdings SAL*. The shares in the latter company are owned in equal proportions by the three Khoury sons and the two Sabbagh sons.

iii) The incorporation on **8 July 2007** in Lebanon of *Consolidated Contractors Group SAL Offshore* ("CCC Offshore") which is wholly owned by CC Holding (see Mr Joujou's November 2010 report para 14) to take on the construction business that was otherwise within CCIC's remit;

iv) The takeover by CCC Offshore of most of CCIC's employees and offices in Athens, and all the business that would otherwise have been taken on by CCIC.

v) The incorporation on **30 August 2006** of two Cayman Island companies to which CCOG then assigned its other Yemeni interests in the last quarter of 2006.

vi) The very large reduction in CCIC and CCOG cash balances and in CCIC's current assets, details of which are set out in para 115 of Mr Bartlett's first affidavit.

Change of directors of the judgment debtors

CCIC

81. From 3 June 2005 to 14 January 2008 the *de jure* directors of CCIC were CC Holding, Said Khoury, Tawfic Khoury and Samir Sabbagh.

CCOG

82. From 29 May 1998 until 12 June 2006 the *de jure* directors of CCOG were CC Holding, Wael Khoury, and Samir Sabbagh**.** From 12 June 2006 until 14 May 2007 the directors were CC Holding, Salwa Khoury and Samir Naef Khoury. From 14 May 2007 until 14 January 2008 the directors were CC Holding, Fouad Asfour and Samer Khoury. Samir Sabbagh and Salwa Khoury were nominees see para 210 below.

January 2008

83. On or about 9 January 2008 in the case of CCOG and 14 January 2008 in the case of CCIC the existing directors resigned. On 9 and 18 January 2008[6], they were replaced by Souheil Nasser, Fadi Homsi, and Tarek Estaytieh. These were nominee directors located in Lebanon who acted on the direction of the controlling shareholders.

[6] The dates in this paragraph are taken from the public records of the two companies of meetings of the board in the case of CCIC and the general assembly in the case of CCOG.

Litigation in Lebanon

84. On **10 July 2007,** CCIC and CCOG commenced proceedings before the Civil Court of First Instance in Beirut in Lebanon against Mr Masri seeking a declaration that the English judgments were without effect in Lebanon. They were represented by Mr Nassib Chedid (who gave evidence before me) as their attorney. The basis on which the declaration was sought was that these judgments were issued by a court that lacked jurisdiction and to which Mr Masri had recourse with the object of *"subterfuge against the jurisdiction of the Lebanese courts*". These proceedings are still pending.

85. On **12 November 2007,** applications were made on the part of Samir Sabbagh (described as a partner and a member of the Board of CCIC) and Salwa Khoury (described as a partner in CCOG) to intervene in the proceedings in order to request that Mr Tawfic Said Khoury (in the case of CCIC) and Mr Samer Khoury (in the case of CCOG and in his capacity as a director of CC Holding, which was a director of CCOG) be added as parties and to prohibit them from executing the "*judicial order dated July 6 2007*". This was an order made by Master Miller under CPR 71 requiring Tawfic and Samer Khoury, then directors of CCIC, and CC Holding (as corporate director of CCOG) respectively, to attend for examination on the assets of CCIC and CCOG. These applications appear not to have been pursued or to have been rejected. Subsequently, on 15 November 2007 similar applications were made by Salwa Khoury and Samir Sabbagh in new Lebanese proceedings against Samer Khoury and Toufic Khoury respectively. The Lebanese Courts made the orders requested on **10 January 2008.**

86. On **18 January 2008,** Salwa Khoury and Samir Sabbagh issued materially identical applications seeking orders prohibiting a number of persons from complying with any of the three orders of Gloster J of 20 December 2007. In Salwa Khoury's application (in Action 1168) the prohibition was sought against Samer Khoury, the defendant, and the following persons requested to be introduced as parties (a) CCOG; (b) Fouad Asfour; (c) Said Khoury; (d) Tawfic Khoury; (e) Souheil Sabbagh; and (f) Samir Khoury. In Samir Sabbagh's application (in Action 1169) the prohibition was sought against Mr Tawfic Khoury, as defendant, and the following persons requested to be introduced as parties (i) CCIC; (ii) CC Holding; (iii) Said Khoury; and (iv) Souheil Sabbagh. The parties sought to be enjoined included, but were not limited to, two individuals (Fouad Asfour and Tawfic Khoury) who were *de jure* directors of one or other of the two companies prior to 9 or 18 January 2008. They did not include the 3 nominee directors who took office on those dates.

87. On 3 March 2008, a request was made by those sought to be introduced as parties in both actions (other than CCOG and CCIC) that they should not be included as parties.

The Receiver's letter of 4 April 2008

88. The stay of the CCOG Receivership Order was lifted at 23:59 on 4 April 2008.

89. In the early hours of **5 April 2008,** the Receiver faxed a letter dated **4 April 2008** to (i) Salwa Khoury; (ii) Samir Khoury; (iii) Fouad Asfour; (iv) Souheil Nasser; (v) Fadi Homsi; (vi) Tarek Estaytieh; and (vii) CCOG at CCOG's address in Beirut. The letter notified the recipients of his appointment as Receiver and enclosed a copy of the CCOG Receivership Order. It included the following paragraph:

> *"Please pay close attention to the Penal Notice included at the beginning of the Order since this explains how breaches of obligations under this Order can result in imprisonment and/or seizure of assets. Please note that the requests made in this letter do not limit the generality of the obligations imposed under the Order. The requests made in this letter are modelled on the terms of the Order. Where a failure to comply with the requests in this letter constitutes a breach of the Order, to the extent that you are subject to the jurisdiction of the courts of England & Wales, this may result in you being found to be in contempt of court and could result in imprisonment and/or seizure of assets."*

90. The letter went on to make a number of requests for information in relation to an agreement for the sale of oil made on 12 March 2008: see para 163 below. The Receiver asked, under para 7 (c), for confirmation of the identity of the purchaser and details as to its registered office, address and contact details and for similar details in relation to any agent of CCOG in relation to the agreement or sale. The reference to paragraph 7 (c) was inapposite since that paragraph requires the provision of information within 3 days of the making of any agreement, and the agreement had been made on 12 March 2008.

91. The letter also asked for confirmation that no payment instructions had yet been given to the purchaser, or, if they had, for details of the bank account to which any monies due to CCOG had been or were to be remitted and whether there had been any agreement to accelerate payment. The Receiver also asked whether any letter of credit had been provided in connection with the agreement and for a copy of such letter and related documentation and for copies of the bill of lading and other documentation required to be presented under it. This information was sought under para 7 (c).

92. Lastly he asked, under para 7 (b) for written confirmation to be sent to the purchaser of the Receiver's rights in the form of an attached draft letter, and observed:

> *"Please note that you must not take any steps to procure or encourage or permit the payment of the sale proceeds to [CCOG] or any person or entity other than the receiver. You should also seek to ensure that no such steps are taken by any directors, officers, partners, employees or agents or in any other way of [CCOG]."*

93. On **9 April 2008,** Olswang wrote to the Receiver to say (i) that para 7 (c) of the Order was inapplicable to the sale agreed on 12 March 2008, that para being only applicable to sales after the receivership took effect; (ii) that any demand for information in respect of the 12 March sale would have to be made under para 7 (a) and asked the Receiver whether he was making any demands under that para; (iii) that any demand under either 7 (a) or (b) only had to be complied with within a reasonable time.

94. On **11 April 2008,** Mrs Salwa Khoury applied to Judge Habib Riskallah, the President of the First Instance Civil Court in Beirut, in Action No 1168. She exhibited to her application the Receiver's letter of 4 April 2008 and the CCOG Receivership Order and sought an ex parte order to forbid the defendant and the forced interveners from disclosing any information required by the British courts or by the British Receiver until resolution of the other requests introduced in the action (see paras 85 and 86

above). A similar application was made by Samir Sabbagh in respect of CCIC in Action 1169.

The Blocking Orders of 14 April 2008

95. On **14 April 2008,** Judge Riskallah gave two judgments. Judgments of the Lebanese courts are classically composed of the "*Dispositif*" i.e. that part of the judgment which contains declarations or orders and the "*Motif*" i.e. the reasoning which leads to the *dispositif*. In the *dispositif* of the two judgments the judge referred to the three orders of 20 December 2007 and the penal notices contained therein; recorded that the plaintiff in each case, as a shareholder in CCOG or CCIC, had *locus standi* to seek summary measures; that CCOG/CCIC's seat was in Lebanon so that its establishment and management were governed by Lebanese law; and that the determination and practice of the authorities and obligations of the Chairman and Board Members was governed by the regulations of establishment and management of the company, and that

> "*the possibility of giving any information to the others about the company by the Chairman and its members of the Board of Directors shall be assessed in the light of the principles and provisions of establishing and managing the company whether these provisions were specified in the company's regulations or in the Lebanese Laws".*

96. He then set out Article 197 of the Code of Commerce which provides:

> "*All the shareholders and equity owners are entitled to view in the company's headquarters the inventory, the budget, the profit and loss accounts, the list of shareholders, the Board of Director's report, the auditors' report, the unified profit and loss accounts and the unified budget if there are any, and the auditors' report on them during the fifteen days prior to the annual general assembly. And if they were denied that right, the discussions of the assembly shall be invalid. And the Members of the Board shall complete the shareholders list gradually according to the deposit of the bearer shares.*
>
> *The stakeholders may take or ask, at their own expense, for copies of all the above mentioned documents except the inventory.*
>
> *The company is entitled to collect for these copies only the fees specified by tariffs issued by the Minister of National Economy."*

He said that, as that Article specified the persons who were entitled to view the documents, no third person was entitled to view this information, especially the company's creditors; and, as a result, the Chairman and the Board were bound not to brief others on those documents or the information they contained.

97. However third parties could obtain the information contained in the documents enumerated in Article 197 if in a trial the court required its production and:

> *"if the legal decision were issued from a non-Lebanese court, it shall be necessary that it be coupled with the exequatur from the competent Lebanese*

judicial authority in case the decision included any compulsory measure to guarantee the execution;

And as both decisions issued by the British magistrate are practically investigation decisions that aim at obtaining evidence ***present in the seat of the Lebanese company in Lebanon, meaning that both mentioned decisions shall be executed practically in Lebanon without passing through the Lebanese legal authorities.*** *And that the party benefiting from them replaced the exequatur by the compulsory measure that guarantees the practical execution, which constitutes a fraudulent circumvention of the Lebanese law and a breach of the principle of judicial sovereignty of the Lebanese government on its territories.*

And as the threat of executing the compulsory measure against the above mentioned natural persons is not a sufficient reason from this court's point of view to give preference of enforcing the British decision that is not coupled with the exequatur, rather than applying the obligation of the members of the Board of CCOG [and others] to give information…which may harm [CCOG], as long as both British decisions receive the exequatur from the Lebanese courts.

And as this prevention applies, of course, to any representative of the company, it is thus impossible for [CCOG] to give the required information. It is also impossible for [CC Holding] as a member in the Board of Directors [of CCOG] to give this information.

…

And as the British decision to appoint the Receiver did not receive the exequatur from the Lebanese courts, thus none of the above-mentioned persons may give the Receiver any information about [CCOG] for the same reasons stated above as to the other two British decisions".

98. The *dispositif* in the CCOG action provided:

> " ***For these reasons***
>
> *The following has been decided:*
>
> *2) On the substance to forbid [CCOG] and [CC Holding] and Messrs Samer Said El-Khoury, Fouad Asfour, Said Toufic Khoury, Toufic Said El-Khoury, Souhail Hassib Sabbagh and Samir Nayef Khoury from giving any information about [CCOG] in execution of the three British decisions issued by Honourable Mrs Justice Gloster DBE on 12/20.2007"*

99. The *dispositif* in the CCIC action was in the following terms:

> *2) On the substance to forbid [CCIC and [CC Holding] and Messrs Said Toufic Khoury, Toufic Said-Khoury, and Souhail Hassib Sabbagh from giving any information about [CCIC] in execution of the three British*

> *decisions issued by Honourable Mrs Justice Gloster DBE on 12/20/2007"*

100. On 14 April 2008, the Receiver wrote to Olswang. He asked for confirmation by return that CCOG intended to comply with the terms of the Receivership Order and ensure that the proceeds of the 12 March sale were paid to him. His letter included the following:

> "*Paragraph 7 (a) requires that CCOG should provide , within a reasonable time, such information and documents as I may reasonably require in relation to the categories set out in paragraph 7 (a) (i) to (iv). I require CCOG to provide information in relation to those categories, including current arrangements in relation to oil sales and the identities of those involved, together with copies of any outstanding contracts. In particular, I require the payment details in relation to the 12 March sale of oil and the identity of the purchaser as, despite your protestations to the contrary, these clearly fall within the scope of paragraphs 7 (a) (i) to (iv)".*

101. Olswang rejected that request in a letter of 14 April 2008. That letter was followed by their application on 28 April 2008 for declarations that the judgment debtors were not bound to provide any information under para 7 which led to the order of Steel J of 23 May 2008, which was later upheld by the Court of Appeal.

102. On 19 March 2008, Flaux J had made the Affidavits No 2 Order referred to in para 67 above. It fell to be executed by 16 April 2008. On **15 April 2008** Salwa Khoury and Samir Sabbagh brought ex parte applications before Judge Riskallah that CCOG and CCIC and others be restrained from complying with the order of Flaux J.

103. On 6 May 2008, Mr Masri applied in Lebanon to set aside the two blocking orders of **14 April 2008** on a number of grounds including that the companies had accepted the jurisdiction of the British Courts and had exercised this right by having recourse to it and had therefore waived any right to resort to the Lebanese courts. On **17 May 2008** he applied for a stay of those orders. On 26 February 2009 his application to set aside the orders was dismissed.

104. On **2 June 2008,** the defendants in Actions 1168 and 1169 served a reply in the proceedings brought by Mr Masri on 6 May 2008, seeking to set aside the orders of 14 April 2008. In it they pointed out that the previous directors had ceased to be directors in January 2008.

105. On **5 June 2008,** the defendants in Action 1168 (involving CCOG) filed an additional reply in which they requested clarification of the legal position in relation to (a) English orders other than that of 20 December 2007 which requested the provision of information without exequatur and (b) as to whether the transfer of the proceeds of oil return (sic) to the Receiver represented a breach or not of the Lebanese order as the transfer of proceeds in compliance with the Order would provide information about CCOG in respect of price, income and other matters. A similar application was made by the defendants in Action 1169 (involving CCIC). These pleadings of 2 June and 5 June 2008 were presented by Mr Chedid. No ruling was given as sought.

Mr Masri's attempt to obtain exequatur in the Lebanon

106. On **12 June 2008,** Mr Masri applied ex parte to the Lebanese Civil Court of Appeal, which is the relevant Lebanese judicial authority, for *exequatur* of the orders of 15 June 2007, 5 October 2007 and 11 February 2008 i.e. the orders of the Commercial Court which provided for payment[7]. On 26 August 2008 he applied for *exequatur* of the 9 April 2008 order. I call these four orders "the quantum orders". On **22 December 2008** the Chairman of the Beirut Court of Appeal granted *exequatur* of the quantum orders. On **22 January 2009** CCOG and CCIC applied to set aside the grant of *exequatur*.

107. On **8 April 2010,** the Beirut Court of Appeal overruled the decision to grant *exequatur* for the ruling of 11 February 2008. It is not clear to me why the Court dealt in its judgment only with the 11 February 2008 order. The reasoning of the court was that it was not possible to grant *exequatur* of the 11 February 2008 order because (i) it was *"organically linked*" to the underlying judgments of 24 October 2005 (the Court of Appeal's dismissal of Defendants' appeal against jurisdiction) and 28 July 2006 (the liability judgment) and (ii) it was not possible to decide about the enforcement of a British accessory enforcement order independently of the two underlying decisions; and that it was necessary to ensure that the requirements for granting of enforcement of the two underlying rulings were fulfilled before ensuring that they were fulfilled in respect of the accessory ruling:

> "*otherwise the enforcement could be granted for the accessory enforcement ruling while it could be legally impossible to grant it to the underlying decision, which is contrary to logic*".

Events in Lebanon after the judgment of Tomlinson J of 21 October 2008

108. On **5 December 2008,** the nominee directors of CCOG and CCIC resigned. The resignation letters to the shareholders of those companies read (in material part):

> *"In our capacity of members of the board of [CCIC/CCOG]*
>
> *Having received from the British law firm Simmons & Simmons a letter addressed to each one of us which includes a threat of criminal pursuit and of imprisonment in case we do not provide information regarding the business of the company*
>
> *And having been notified previously of a Lebanese judicial decision precluding the provision of any information to the British courts because such provision of information would constitute a disclosure of confidential information*
>
> *Therefore*
>
> *And in order for us to preserve the interests of the company while avoiding personally legal pursuit before the Lebanese or the British courts*

[7] He appears from the petition of 29 May 2009 (see para 120 below) also to have applied for exequatur of 3 other orders, which did not include the liability judgment of July 2006.

We decide to resign from the board of your esteemed company, wishing it the best'

Provided that such resignation shall have immediate effect".

The appointment of a judicial administrator

109. This left CCIC and CCOG apparently without direction. Mr Chedid, the judgment debtors' lawyer, who had been informed by the directors of their decision and had unsuccessfully tried to persuade them to stay, and who had been told by the shareholders that they were not prepared to do any kind of work for the companies as directors, then applied, at the judgment debtors' expense and after discussion with Mr Marina, their in-house lawyer, to the judge of urgent matters in Beirut[8]. Mr Chedid confirmed that it is Mr Marina, who has not given oral evidence, who is in charge of litigation at the companies.

The appointment of judicial administrators

110. On **20 December 2008,** that judge appointed Mr George Sakhour, Dr Jihad Al-Hajjar and Mr Edgard Elias Joujou to administer the companies:

"provided that the tasks shall be distributed later and provided that the first two administrators shall convene a general assembly to elect a new board of directors for the company, and the three of them shall represent the company, both internally and externally, either jointly or severally".

111. The applicants are described in the 20 December 2008 Order as "*Suhail Nasser et Al*" (i.e. the previous directors) and the order recites:

"Whereas the documents evidence a vacancy in the management of the company exposing its interests to harm,

Whereas the shareholders do not oppose the judicial administration aiming primarily at electing a new Board of Directors"

112. On **14 January 2009,** the same judge made an order in respect of CCOG and CCIC:

"To entrust Mr Edgard Joujou with the management of the Company with the assistance of Messrs Jihad Al Hajjar and George Zakhour on the understanding that the tasks will be defined later, provided that Mr Edgard Joujou shall conduct the ordinary business of the company with the obligation to seek the prior approval from the Court for any matter that is important or not covered by the above."

Mr Chedid had prepared and personally made the application to the Court at the judgment debtors' expense. As he confirmed in evidence, the judgment debtors' efforts to resist enforcement (e.g. the application in July 2007 for a declaration that

[8] This is a different court from the one which dealt with the applications for exequatur and the blocking orders.

this court's orders were invalid) continued as before (e.g. the application in January 2009 to set aside the exequaturs which Mr Masri had obtained). Mr Chedid continued to act for the companies.

113. On **22 January 2009,** Mr Chedid, acting pursuant to a power of attorney on behalf of the judgment debtors and on the authority of the judicial administrator, applied to set aside the three *exequatur* orders obtained by the Judgment Creditor. According to Mr Joujou[9], the decision to do so was based on the advice of the judgment debtors' lawyers that:

> *"… not to oppose the above-mentioned exequatur constitutes a circumvention of the court of first instance decision in respect of the case pending before it and raised by the [Judgment Debtors] in July 2007."*

This was a reference to the proceedings (see para 84) for a declaration that the English judgments were without effect in Lebanon. Such advice takes it as a given that the judgment debtors are not going to comply voluntarily with their obligations under the orders of this court.

114. On **21 February 2009**, pursuant to an application made by Mr. Joujou, the Lebanese Court issued further directions to the judicial administrators in relation to two matters, namely the calling of the general assembly of CCIC and CCOG, and the conduct of the litigation between the judgment debtors and the judgment creditor. The orders provided:

> *"After considering the matter,*
>
> *We Decide:*
>
> *To approve the proposal of the Judicial Administrator in respect of convening the general assembly of the shareholders and to instruct the two assisting judicial administrators to execute this task.*
>
> *To approve instructing the judicial administrator Mr.… Joujou to supervise the pleading and defences in England provided that no binding decisions are to be taken before seeking directions from this Court.*
>
> *To charge the applicants to pay the advance on the fees to proceed with the above steps."*

115. On **28 February 2009,** the Second Chamber of the Beirut Court of First Instance dismissed the judgment creditor's appeal against the orders of 14 April 2008. The President of the Chamber was Mr Habib Riskallah, who had made those orders originally.

116. On **15 April 2009,** Mr Joujou (hereafter the "judicial administrator") wrote to Simmons & Simmons stating that he could not make a decision as to whether CCIC and CCOG should pay the judgment debt or enter into any settlement because this would fall outside the ordinary course of the companies' business and would require the approval of the Lebanese Court, and that an obstacle in the way of obtaining the

[9] See his petition to the Lebanese Court dated 29 May 2009.

Court's consent was that that it would constitute a circumvention of the *exequatur* process and he would not at that time petition the Court for approval of the payment because the court would not grant such approval without *exequatur*.

117. On **16 April 2009,** the President of the Beirut Court of First Instance at the suit of Samir Sabbagh made an interim order against Mr Masri preventing him from taking steps to enforce the CCIC Receivership Order under penalty of $ 2 million or Freezing Order No 2 in respect of CICC bank accounts under penalty of $ 500,000.

118. On **27 April 2009,** the general meetings of the shareholders of CCIC and CCOG called by the judicial administrator for the purpose of appointing new directors were inquorate because not enough shareholders attended even though the order of 20 December 2008 had specifically referred to the fact that the shareholders did not oppose "*the judicial administration aiming primarily at electing a new Board of Directors*".

119. Further meetings of shareholders were called for **1 June 2009** but these also were inquorate since the shareholders failed to attend.

120. On **29 May 2009,** the judicial administrator petitioned the Lebanese Court for directions as to whether

i) payment of the judgment sum constituted an important matter which could only be decided upon by the Lebanese Court as per the decision of 14 January 2009;

ii) payment could be made prior to the determination of the proceedings concerning exequatur; and

iii) whether opposition to the exequatur orders should be continued.

121. On **1 June 2009** the court decided that:

> *"based on the fact that the decision on the payment of the English judgment sum of sixty five million US dollars by the company is not a matter that can be decided upon by the judicial administrator without the consent of the Court, we hereby instruct the judicial administrator to take all necessary actions and measures to defend the interest of the company by all legal and judicial means he deems appropriate including the continuation of the legal actions outlined in the petition dated 30 May 2009"*

122. In a letter dated **5 June 2009** to Simmons & Simmons, Mr Masri's solicitors, Mr Joujou said that, in accordance with this order, he had been expressly instructed to continue the opposition to the judgment creditor's application for *exequatur* and not to meet the English judgments in the meantime.

123. On **27 August 2009,** the Beirut Court made an order at the suit of Mrs Salwa Khoury preventing Mr Masri from taking steps to enforce Freezing Order No 2 in respect of CCOG bank accounts under penalty of $ 2,500,000; Freezing Order No 4 (shares in Nigerian companies) under penalty of $ 500,000 and the CCOG Receivership Order under penalty of $ 2,500,000.

124. On **8 April 2010**, on the application of the judgment debtors, acting by the judicial administrators, the Lebanese Court set aside the previous *ex parte exequatur* orders granted in favour of Mr Masri: see para 106 above. Mr Masri is appealing this decision.

125. On **17 September 2010,** the judicial administrator applied to the Lebanese Courts seeking confirmation that, unless and until *exequatur* of the relevant orders was given by the competent Lebanese courts, the companies must not (i) disclose documents and information confidential to the companies to Mr Masri; (ii) transfer monies to the Receiver; and (iii) co-operate with the Receiver by the provision of information and other steps. Mr Masri was notified of the application with an invitation to appear before the court.

126. On **4 October 2010,** the judge decided to instruct the judicial administrator :

> *"not to take any step leading to the carrying out of the decisions issued by the foreign courts at the request of Mr Munib Masri unless and until they are granted exequatur by the Lebanese courts, in particular in relation to any requests for the disclosure of documents or the disclosure of confidential information relating to the Company to Mr Masri, or the transfer of monies to the English receiver appointed by the English courts, or the cooperation with the latter through the provision of information and other steps."*

127. The reasons given were these:

> "*Whereas the Company had initially and on purpose taken the decision not to pay the amounts requested by Mr Munib Masri before the order instituting the judicial administration was given,*
>
> *Whereas, pursuant to the obligation of the Court supervising the judicial administration to preserve the interests of the Company and to abide by the principle of caution in respect of the issue of payment of large debts, specifically those that have been the subject of opposition by the Company before the court prior to the institution of the judicial administration,*
>
> *Noting the necessity to abide by the obligation not to pay until after the rendering of a court decision obliging said payment and issued by the competent Lebanese judicial authority,*
>
> *Whereas, the foreign orders are not enforceable against the Company and hence are not binding upon the Company until they are granted exequatur by virtue of a decision given by the Lebanese courts,*
>
> *Whereas, it does not appear, as to date, that such decision has been rendered regarding any of the judgments issued by the English courts in spite of Mr Masri's application to the Lebanese courts to obtain orders granting exequatur,*
>
> *Noting that Mr Masri has not made any opposition nor any request in the proceedings before this court."*

128. On **12 November 2010,** the judicial administrator presented a report to the Beirut court on his conduct of the administration of the judgment debtors.

What could have happened

129. Professor Slim confirmed the following propositions:

i) 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;

ii) If, without appointing new boards, the shareholders had decided in general meeting that the judgments should be honoured, the court would normally give effect to that decision on the application of the judicial administrator;

iii) If there was no judicial administration, but the shareholders decided in general meeting that the judgment debtors should honour the judgment the directors would be bound to see that they did so.

130. This evidence was given in the re-examination of Professor Slim, so that the judgment debtors did not have the right to cross examine him on it. Mr Boyle submitted that it would be unfair for me to place any reliance on it. It seems to me, however, that point (i) was foreshadowed in opening, put to Professor El Khoury and accepted by him and is manifestly correct. Further the shareholders could at any time request the Lebanese court to direct the judicial administrator to pay the judgment debt. In one sense the point is not directly relevant, since the question is whether the judgment debtors were precluded by Lebanese court orders, not whether they could have been discharged. At the same time the fact that, if the shareholders, for whom in practice the directors (when there were any) have acted as nominees, could, if they wished see to it that payment was made, illustrates the degree to which the appointment of the judicial administrator is part and parcel of a strategy to avoid enforcement. I do not propose to consider points (ii) and (iii).

The judgment creditor's application

131. The judgment creditor's application was issued on 11 May 2010 and amended with permission on 11 June 2010. It was supported by the 1st, 2nd, 3rd and 4th Affidavits of Andrew Christopher Bartlett of Simmons & Simmons, each dated 11 May 2010 and the affidavit of Jihad Anis Abbas. The first affidavit dealt with the alleged anti-enforcement strategy of the judgment debtors; the second with the specific allegations of contempt; the third with the alleged responsibility of Mr Wael Khoury for those acts; and the fourth with service.

132. In response the judgment debtors filed on 15 November 2010 the 1st, on 18 November 2010 the 2nd, and on 30 November 2010 the 3rd affidavit of Seamus Andrew of SC Andrew LLP, their solicitors. These affidavits were followed by the 4th and 5th affidavits of 24 and 30 January 2011. They have many exhibits, several of which consist of statements of individuals either in the form of witness statements or affidavits given by others. In the course of the hearing I refused, for want of jurisdiction, the application of the judgment creditor to cross examine the individuals whose statements had been exhibited as part of the evidence of Mr Andrew.

Expert witnesses

133. The position in relation to expert witnesses was about as unsatisfactory as it is possible to be. When the application notice was issued it was unaccompanied by any evidence of Lebanese Law. On 29 July 2010, Steel J gave directions (i) that the judgment creditor should serve any evidence in response to the application by 15 October 2010; (ii) that the judgment creditor should serve any evidence in reply by 15 December 2010; and (iii) that the hearing should be listed for on or after 17 January 2011 with an estimate of 4 days.

134. On **20 September 2010,** the judgment debtors applied to strike out the allegations of contempt insofar as they related to acts which occurred subsequent to the appointment of a judicial administrator on 20th December 2008. In support of this they filed the first witness statement of Professor Georges Naffah. Professor Naffah is the professor of company law at the Lebanese university in Beirut. His evidence formed part of the evidence put before Gloster J in December 2010 at the hearing of the application by the judicial administrator to discharge the Third Receivership Order over all the oil and rights to oil to which CCOG was entitled. On **11th October 2010,** Steel J made an order which, among many other things, ordered that any evidence of Lebanese law which the judgment creditor might wish to serve in response to the Lebanese law evidence adduced by the judgment debtors in relation to the question of judicial administration orders and/or Lebanese court orders be served by 6 December 2010; with any evidence in reply to be served by the judgment debtors by 11 January 2011.

135. On **12 November 2010,** the judgment debtors served the 1st affidavit of Professor Naffah, which repeated what he had said in his 1st witness statement and contained additional material in relation to (a) the orders of 14 April 2008, (b) the process of setting up of Lebanese companies, and (c) the *situs* of receivables under Lebanese law: (pages 25, 32, and 35). This had not been contemplated by Steel J's order. On **15 December 2010,** the judgment creditor served the 1st and on 20 December 2002 the 2nd Report of Professor Slim.

136. On **14 January 2011,** there was a pre-hearing review at which the question of an extension of time for the judgment debtors' evidence in response was due to be dealt with. In the event that matter could not be reached for want of time and the question was adjourned to **20 January**. That hearing was vacated because the arrangements for its timing were in such disarray that it was necessary to have the conduct of the hearing reviewed by the trial judge. A case which had been estimated as requiring 1 day's reading and 6-8 days had by now produced an estimate of 3-5 days' reading and anything up to 14 days of evidence and 2 days for oral closings.

137. On **21 and 24 January 2011,** the judgment debtors served no fewer than 3 reports: from (1) Professor Naffah; (2) Professor Kassir; and (3) Professor El Khoury**.** On Wednesday, **26 January 2011** the court assembled in order for me to address the question as to how the case should be managed and as to the future course of the hearing. It was on that occasion that I directed that the case against the third respondent should be dealt with separately. Although the fact that there were 3 reports was mentioned I confess that the fact that there were 3 reports *from the same party* did not impinge very deeply on my consciousness. But it did on Thursday, **3 February 2011** when it became necessary to determine whether the judgment debtors should be allowed three expert witnesses; and the necessary extension of time given.

138. With very considerable reluctance I agreed to allow the judgment debtors to adduce the evidence of 3 experts. I very much doubt that Steel J envisaged any reply evidence other than that of Professor Naffah; and that is no doubt why his order did not specify any numerical limit to the expert evidence. It seemed to me manifestly unsatisfactory to have 3 experts in circumstances where Professor Naffah had in fact addressed questions of Lebanese company law, private international law, and criminal law, the latter two subjects being said to be the particular specialities of Professor Kassir and Professor El Khoury respectively. I was persuaded to do so upon the basis that there had not been timely objection by the judgment creditor to the use of three experts; and that there had been discussions about the experts meeting and that it would be unfair, in all the circumstances, to require the judgment debtors to re-arrange themselves so as to have all the evidence delivered by one expert.

139. In the event I was told over the weekend of 5/6 February that the judgment debtors would only be calling Professor El Khoury. On **7 February 2011** I gave the judgment creditor permission to cross examine Professor Naffah, some of whose evidence had been put in on time, and ordered that the judgment debtors could use his reports for the purpose of articulating propositions to put to Professor Slim on the basis that, unless agreed to, they would not constitute evidence. I also indicated that I reserved for further consideration whether, if he was not called I would give permission under CPR 32.7 (2) for his evidence to be used. In the event no such permission was sought nor did the judgment debtors seek to rely on his evidence or that of Professor Kassir.

140. I have, thus, read and heard, as evidence in the hearing, the evidence of Professors Slim and El Khoury.

Cross examination.

141. On **7 February 2011,** I also ruled on the judgment creditor's application to cross examine the makers of several statements which had been recorded in or exhibited to the statements of Mr Andrew. I ruled that, because the present proceedings are not a trial, in respect of which CPR 33.4 would have applied, it was not open to me to order the makers of those out of court statements to be cross examined, although I indicated that the weight that I might attach to any such statements might well be limited.

142. The effect of that ruling was to create an unsatisfactory state of affairs. The judgment debtors correctly point out that it is for the judgment creditor to prove contempt to the criminal standard. They rely on hearsay evidence in support of contentions that the court cannot be sure that there has been a contempt, whilst successfully resisting the application of the judgment creditor to cross examine those whose hearsay evidence is adduced. This procedure allows a putative contemnor to produce what may be a partial account of matters which may be wholly or predominantly within his own knowledge, revealing sufficient to raise a doubt, but without allowing for any probing of evidence which, when cross examined, might prove unreliable or wrong. It seems to me that consideration should be given to amending the rules so as to extend the provisions of CPR 33.4 to a contempt application and/or to give the court power to order cross examination of a person whose hearsay statement is relied on and, if he does not attend, to disallow reliance on it.

The application notice

143. In the application notice the judgment creditor alleges that the judgment debtors have pursued an exceptional "*anti-enforcement strategy*" in order to prevent enforcement against their assets, and that that strategy has included the acts of contempt which are relied on.

The approach of the court in cases of contempt

Onus and standard of proof

144. The onus of proving the acts of contempt of which he complains rests on the judgment creditor. He must satisfy the court so that it is sure that the judgement creditors are in contempt in the respects alleged i.e. to the criminal standard. The judgment debtors are to have the benefit of any reasonable doubt.

Inferences

145. In reaching its conclusions it is open to the court to draw inferences from primary facts which it finds established by evidence. A court may not, however, infer the existence of some fact which constitutes an essential element of the case unless the inference is compelling i.e. such that no reasonable man would fail to draw it: *Kwan Ping Bong v R* [1979] AC 609.

Circumstantial evidence

146. Where the evidence relied on is entirely circumstantial the court must be satisfied that the facts are inconsistent with any conclusion other than that the contempt in question has been committed: *Hodge's Case* [1838] 2 Lewin 227; and that there are "*no other co-existing circumstances which would weaken or destroy the inference*" of guilt: *Teper v The Queen* [1952] AC 480, 489. See also *R v Blom* [1939] AD 188, 202 (Bloemfontein Court of Appeal); *Martin v Osborne* [1936] 55 CLR 367, 375. It is not, however, necessary for the court to be sure on every item of evidence which it takes into account in concluding that a contempt has been established. It must, however, be sure of any intermediate fact which is either an essential element of, or a necessary step on the way towards, such a conclusion: *Shepherd v The Queen* 170 CLR 573 (High Court of Australia).

Adverse inferences

Mr James Lewis QC on behalf of the judgment debtors accepted that, although (i) an application for contempt is criminal in character, (ii) an alleged contemnor may claim a right to silence, and (iii) the provisions of sections 34 and 39 of the Criminal Justice Act 2003 do not apply, it was open to the Court to draw adverse inferences against the judgment debtors to the extent that it would be open it to do so in comparable circumstances in a criminal case. Thus it may be legitimate to take into account against the judgement debtors the fact (if it be such) that, when charged with contempt, as they have been in these proceedings, they have given no evidence or explanation of something of which they would have had knowledge and of which they could be expected to give evidence if it was true.

147. Mr Lewis submitted that the court should adopt by analogy the approach summarised in Archbold 4 – 398 in relation to an accused's failure to testify namely that (i) an

inference from failure to give evidence cannot on its own prove guilt; (ii) the court must be satisfied that the judgment creditor has established a case sufficiently compelling to call for an answer before drawing any inference from silence and if it concluded that the silence could only sensibly be attributed to the defendant's having no answer, or none that could stand up to cross examination, the court could then draw an adverse inference.

148. For present purposes the law of Lebanon is to be determined as a question of fact: *Dicey & Morris* Rule 18 (1); *Administration of Justice Ac 1920,* s 15 (which provides that, in the case of trial by jury, the effect of the evidence as to that law is to be determined by the judge); *R v Governor of Pentonville Prison ex parte Zezza* [1983] AC 46. If the court is not sure on some aspect of foreign law the resolution of which in a particular manner is essential in order for there to be a contempt, the contempt will not be established to the necessary standard.

149. I approach the case on the basis set out above. The conclusions of fact which I have reached in the paragraphs that follow are ones of which I am sure.

Mens rea

150. In order to establish that someone is in contempt it is necessary to show that (i) that he knew of the terms of the order; (ii) that he acted (or failed to act) in a manner which involved a breach of the order; and (iii) that he knew of the facts which made his conduct a breach: *Marketmaker Technology (Beijing) Co Ltd v Obair Group International Corporation & Ors* [2009] EWHC 1445 (QB). There can be no doubt in the present case but that the judgment debtors have at all times been fully aware of the orders of this court. It is not and could not sensibly be suggested that the conduct of which complaint is made was casual or accidental or unintentional. However, the question arises whether it is, also, necessary to show that they acted knowing that what they were doing was a breach of, and intending to breach, any of the orders.

151. In *Stancomb v Trowbridge Urban District Council* [1910] 2 Ch 190 Warrington J, on an application for leave to issue a writ of sequestration which, under the then rules required *"wilful disobedience"* to an order, said:

> *"In my judgment, if a person or a corporation is restrained by injunction from doing a particular act, that person or corporation commits a breach of the injunction, and is liable for process for contempt, if he or she does the act, and it is no answer to say that the act was not contumacious in the sense that, in doing it, there was no direct intention to disobey the order. I think the expression "wilfully" in Order XLII R.31, is intended to exclude only such casual or accidental and unintentional acts as are referred to in Fairclough v Manchester Ship Canal Co"*

152. In *Adam Phones Ltd v Gideon Goldschmidt and others* [2000] CP Rep 23 Jacob J (as he then was) described two opposing lines of authority constituted by:

i) *Heaton's Transport (St Helen's) Ltd v Transport and General Workers Union* [1973] AC 15, 108-110; *Mileage Conference Group of the Tyre Manufacturers Conferences Agreement* [1966] 1 WLR 1137; *Spectravest Inc v Aperknit Ltd* [1988] FSR 161 (Millett J) on the one hand and

ii) *Irtelli v Squatriti* [1993] QB 83, on the other.

The former cases hold that there is contempt if an act intentionally done amounts to a breach of the order. In the latter case the Court of Appeal assumed that it was necessary to show contumaciousness. In that case, where committal to prison was sought, the defendants had done that which was a breach of the order (the creation of a further charge) but had produced some not particularly convincing evidence that they did not understand the order to preclude it and, since that evidence was not challenged, the court concluded that there was no knowing breach of the order.

153. Jacob J said that, free from authority he would have sided with *Irtelli* but felt bound to follow the earlier cases, of which *Heaton's* was a decision of the House of Lords, particularly when *Arlidge, Eady and Smith* on Contempt of Court described *Irtelli* as a "*doubtful case*" and when the House of Lords in *DG of Fair Trading v Pioneer Concrete* [1995] 1 AC 456 had approved of what Warrington J had said in *Stancomb v Trowbridge* and said that it should be followed in that case.

154. In *Bird v Hadkinson* [2000] CP Rep 21 Neuberger J also declined to follow *Irtelli*. In that case he had first to determine whether or not an obligation to give information about what had happened to various funds required that the information be accurate. He held that "*at least on the face of it*" an inaccurate answer did not comply with the terms of the order but said that if an inaccurate answer was given in good faith and after all reasonable enquiries it would either be a contempt of a most technical nature or there may be no contempt at all. As to the clash of authorities, he regarded himself as bound not to follow *Irtelli* having regard to *Pioneer Concrete*, in which the previous authorities were reviewed (and in which Lord Wilberforce observed that "*liability for contempt does not require any direct intention on the part of the employer to disobey the order*"). He observed that in *Irtelli* the previous line of authority had not been cited, that the case had been decided without opposition; and that what had been cited was *Pioneer* in the Court of Appeal, which the House subsequently reversed.

155. I regard myself as similarly bound. I do so with less reluctance than Jacob J. In my judgment the power of the court to ensure obedience to its orders for the benefit of those in whose favour they are made would be inappropriately curtailed if, in addition to having to show that a defendant had breached the order, it was also necessary to establish, and to the criminal standard, that he had done so in the belief that what he did was a breach of the order – particularly when a belief that it was not a breach may have rested on the slenderest of foundations or on convenient advice which was plainly wrong.

156. The judgment debtors do not contend, as I understand it, that they lacked the necessary intent. What they say is that they had a reasonable excuse for what they failed to do because of the constraints imposed upon them by the orders of the Lebanese Court. I address this contention in more detail hereafter. Dealing with the matter in general terms, I do not accept that where D is ordered by the English Court to do X in unconditional terms and fails to do so, his failure to comply with the order is excused if compliance with it would (or might) constitute a breach of the order of a foreign court. What course the Court takes if the existence of such an order is the reason for non compliance is a different question. Nor do I regard Neuberger J's tentative observation that the supply of inaccurate information by a defendant who

had acted honestly and reasonably and had taken all reasonable steps might not be contempt, as recognising some general principle of reasonable excuse as a defence to contempt. His observations may properly be regarded as directed to what the particular order under consideration required as a matter of construction. Further if someone has acted honestly and taken all reasonable steps it may be legitimate to regard the inaccuracy of the information as accidental and unintentional. Nor do I regard the case of *Islamic Investment Company of the Gulf (Bahamas) Ltd v Symphony Gems N.V.* [2008] EWCA Civ 389, where it was accepted that the appellant was in contempt but where the Court set aside the order of suspended committal, as establishing any such principle[10].

157. Proceedings for contempt of the kind now in issue are criminal proceedings for the purpose of Article 6; but that does not mean that they are not civil proceedings - so that hearsay evidence may be admissible: *Daltel Europe Ltd v Makki* [2006] 1 WLR 2704. The judgment debtors are entitled to the presumption of innocence under Article 6.2 and the rights in Article 6.3. Further the court will, in determining the principles applicable, follow the analogy of criminal proceedings "*with some strictness*": *Jelson (Estates) Ltd v Harvey* [1983] 1 WLR 1401. For that reason there can be, as it seems to me, no question of any issue estoppel.

The alleged anti-enforcement strategy

158. As I have already said, the judgment debtors have no intention of paying anything in respect of the amount due under the various judgments; have failed to do so when they could easily have done so; and have resisted every attempt to compel them to do so. They have also taken steps to reduce their assets available for execution.

159. I have no doubt that this stance has been taken because the two families take the view (as is apparent from what has been submitted to the courts in Lebanon and England) that English jurisdiction against the judgment debtors was wrongly established; that the judgment against them was wrongly given; and that the judgment creditor does not deserve to have any share in the profits of the field.

160. The fact that the judgment debtors are ultimately owned by the two families; and that, until the judicial administration their directors were either family members or nominees, does not mean that the shareholders, directors and companies are necessarily to be regarded as an undifferentiated mass. Both sides have for their purposes adverted to the distinction between (a) the shareholders; (b) the board of directors; (c) the judicial administrator and (d) the companies themselves. I shall revert to this question hereafter. I am, however, quite sure that the controlling shareholders of the judgment debtors (the Khoury and Sabbagh families and, in the unlikely event of a dispute, the Khoury family) could readily procure that they paid the amounts ordered by Gloster J. They could have done that as soon as those orders were made through the existing board members. If necessary (and I am sure that it would not have been necessary) they could procure the appointment of new directors who would ensure that the companies would satisfy the judgments. When the

[10] I note that in *Rantzen v Rothschild* [1865] 14 W.R. 96, which was followed in *Stancomb* and referred to in *Pioneer Concrete*, a foreman had had notice of an injunction preventing the pulling down of a party wall served on him. Since he could not read he asked a policeman to read it. He did so and advised the foreman to disregard it. The foreman was treated as guilty of a "*gross contempt*" for which his employers were liable.

nominee directors resigned and the judicial administrator was appointed it was open to the shareholders at any time to appoint new directors. If they had done so and those directors had decided to honour the judgments I have no doubt that the Lebanese court would have brought the judicial administration to an end.

161. With that inevitably lengthy introduction, I set out in the paragraphs that follow the several allegations made and my conclusions on them.

Allegation 1

162. Allegation 1 A is in these terms:

> **Allegation 1**: CCOG has acted in contempt of the Order Appointing a Receiver granted by Gloster J. on 20 December 2007 (the "CCOG Receivership Order") and/or it has acted in contempt of the Freezing Order granted by Gloster J. on 20 December 2007 ("Freezing Order No.1"). In particular it is alleged that:-
>
> (i) **Allegation 1(A)**: CCOG has **received** revenues from the sale of oil from the Masila Concession in contempt of the CCOG Receivership Order and/or that it has assigned its rights in the Masila Concession in contempt of Freezing Order No.1.
>
> Date: The CCOG Receivership Order became effective on 4 April 2008. It is alleged that CCOG has been in contempt of such Order and/or Freezing Order No. 1 since that date.

The sale on 12 March 2008

163. The facts which underlie this allegation (and which are not seriously in dispute) relate to four sales of oil. The first was on **12 March 2008** on which date CCOG agreed to sell 250,000 barrels +/- 5% of Masila Concession Oil, with loading to take place between 15 March and 14 April 2008; payment to be against documents after a minimum of 30 days from bill of lading date: see Olswang's letter of 14 March 2008. On **18 March 2008,** the buyer's bank opened an irrevocable letter of credit in favour of Petroleum Marketing Company SA, "PMC" CCOG's brokers, under which payment was to be made 30 days after the bill of lading date. On **25 March 2008,** oil to a value of $ 23,932,423 **w**as shipped on board the m.t. Formosa Petro Empire**.** Payment was, therefore due on or about 25 April 2008.

164. In the early hours of 5 April 2008, the Receiver faxed his letters of 4 April 2008. On 9 April 2008, Olswang responded in the terms referred to in para 92 and on 14 April 2008 the Receiver replied: para 99. On the same day the Lebanese Court made the orders ("the blocking orders") referred to in paras 94ff. On or about 25 April 2008 funds were released to PMC, CCOG's agent by wire transfer.

The judgment creditor's claims

165. The judgment creditor contends that CCOG was in contempt of the CCOG Receivership order by its receipt of the funds, through its agent, PMC on or after 25 April 2008. It could readily have purged that contempt by directing payment to the Receiver but chose not to do so. The contempt was particularly serious because the sum involved represented a very substantial proportion of the amount then due and

because it followed on the conditional permission to appeal given by the Court of Appeal on 15 January 2008 which had contemplated that sums from the sale of oil would between then and the hearing of the appeal end up in the nominated account (which Olswang had duly opened at Lloyds TSB Threadneedle Street: see its letter to the Court of Appeal of 22 January 2008). In fact the Court of Appeal was misled and, had it not been, a different order might well have been made.

The judgment debtors' response

166. The judgment debtors, through Mr Boyle, say that there was no contempt at all. Firstly, as they contend, the judgment creditor has misunderstood the CCOG Receivership Order. That order did not enjoin the judgment debtors from receiving the proceeds of sale nor did it compel CCOG to pay or direct payment of the proceeds to the Receiver. It says no such thing. In particular para 2 of the order says nothing about its effect. What the order did was to establish a procedure which would enable the Receiver to receive information about sales and, as a result be able to secure payment to himself of the proceeds. However, in the events which happened CCOG was precluded by the blocking order made against it on 14 April 2008 (before payment was received) from revealing any such information, and, by reason of the provisions of paragraph 15 of the CCOG Receivership Order it was entitled not to provide that information. If, as was the case, the only way in which it could comply with the CCOG Receivership order, was to contravene the blocking order, it was excused from compliance.

167. The way in which the order operates is, Mr Boyle submits, as follows. Para 2 simply appoints Mr Manning as Receiver of the Oil Revenues. It does not direct CCOG not to receive them nor does it direct CCOG to pay them to anyone. The only injunctive part of the order is paragraph 7, which obliges CCOG and its directors and officers to cooperate with the Receiver in the ways specified. Under the scheme contemplated by the Order CCOG is entitled to sell oil in the ordinary course of business (as expressly permitted under Freezing Order No 1). When sales are entered into CCOG is, by para 7 (a), obliged, if it has received an appropriate request from the Receiver, to provide information about the whereabouts of the Oil Revenues, the arrangements for the sale of oil and the realisation of the proceeds, the identities and details of those involved in the sales and the amount due from time to time. In addition, under para 7 (c), CCOG is obliged within 3 days of any agreement for sale or any sale of oil to provide the Receiver with specific information viz a copy of any written agreement, details of the identity of the purchaser, any agent who acted for CCOG in making the agreement/sale and details of the bank account to which any monies due to CCOG have been or are to be remitted. Under para 7 (b) the Receiver can require CCOG to write to third parties to confirm his rights under the order to act on behalf of CCOG and to receive the Oil Revenues. Armed with that confirmation the Receiver can apply to the purchaser to receive the proceeds of sale.

168. But it is up to the Receiver to act. If he receives all the relevant information but fails to contact the purchaser, who pays CCOG, he has only himself to blame; and CCOG commits no breach by receiving the proceeds. The CCOG Receivership order may be contrasted with the terms of:

i) the CCIC Receivership Order, which by para 2 appointed Mr Manning as Receiver of the CCIC Contract Revenues and by para 7 (D) expressly required payment of any Contract Revenues that CCIC received to the Receiver within 2 working days of receipt; and

ii) the Extended CCOG Receivership Order of 1 December 2010, which by para 2 appointed Mr Manning as Receiver over and in respect of all oil and rights to oil to which CCOG was or might become entitled and which by para 3 ("*for the avoidance of doubt*") restrained CCOG from receiving any Masila oil.

The CCOG Receivership Order is, he submitted, clear, but, if ambiguous, any ambiguity in it must be resolved in favour of the judgment debtors.

169. Attractively though these submissions were presented I cannot accept them. The primary and overarching provision of the CCOG Receivership Order was the appointment of Mr Manning as Receiver of the Oil Revenues. It is of the essence of the appointment of a Receiver, and the effect of an order appointing one, that it is he who is entitled to receive the assets in question and not another. That is what the order means. The effect of the Order was to restrain CCOG, which was bound by it, from receiving those Revenues either by itself or by its agent (see para 11). Other provisions of the Order, in particular clause 7, provided a mechanism for putting the receipts into the hands of the Receiver by laying down certain positive obligations. But they cannot detract from the force of the appointment itself. It was not necessary that the order should express an obligation on CCOG not to receive. The positive order appointing the Receiver to receive necessarily precluded CCOG from the inconsistent act of receipt itself.

170. I consider this to be the natural meaning and effect of a Receivership order. Its whole purpose is to stop anyone but the Receiver from receipt. It is also what the Court of Appeal indicated was its effect in the judgment of Collins LJ of 4 April 2008 in terms which I shall repeat:

> "53 *….[The appointment of a receiver] has effect* ***as an injunction restraining the judgment debtor from receiving*** *any part of the property which it covers, if that property is not already in his possession, but it does not vest the property in the receiver. As Cotton LJ said in* Re Sartoris *[1891] 1 Ch 11, 22 (CA): "It operates* ***as an injunction restraining the defendant*** *from getting in money which the received is appointed to receive.*"

To the same effect were the observations of Sullivan LJ at paragraph 23 of his judgment of 6 February 2009 in relation to the proper construction of para 15 of the Order ("*While the Respondent is* ***restrained from receiving*** *the Oil Revenues, the only positive obligations imposed by the Order are [in para 7]*").

171. Mr Boyle submitted that Collins LJ 's observations were no more than an expression of a general principle. He was not engaged in construing the CCOG Receivership Order. The dictum from *Re Sartoris* was acceptable in general terms (although the case in fact concerned whether a provision - that income should cease to be payable to a tenant for life if he suffered something whereby the income became payable to another - was engaged if a receiving order was made against him in bankruptcy proceedings) but everything depends on exactly what the order says.

172. I do not regard the observations of Collins LJ as of such limited effect. They were of both a general and a particular character. In para 52 of his judgment he cited from *Snell* on the general effect of the appointment of a Receiver ("***as an injunction against the judgment debtor receiving the income***"[11]). His judgment was plainly concerned with the particular effect of the appointment of the Receiver on the terms of the CCOG Receivership Order; and in para 61 he observed that:

> *"I do not consider that there is anything in the point that the effect of the order may be that, because the judgment debtor (if he complies with the order)* ***has to decline to receive payment****, the third party will be put in a quandary in that he cannot pay his creditor, who is refusing payment. Oil contracts are high value, and it will not take many customers or many shipments to clear the judgment debt. The number of potential purchasers is limited and they will be well able to take advice."*

173. In those circumstances I am confirmed in the conclusion that I have reached by the judgment of the Court of Appeal. Indeed I am probably bound by it. But whether strictly bound by it or not, I intend to follow it.

174. The contrast with the CCIC Receivership Order does not lead to any different conclusion. Not only is that a different order; but it related to Revenues which, as its paragraph 7 (B) envisaged, might not be capable of being paid directly to the Receiver as a result of pre-existing contractual obligations. Accordingly the Order makes allowance for that in para 7 (B) and provides, in para 7 (D) for what is to happen to such Revenues as and when they are not received by the Receiver but by CCIC in accordance with the permission granted in 7 (B).

175. Similar considerations apply to the Extended CCOG Receivership Order which specifies what is to happen "*for the avoidance of doubt*", words which as Lord Walker observed in *Sirius* [2005] LRIR 294, 302 [35] "*although sometimes loosely used, suggest that the paragraph is going to spell out what is fairly obvious (or at any rate unsurprising) rather than subverting the other provisions*". In view of the points now taken by the judgment debtors the provision was apposite.

176. Mr Boyle contends that if, as I have held, the CCOG Receivership order is an injunction against receipt, that was an injunction which could not be complied with without a breach of the 14 April 2008 blocking order. In order to ensure compliance CCOG would have to inform the Receiver that the sale had taken place, that an amount was due for payment in respect of the sale proceeds, and that it was directing payment to the Receiver, and to direct such payment. To do that would involve disobedience to the 14 April 2008 blocking order because it would involve providing information under para 7 (a) as to the whereabouts of part of those Revenues or any assets representing the same and as to the amounts due to CCOG in respect of Oil Revenues. It might also involve compliance with para 7 (b) insofar as third parties had to be informed of the Receiver's rights. However, under para 15 of the order that is not something that CCOG was required to do.

177. I do not accept this for two reasons. First, it was a breach of the order for CCOG to *receive* Oil Revenues. In order to comply with the order CCOG did not have to pay

[11] Citing *Stevens v Hutchinson*[1953] Ch 299, 305 per Upjohn J, which is clear authority for that proposition.

the Receiver: see paras 52-3 and 61 of the judgment of Collins, LJ. The 14 April order did not require CCOG to receive the Oil Revenues nor preclude it from declining to do so, by itself or by its agents. CCOG did not have to call for the money to be paid to itself or its agent.

178. Second, I do not, in any event, accept that procuring that the $ 22 million odd of Oil Revenues was received by the Receiver would have involved the giving of information" *in execution of"* the orders of 20 December 2007. This is for two reasons.

179. First, I do not accept that information provided incidentally as a result of payment of Oil Revenues (because the payment of Oil Revenues to the Receiver necessarily indicates that there are oil revenues in the amount paid and their whereabouts) constitutes the "*giving of information …in execution of the Order*". The Order is executed, so far as the giving of information is concerned, by the provision to the Receiver of information falling within (so far as presently relevant) para 7 (a) as required by him and in response to his request. If CCOG caused $ 22 million to be paid to the Receiver it would not, in my judgment, be executing the information provisions of the Order.

180. Second, a simple payment of $ 22 million to the Receiver would not, in fact, have been responsive to the requirements in his letter of 4 April 2008 which called for information as to:

i) the identity of the purchaser and any agent of CCOG;

ii) details of the bank account to which monies due to CCOG have been/are due to be remitted in connection with the agreement or sale;

iii) confirmation as to whether there has been an agreement to accelerate payment and

iv) production of the letter of credit and the documents to be presented thereunder.

Information in category (ii) might be revealed if the payment to the Receiver came from the same account as that to which the purchaser remitted the monies and it was apparent that that was so. But it would not have to. In addition on 14 April 2008, Olswang had made it plain that they rejected the Receiver's request and on 28 April 2008 issued an application for a declaration that they were not bound to comply with it. A subsequent payment to the Receiver would not, in those circumstances, have been responsive to the Receiver's request nor in execution of the order for the provision of information as specified by him.

181. CCOG did not in April 2008 obtain an order from the Lebanese Court prohibiting payment as well as the provision of information, although that had been sought in the 18 January 2008 application. The judgment debtors later sought clarification of the 14 April 2008 order so as to extend it to payment. But such clarification was never given. I note also that CCOG's application of 28 April 2008 (which led to the orders of Steel J of 23 May 2008) sought no declaration in relation to payment. That application and the subsequent declaration were limited to information. If it had then been thought

that the blocking order prevented payment, CCOG would no doubt have sought declarations to that effect.

182. Mr Kealey also submitted that the information obligations under the CCOG Receivership Order only concerned information which would assist the Receiver in carrying out his task of seeking to secure the money. Once the proceeds of the March sale were paid to him information concerning that sale ceased to be of any use or assistance to him and therefore fell outside those obligations. Any information about the March sale which would be revealed by payment of the proceeds of sale was not, therefore, information within the terms of the order because it was of no use to the Receiver. I do not agree. The information obligations are not limited to the provision of information which is of use or assistance.

Purging

183. It is suggested that, if CCOG were in contempt because the Receiver had not received the $ 22 million, they were left in an impossible position because they could not purge their contempt without revealing information in breach of the 14 April blocking order. I do not agree. They could have gone a long way to purging their contempt by paying over any Oil Revenues they had wrongly received. That would not involve a giving of information" *in execution of"* the orders of 20 December 2007.

184. It may be that, that in order fully to purge their contempt they would have had to give details in respect of the relevant sales (such as the basic terms of the agreement, dates of sale and payment and amount). In relation to the 12 March 2008 sale, those matters were largely revealed before the Receivership order took effect. But there is nothing in the blocking order that precludes the *voluntary* provision of information in the interests of the company e.g. to avoid penalties that might otherwise be imposed for contempt. The provision of information in order to purge any contempt would not have been a provision in execution of the CCOG Receivership Order, but a means of avoiding or mitigating any sanction in respect of a breach of it. The ability of the judgment debtors voluntarily to provide information, if they thought it in their interests to do so, is, no doubt, the reason that Mr Andrew was able, in para 31 of his 2nd affidavit, sworn on 18 November 2010, to reveal that "*these funds ... were wired electronically and unilaterally to PMC*[12] *in accordance with the details stated on the letter of credit";* a fact which was only revealed in the course of these proceedings after the date of the blocking order. It also explains why CCOG was able to produce, in Mr Andrew's 6th affidavit, documents relating to the sale of 1 million barrels of oil by CCOG to Canadian Nexen Petroleum Yemen. In that affidavit he took care to explain that the documents were not being disclosed pursuant to any coercive order of the English Court but "*in order to ensure there is no risk that the court could be left with a misleading impression if the documents exhibited were not made available to the court*".

185. Mr Boyle contends that, if he is wrong on the two previous points, nevertheless the 14 April 2008 order has an effect beyond the words of the *dispositif*. It is common ground between the experts that, in Lebanese law, a defendant is bound to observe not only what is laid down in the *dispositif* but whatever appears in the *motif* which is

[12] Petroleum Marketing SA, the brokers used by CCOG since January 2007.

closely connected with the *dispositif*. Professor El Khoury expressed it this way in para 22 of his report:

> *"Third, under Lebanese law it is well established that the effect of res judicata or force of the judged case [force de chose jugée] is not limited to the dispositive part, i.e. final part of the judgment, but it also undoubtedly embraces the reasoning that is* ***directly and tightly linked*** *to that final part."*

Professor Slim was essentially in agreement with that proposition.

186. The *dispositif* of the blocking orders prohibits, as Mr Boyle submits and I agree, the giving of information about the judgment debtors in execution of any of the three 20 December 2007 orders, and that prohibition is not limited to the provision of information *within Lebanon*. The reasoning which, Mr Boyle submits, is directly and tightly linked to the *dispositif* is that you cannot coerce a Lebanese corporation, by the threat of penalties against it or its directors, if you have not obtained an *exequatur* from the Lebanese courts. That reasoning applies to everything in the order, including the appointment of the receiver and any implied injunction against receipt. Mr Boyle drew particular attention in this respect to the sentence in the *motif* which reads:

> "*If the legal decision were issued from a non-Lebanese court, it shall be necessary that it be coupled with the exequatur from the competent Lebanese judicial authority in case the decision included a compulsory measure to guarantee its execution."*

187. I do not accept this. Lebanon would regard it as an infringement of its sovereignty if any other State sought to enforce a judgment of its courts *in Lebanon*. So would the United Kingdom in respect of enforcement within its territory. As Lord Hoffmann put it in *Société Eram*:

> *"[54] ….The execution of a judgment is an exercise of sovereign authority. It is a seizure by the state of an asset of the judgment debtors to satisfy the creditor's claim. And it is a general principle of international law that one sovereign state should not trespass upon the authority of another, by attempting to seize assets* ***situated within the jurisdiction of the foreign state or compelling its citizens to do acts within its boundaries****."*

188. Consistently with this principle the judgment of a foreign court cannot be enforced in Lebanon unless and until it has received the necessary *exequatur*. But, as the Court of Appeal has held in its judgment of 4 April 2008, the making of the Receivership order "*did not exceed the permissible limits of international jurisdiction*" for the reasons there stated, including that the order has no proprietary effect.

189. The only reasoning that I derive from the *motif* as being "*directly and tightly linked*" to the *dispositif* is as follows. Since the December 2007 orders required the production of information present *in Lebanon* and amounted, therefore, for practical purposes, to execution *in Lebanon*, they could not be so executed (i.e. in Lebanon) without the *exequatur* of the Lebanese Court. It was not open to the judgment creditor to circumvent this requirement by threatening the directors or officers of CCOG with penal consequences (as set out in the penal notice) because such a circumvention would be fraudulent (securing an impermissible result without apparently doing so)

and a breach of the judicial sovereignty of the Lebanese government *on its territories*. It is that reasoning which is the essential basis of the *dispositif*. The fact that the order contained in the *dispositif* is not confined to the giving of information to third parties in Lebanon does not alter that. If what is forbidden is the obtaining in Lebanon of evidence which is in Lebanon it would be perfectly sensible to prevent its supply anywhere, on account of the source from which it came (Lebanon) and the means by which it had been sought to be obtained (execution in Lebanon).

190. I accept that the dispositif is expressed in general terms so as to preclude *any* compliance with the orders of 20 December 2007. But that order has been made on the footing that the information which would be revealed if those orders were to be complied with is evidence present in Lebanon such that, if the orders were complied with (by Lebanese persons in Lebanon), that would, for practical purposes, amount to execution in Lebanon. It does not follow from that *motif*, that the companies are (absent any *dispositif* to that effect) precluded as a matter of Lebanese law from complying with the decisions of this court if the evidence was not, or not only, present in Lebanon so that compliance would not, for practical purposes, amount to execution in Lebanon or if that which they were required to do (or abstain from doing) was to be done or omitted outside Lebanon.

191. I am satisfied that the *dispositif* is not directly and tightly linked to the proposition that, because the English order in question contains a penal notice it may not, as a matter of Lebanese law, be enforced anywhere in the world in the absence of *exequatur* in Lebanon. The sentence relied on does not, in fact, say that[13]; and it cannot be taken in isolation from, or without reference to, the body of the text of which it forms part. The proposition would be extraordinary. If well founded it would mean that, if an English court ordered a Lebanese corporation subject to English jurisdiction to return, say, a plane at Heathrow (or Paris) to the claimant under an order with the usual penal notice, it would be contrary to Lebanese law for enforcement to take place here. It would elide the distinction between enforcement or execution against a Lebanese company and enforcement or execution against a Lebanese company *in Lebanon*. Professor El Khoury initially accepted that, absent the 14 April 2008 orders, there was nothing in Lebanese law that prevented a Lebanese company from complying in England with a judgment of the English Court, whether for money or, for instance, possession of property in England, whether or not there had been *exequatur*: Transcript 9.2.11, pp 106-7, 116-8. He also explained, as I understood him, that the basis of the 14 April 2008 order was that a foreign judgement cannot be executed in Lebanon without *exequatur*: Transcript 10.2.11, pp 19-29. In relation to the 12 March sale the prohibition against receipt was contravened by receipt outside the Lebanon.

Later sales

192. There were three later sales of oil. The dates of those sales and of the loadings of oil pursuant thereto and of the orders of the Lebanese court potentially applicable were as follows:

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[13] I do not accept that Professor Slim's acceptance in evidence (8.2.11. page 123, l.6) that the fact that the orders had a penal notice was one of the reasons for the decision was an acceptance that no order against a Lebanese corporation could, as a matter of Lebanese law, be enforced, without exequatur, even if the enforcement was outside Lebanon.

Sale	*Loading*	*Order*
12 February 2009	20 February 2009	14 April 2008 14 January 2009
7 December 2009	31 January 2010	14 April 2008 14 January 2009 1 June 2009
21 April 2010	2 June 2010	14 April 2008 14 January 2009 1 June 2009

193. All these sales took place after the appointment of a judicial administrator. The Receiver has received none of the Oil Revenues from them. They have all been received by CCOG or its agents.

Submissions in respect of the 3 later sales

The judgment debtors

194. Mr Boyle submits that the position is as follows. The judicial administrator was required to sell oil in the ordinary course of business. But the order of 14 January 2009 required him to obtain the *prior* approval from the court in relation to any important matter[14]. Whether or not to pay the judgment debt to the Receiver (and when) was an important matter which could only be decided on by the judge - as he himself decided on 1 June 2009. Then on 4 October 2010 the judicial administrator was specifically instructed not to take any step leading to the carrying out of the decision of the English court or to transfer monies to the Receiver. It follows that, if the judicial administrator had arranged for CCOG to pay the Receiver the proceeds of these sales, or not, itself, to receive them, not only would CCOG be in breach of the 14 April 2008 order (as discussed above) but the judicial administrator would be in breach of the orders of 14 January 2009 in respect of the sale on 12 February 2009, and of that order and the order of 1 June 2009 in respect of the sales of 7 December 2009 and 21 April 2010. In those circumstances para 15 of the Order is engaged (the Lebanese court being, as is common ground, a court of competent jurisdiction), with the effect that CCOG was not bound either (i) not to receive the monies or (ii) to pay them over to the Receiver. A decision to take either course would be an important matter. Alternatively , if there was a contempt, it is not one deserving of sanction since the judicial administrator was an independent person charged with fulfilling a duty to the Lebanese Court and could not act otherwise than as he did.

The judgment creditor

195. Mr Kealey submits that the 14 January 2009 order does not prohibit compliance with the CCOG Receivership Order. Even if compliance with the Receivership Order is an important matter, the 14 January order does not require the judgment debtors to disobey the orders of the English court: not only because the judgment debtors (as opposed to the judicial administrator) are not the subject of the Lebanese court order but also because the requirement on Mr Joujou under the Lebanese order is to seek the Lebanese court's approval to comply. He cannot hide behind the need to seek

[14] Professor Slim thought that a better translation was that Mr Joujou was appointed "*with the task to refer to the Court before acting in any important matter or not covered by the above*". The sense appears to me to be the same.

approval, which he has not sought, in order to assert that he is precluded from compliance. In relation to the former point there is, as he contended, a mismatch between the orders of the English court which are directed at the judgment debtors and those of the Lebanese court which are directed at their judicial administrator, who is not a director or officer of theirs. It is not open to the judgment debtors to excuse their non compliance with English court orders by claiming that such compliance would involve the judicial administrator disobeying an order which only affected him.

196. Mr Boyle submitted that it was not open to the judgment creditor to take the former point. It had not featured in the application notice, the judgment creditor's evidence, skeleton argument or opening. As a result the judgment debtors have not had the opportunity to adduce expert evidence that the orders of the Lebanese court in the Judicial Administration bind them, or to put this to Professor Slim in cross examination. They cannot be found in contempt on the basis of a case to which they have not had a proper opportunity to respond

197. In my judgment Mr Boyle's contentions are, in this respect, well founded. In any event I am left unsure as to whether it is legitimate in Lebanese law to regard CCOG as free to act in a way which would mean that its administrator was disobeying an order, direction or ruling of the Lebanese Court. It is the judicial administrator who is at the pinnacle of command in respect of the company, even though he is not a director, *de jure* or *de facto*, although discharging the functions normally discharged by the board of directors. As Professor Slim's evidence makes clear, once the judicial administrator is appointed the former officers of the company are relieved of their duties. It seems to me doubtful, to put it no higher, that, as a matter of Lebanese law, CCOG can legitimately (i.e. without disobedience to the order of the Court) make a payment when the court has ordained that the person who alone has the power to direct such payment may not do so without reference to the court.

198. As to the latter point, the order does indeed require reference of important matters to the judge. But it also contains a prohibition against action without having done so. The need for prior approval in relation to any important matter requires the act or omission in question to follow and not precede the relevant approval. It does not seem to me that that position changes (at some unspecified time) if the judicial administrator fails to apply. If he fails to apply when he ought to do so a person prejudiced thereby can apply to the court for directions. At the lowest I am not sure that there would have been no breach of the order of 14 January 2009 if CCOG had either taken a decision to decline to receive payment or made payment to the Receiver.

Conclusion in respect of the 3 later sales

199. I am not satisfied, therefore, that non receipt of the proceeds of the later sales, or, a fortiori, payment would not be a breach of the orders of the Lebanese Court of 14 January 2009 and 1 June 2009. I do not, therefore, find this alleged contempt established in respect of these three sales.

Allegation 1 A – Assignment of Rights

200. Allegation 1 A contains an averment that CCOG has, in breach of Freezing Order No 1 assigned its rights in the Masila concession. That order provides in para 2 that

CCOG must not assign any of its rights in the Masila Oil Concession to any other person or entity or otherwise dispose of or diminish the value of such rights. Para 3 provides that the order shall not prevent CCOG from selling oil in the ordinary course of business for its market value.

201. This allegation relates to the sale of **12 February 2009**. A witness statement from Mr Darren Knoll, Nexen's legal manager for Yemen operations, referred to the problem created by CCOG's failure to uplift in accordance with nominations made. He referred to a letter from Canadian Nexen of 26 January 2009 as to which he said:

> *"CNPY proposed a revised nomination procedure to enable CCOG to Lift on 18-19 February ….or suggested that CCOG assign part of its Entitlement to CNPY and permit CNPY to Lift and sell oil on CCOG's behalf.*
>
> *CCOG did not accept the proposals … and, in order to obviate the potentially serious operational problems associated with CCOG's Underlifting, CNPY purchased 1,000,000 barrels of CCOG's Entitlement to oil from CCOG by way of an "in-tank" transfer of CCOG's Entitlement, with the purchase price to be credited to CCOG in the Joint Operating Contract for the Concession.."*

202. I do not regard that as a description of the sale of some part of an interest in the Concession, but of a sale of oil to which CCOG was entitled. In his affidavit in response, Mr Andrew further explained the position and exhibited the relevant contract of 12 February 2009 which is plainly a contract for the sale of oil (1,000,000 Entitlement Barrels), under which title and risk of loss was to pass as of midnight 20 February 2009 at the terminal storage facilities, and not a contract for the sale of an interest in the Concession. On 24 February 2009 Nexen notified CCOG that it had adjusted CCOG's accumulated entitlement by minus 1 million barrels and that payment would be transferred to the joint operating account in accordance with the applicable agreement.

203. For these reasons, this allegation is not made out.

Allegation 1(B): CCOG's failure to provide information to the Receiver concerning its oil sales (pursuant to paragraphs 7(A) and 7(B) of the CCOG Receivership Order), in conjunction with its instigation of proceedings in Lebanon to obtain blocking orders, constitutes a contempt of the CCOG Receivership Order.

Date: The CCOG Receivership Order was granted on 20 December 2007 but was stayed until *4 April 2008*. The applications for blocking orders in Lebanon were made on *18 January 2008*. It is alleged that CCOG has been in contempt continuously from those dates.

204. The judgment creditor contends that the effect of the CCOG Receivership Order was to vest in the Receiver the right to co-operation from CCOG at and from 23:59 on 4 April 2008 and that CCOG interfered directly with that right, which accrued on that date, by applying for and obtaining the order of 14 April 2008. That was a direct interference with the rights of the Receiver since CCOG's intention in securing the order was to remove or diminish those rights. As a result the refusal of CCOG to provide the Receiver with the information which he requested in conjunction with the obtaining of the blocking order was a contempt.

205. I do not accept this. The CCOG Receivership Order provides that nothing in it shall require the defendants or their directors to disobey any order of a court of competent jurisdiction. That exclusion is not expressed to be applicable only to orders that have been obtained prior to the date of the order or only to orders obtained by third parties; nor does the order contain any provision which restrains CCOG from seeking any relief open to it from any court of competent jurisdiction. In those circumstances it is not, as it seems to me, a contempt of court to seek an order from such a court in order, if it is obtained, to rely upon it, if applicable, to excuse compliance by reason of paragraph 15. If CCOG was to be precluded from seeking any such order that would need to be specified. Nor can I regard the Receiver as having a vested right to the information specified in para 7. The order gives him a right but not one that is absolute, since para 15 may operate to reduce or extinguish it.

206. The discussion in the previous paragraph assumes that the application which led to the order of 14 April 2008 in respect of CCOG can be regarded as instigated by or made by or on behalf of CCOG. Mr Boyle submits that it plainly cannot. The order was obtained on the application of Salwa Khoury, who held 2 out of 100,000 shares in CCOG. A similar issue arises in respect of the order of 14 April 2008 in respect of CCIC, made by Mr Samir Sabbagh, who held 2 out of 500,000 shares in CCIC.

Was the application for the 14 April Orders made on behalf of the judgment debtors?

207. It is relevant in this connection to refer to part of the judgment of Tomlinson J, of October 2008, which it is necessary to set out in full.

> "*I have already referred to Ms Salwa Khoury. Also involved in applications to the Lebanese court has been Mr Samir Sabbagh, the son of Mr Hasib Sabbagh ....Mr Samir Sabbagh is a shareholder in CCIC, although I do not know if his shareholding is as insignificant as is that of Ms Khoury in CCOG*[15]*. I reproduce below, with two small omissions, what Mr Morgan says about the various applications to the Lebanese court:*
>
> *"99. ... I believe that the Judgment Debtors have been involved in procuring the Lebanese Orders prohibiting compliance with the English orders for the following principal reasons:*
>
> *(A) The Judgment Debtors commenced the first proceedings in Lebanon on 10 July 2007 seeking a declaration that the English judgments could not be recognised and enforced in Lebanon (action 216).*
>
> *(B) On 12 November 2007, Salwa Khoury lodged an application in action 216 seeking an order prohibiting Samer Khoury from complying with an English order made under CPR Part 71 and seeking a declaration that the Part 71 order was not enforceable in Lebanon. On the same date, Samir Sabbagh lodged an application in almost identical form seeking an order prohibiting Toufic Khoury from complying with an order made under CPR Part 71.*
>
> *...*

[15] In fact it was, and proportionately much smaller.

(3) Both applicants instructed Caroline Moarbess, a lawyer listed on letter heading as being part of the same law firm that the Judgment Debtors had instructed. However, we have since been informed by Mr Chedid (the Judgment Debtors' lawyer) that Ms Moarbess had set up practice in a separate firm earlier in 2007[16].

(4) The fact that both applicants instructed the same lawyer (who had until recently worked with the Judgment Debtors' lawyers) and lodged almost identical applications at the same time suggests that there must have been a central point of co-ordination.

(5) The fact that the applicants were aware of the CPR Part 71 Orders suggests that they must have been brought to their attention by the Judgment Debtors or Samer Khoury and Toufic Khoury.

(6) The applicants must have been provided with copies of the claim documents in action 216 by the Judgment Debtors since they were not party to the proceedings but they made applications in the proceedings and referred to the arguments set out in the claim documents.

(7) The arguments set out in the application documents reveal a detailed knowledge of the English proceedings and the Yemen proceedings which, realistically, could only have been obtained from the Judgment Debtors.

(8) The lengthy detailed jurisdictional arguments regarding the gathering of evidence in foreign proceedings reflect the positions taken by the Judgment Debtors in the English proceedings and it is highly unlikely that the applicants and Ms Moarbess would have produced these arguments without reference to the Judgment Debtors and/or their legal team. In particular, Ms Moarbess displays a detailed knowledge of Belgian case law which I believe must have been as a result of liaison with the Judgment Debtors who instruct as part of their legal team, Professor Arnaud Nuyts, a professor at the University of Brussels in Belgium (see pages 9 and 10 of the application document dated 12 November 2007).

(9) Although the applicants asserted that compliance with the Part 71 Orders would result in damage, they do not specify what that damage would be and they do not identify any unfair prejudice that would ensue (other than the companies complying with their legal obligations). This again suggests that the interests that are sought to be protected by the application are those of the company and not any third party.

(10) There is no evidence that the Judgment Debtors contested these applications in any way although they were not subsequently pursued.

[16] As Mr Chedid confirmed in evidence before me.

(C) Any interests that are sought to be protected by the Order are in any event only interests that reflect those of the company; there is therefore no risk of prejudice to an independent third party. The only potential harm to a shareholder is the devaluation of the company by virtue of it complying with the Orders of the English court. In such circumstances it would be wholly inappropriate for the English court to refrain from granting an order that it would otherwise make.

(D) The fact that Salwa Khoury and Samer Sabbagh have been provided with documents (outside the scope of Article 197 of the Lebanese Civil Code) relating to the case highlights the artificial nature of the arguments raised by the Judgment Debtors and the applicants that it would be a criminal offence for the companies to provide any information to third parties or the Receiver.

(E) On 15 November 2007, further applications were brought by Salwa Khoury and Samir Sabbagh in a separate Lebanese court seeking orders prohibiting compliance with the CPR Part 71 orders. One of the principal arguments in support of the applications related to Article 197 of the Lebanese Civil Code (relating to shareholders and debenture holders' rights to company information).

(F) At around the same time that the above applications were being prepared, Mr Melkane was being instructed first on behalf of Wael Khoury (a former director of CCOG) and then on behalf of the Judgment Debtors to give expert evidence as to points of Lebanese law for the purposes of the English proceedings.

(1) His first report was dated 21 November 2007 and contained the same arguments about the restrictions on the provision of information under article 197 of the Civil Code (as well as further arguments based on articles 167 Civil Code and 579 Criminal Code). The similarity of the arguments would be striking if the documents had been prepared entirely independently because it appears that there has never been any case involving a director being found to have breached article 197 by providing information pursuant to a foreign court order (I say this on the basis of the evidence of Mr Abirached) and, on its face, the provision does not appear to limit the provision of information by companies to third parties.

(2) Mr Melkane's second report, also dated 21 November 2007, was prepared for the purposes of post hearing submissions in the English proceedings in response to the Judgment Creditor's applications for a freezing injunction, receivership order and affidavit of assets order. The opinion was addressed to the issue of whether individual directors should be named in the penal notice in the English freezing order.

(G) On 25 November 2007, CCOG apparently executed an assignment agreement (under Lebanese law) purporting to assign various shares in CCOGNL in breach of a pledge to Centrica.

(H) (Dewey & Le Boeuf ceased to act for the Judgment Debtors on 26 November 2007. They were replaced by Olswang who had previously acted only for the Directors).

(I) On 20 December 2007, Mrs Justice Gloster DBE granted a freezing order over CCOG's interest in the Concession, a receivership order over CCOG's revenues from the Concession and an order for the provision of affidavits of assets by the Judgment Debtors.

(J) On or around 9 January 2008, the directors of CCOG were all replaced by individuals (and non-family members) based in Lebanon rather than Greece. Similarly, on or around 21 January 2008, all the directors of CCIC (members of the Sabbagh and Khoury families and the holding company), the principal operating company in the CCC group said to be domiciled in Greece, were replaced by non-family members located in Lebanon.

(K) On 10 January 2008, Salwa Khoury and Samir Sabbagh obtained orders from the Lebanese court prohibiting the directors from complying with the CPR Part 71 Orders (although such orders had in fact already been discharged by Master Miller).

(L) On 11 January 2008, CCOG received early payment in relation to an oil sale in respect of which payment was due on 23 January 2008. This was in the context of the Receivership Order having been stayed temporarily until 15 January 2008.

(M) On 18 January 2008, Salwa Khoury and Samir Sabbagh lodged further ex parte applications in Lebanon seeking Orders prohibiting the companies and their directors from complying with both the information provision requirements in the 20 December orders and the payment obligations in the Receivership Order. The following points should be noted in respect of these applications:

(1) Again, these applications only seek to protect the interests of the Judgment Debtors and the reflective interests of their shareholders.

(2) The applicants would appear to have been provided with copies of the 20 December Orders by the Judgment Debtors or their directors, otherwise they would have had no knowledge of their existence or terms.

(3) The applications refer to the fact that the judgment debtor companies were 'about to present a petition before the European courts in Strasbourg'. This is a reference to the application to the European Court of Human Rights that was subsequently lodged by the Judgment Debtors on 23 January 2008. The applicants could only have known this confidential information if they were in close contact

with the Judgment Debtors and/or their legal team when preparing the application.

(4) The Judgment Debtors have not challenged the applications dated 18 January 2008 in any way and they have not disputed any statements of fact or law made by the applicants; they left it to the judge to determine them, as explained in Mr Marina's Fourth Witness Statement at paragraph 14.

(N) On 21 January 2008, the Judgment Debtors served affidavits of assets pursuant to the Affidavits Order dated 20 December 2007. However, these were wholly insufficient; for example they failed to provide account numbers in respect of bank accounts and they identified CCIC's construction projects by reference to objectively meaningless acronyms.

(O) On 22 January 2008, Simmons & Simmons wrote to Olswang in relation to the Judgment Debtors' involvement in the Lebanese proceedings (Exhibit SRM1, page 1). This letter stated, inter alia:

'Please confirm without delay:

(1) whether any of the directors of your clients had any involvement with the commencement of these [Lebanese] proceedings and/or any communication with the parties commencing the proceedings in relation to the enforcement of the English court orders;

(2) whether your firm has advised in relation to the commencement or legitimacy of these proceedings;

(3) the precise nature of all proceedings commenced in Lebanon against CCIC and/or CCOG and/or their directors in relation to the issue of compliance with the orders of the English court in these proceedings; and

(4) please also provide copies of all related documentation and certified translations of such documents.'

Olswang replied in their third letter of 31 January 2008 (Exhibit SRM1, page 3) refusing to respond to the questions raised.

(P) Although Mr Masri was informally notified of some of the Lebanese applications through the English proceedings, he was not served with the Lebanese proceedings or joined in to them despite the fact that he was clearly an interested party.

(Q) Despite the fact that the Judgment Debtors now refuse to comply with the disclosure obligations in the Order dated 11 February 2008[17], they did not raise any arguments as to the obligations infringing Lebanese law at the hearing on that date.

(R) The Judgment Creditor lodged an application seeking further and better affidavits. The Judgment Debtors sought to delay the listing of this matter but it was in any event listed for 19 March 2008. On 19 March 2008 Mr Justice Flaux found the Judgment Debtors to have breached the Affidavits Order and ordered them to provide further affidavits by 16 April 2008.

(S) On 04 April 2008, the Judgment Debtors' appeals against the 20 December Orders were dismissed and the appointment of the receiver took effect.

(T) On 14 April 2008, the Lebanese court, acting without notice to Mr Masri, granted a temporary Order pursuant to the applications dated 18 January 2008 prohibiting the Judgment Debtors from complying with the information provision requirements in the Receivership Order and the Affidavits Order. However, the Order did not prohibit the payment of monies pursuant to the Receivership Order as had been sought in the 18 January applications.

(U) On 16 April 2008, the Judgment Debtors served further affidavits of assets in accordance with the Order of Flaux J. There is no evidence that any of the directors have since been subject to criminal proceedings in Lebanon for having disclosed information pursuant to an Order of the English court.

(V) On 15 May 2008, the Judgment Debtors' Lebanese lawyer, Mr Chedid, served his third witness statement as part of the English proceedings. He gave no evidence as to his clients' involvement in the intervention applications despite questions having been raised by Simmons & Simmons.

(W) On 5 June 2008, the Judgment Debtors' Lebanese lawyers lodged documents in the Lebanese proceedings which in effect seek a ruling that the Judgment Debtors be prohibited from paying any monies to the Receiver. This is articulated as a request for clarification as to the meaning of the 14 April Order; however, given that the original application had specifically sought an order prohibiting the payment of monies and such an order was not granted it appears in reality to be a request for the order to be broadened. The document lodged by the Judgment Debtors states (according to an informal translation):

[17] The order of Gloster J requiring payment of $ 3,861,645.27 in respect of Q 1 and Q 2 2007 and including disclosure requirements.

> *'6. The Defendant requests: [clarification of the] Legal position towards the Lebanese order from one side and the obligations tacitly derived from the Receivership order dated 20.12.2007* ***especially whether the transfer of the proceeds of oil return to the Receiver represents a breach or not to the Lebanese order as the transfer of proceeds in compliance to the Receivership order would provide him information about the first defendant especially regarding the details of the transaction (i.e. price, income and other)****.' ([original] emphasis added)*[18]
>
> *100. In the circumstances of this case, the applications lodged by Salwa Khoury and Samir Sabbagh should not be considered as applications made by independent third parties to protect their legitimate interests. I believe that they were applications made at the behest of, and with the co-operation of, the Judgment Debtors themselves. The Judgment Debtors are the only parties who stand to gain from these applications and they have conspicuously avoided replying to questions about this issue in correspondence or evidence.*
>
> *I should also mention that the Mr Samer Khoury referred to in paragraph 99(B) above is as I understand it Ms Salwa Khoury's brother and that Mr Morgan omits from his chronology the ex parte application made by Ms Salwa Khoury on 11 April 2008 which followed hard upon the upholding by the Court of Appeal of the receivership order made by Gloster J. Given that these are family owned companies I regard the inference derived by Mr Morgan at paragraph 100 of his affidavit as wholly irresistible. It would in all the circumstances be irresistible even if they were not family owned companies.*"

208. Mr Boyle submitted (i) that these findings, made at an interlocutory hearing, were not binding on the judgment debtors; (ii) that the standard of proof which Tomlinson J was applying was the lesser civil standard, and (iii) that any finding that I might make must be based on the evidence before me and to the criminal standard. I agree with propositions (i) and (iii). As to (ii) the applicable standard was the civil standard but it is apparent from his judgment ("wholly irresistible") that Tomlinson J was sure of his conclusions.

209. The matters to which Mr Morgan referred in his evidence to Tomlinson J are also before me. I have in addition the evidence of Mr Chedid which is to the effect, that Mrs Khoury and Mr Sabbagh told him that they wanted to take out a lawsuit to stop the companies, and their former directors, complying with English orders ordering them to disclose certain information because they said that they did not want this disclosure to take place because they thought it was not in their interests to have this disclosure happen. He told them that he could not take the case himself, being the lawyer of the companies, because there might be a potential conflict of interest because the companies might have their own (different) views on the application of

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[18] I infer that Tomlinson J highlighted this passage because it shows that CCOG recognised that the orders of 14 April 2008 did not prohibit CCOG in terms from making payment of Masila Concession Oil Revenues to the Receiver. So they applied for an order interpreting the 14 April 2008 order as prohibiting payment to the CCOG Receiver.

the orders. He referred them to Ms Caroline Moarbess who had been a lawyer with his firm until March or April 2007. Thereafter it was she and not he who had the conduct of the case. He had no contact with her before she obtained the orders of 14 April 2008. She told him that she had got them after she had done so. He represented the companies in the proceedings and some of the directors. His evidence was that the companies were not involved in the making of the orders and did not instigate them or cooperate in obtaining them.

210. I am, however, for myself entirely satisfied, on the totality of the evidence before me, as was Tomlinson J on the evidence before him, that the applications for the April 2008 blocking orders were made at the behest of and with the cooperation of the judgment debtors. The applications were made by two former directors, who, when directors, were nominees for the controlling shareholder, as Mr Chedid confirmed. The *de jure* directors at the time were Souheil Nasser, Fadi Homsi, and Tarek Estaytieh. They also were nominees for the controlling shareholders whose predominant and overriding intention was to ensure that the English judgments were not enforced against the judgment debtors and to resist every attempt by the judgment creditor to do so and every attempt on his part or that of the Receiver to obtain information which might assist enforcement. The blocking order must be seen as part of that strategy.

211. In those circumstances, as it seems to me, the intentions and strategy of those for whom these individuals were nominees must be attributed to the judgment debtors and the inference that the application was at their behest and with their cooperation becomes, as Tomlinson J held, irresistible. I reject the proposition that Salwa Khoury applied for the order against CCOG and Samir Sabbagh for the order against CCIC simply in order to protect the value of their nominal shareholdings, which they had obtained in order to become nominee directors, and without reference to the controlling shareholders.

212. I do not regard Mr Chedid as in a position to gainsay this conclusion. He was not involved in the decision to make the application; nor does he know what considerations were taken into account by the applicants or the directors at the time (from neither of which groups have I heard any oral evidence[19]), the directors and, most importantly of all, those for whom they were nominees. Nor is he the only lawyer involved for the companies. Mr Marina, from whom I have also not heard any oral evidence, was and is the in house lawyer of the group.

The drafting of para 15

213. When para 15 was in the course of being drafted CCOG wished to have the following sentence added:

> "*For the avoidance of doubt, the Defendants and/or their directors shall be at liberty to apply to a court of a foreign country for declaratory or other relief as to the scope of their obligation under the law applicable within that country so far these may be affected by the order".*

[19] I have not forgotten the statement of Mr Sabbagh (to which Tomlinson J referred and with whose observations on it I concur) or the written evidence of Mr Nasser which does not address the point.

214. Gloster J did not accept that that sentence should be included saying: *"I am not going to give you the last sentence because that suggests you can go and take the sort of proceedings you did start in the Yemen"*. She said that whether or not CCOG would be considered to be in breach of the Order if they commenced proceedings elsewhere would depend on the *"nature of the proceedings"*.

215. I do not regard this as taking the matter further. The Order must, even between the parties, speak for itself. Gloster J's indication was that she did not intend to give CCOG something that might suggest that it could take the sort of proceedings which it started in Yemen. Those proceedings, which sought in effect declarations of non liability in respect of the very obligations which the Commercial Court had held to exist, are quite different to the applications for the 14 April 2008 orders.

Failure to comply with the Receiver's requests

216. There remains for consideration the question whether CCOG was in contempt by reason of its failure to comply with the Receiver's requests between 4th and 14th April and whether it is open to the judgment creditor to advance a case on that footing.

217. The relevant sequence is this. The Receiver despatched his letter of 4 April 2008 (see paras 89ff) seeking information at 1.32 a.m. on Saturday **5 April 2008**. Olswang replied on Wednesday **9 April** in the terms set out in para 93 above. The Receiver replied on Monday **14 April** (para 101) Olswang rejected that request on **14 April** and on **28 April** applied for declarations under para 9 of the CCOG Receivership Order as to the effect of the 14 April 2008 blocking orders in the light of para 15 thereof.

218. I am not persuaded that there was a breach of the order between midnight on Saturday 4 April and Monday 14 April 2008. The request under 7 (c) was inapposite. No clear request was made under 7 (a) until 14 April. A request was made under 7 (b). I am not at all sure that the letter which the Receiver asked to be sent did not go beyond what he was entitled to have sent. It will be recalled that what 7 (b) required was the provision of:

> " *such written confirmation to third parties anywhere in the world as the receiver may reasonably require of the receiver's rights under this order to act on behalf of [CCOG] for the purpose of carrying out his functions as set out above, and of his right under this order to receive the Oil Revenues in that capacity"*

The letter which the Receiver required to be sent included the following:

> *"We are obliged by order of the High Court of England & Wales to inform you that a receiver has been appointed by the court to collect any oil revenues owed to CC (Oil and Gas). The receiver's details are …. We hereby instruct you pay any amounts due to [CCOG] or its nominee under the Oil Sale Agreement to Mr Manning as receiver on our behalf. Please pay these amounts into the bank account of the receiver; we will confirm details of this account as soon as possible...*

219. As can be seen the letter requires CCOG to instruct their counterparty to pay the Receiver. It also required CCOG to give an unconditional and irrevocable confirmation that it would consider payments to the receiver of amounts due under any agreements for the sale of oil to constitute satisfaction of the recipients' obligation to pay CCOG. CCOG's objections to that letter, which included the latter two points, are set out in their skeleton argument before Steel J. It is not necessary to rule on them. CCOG was entitled to a reasonable time to consider whether it had any objection to the request and, if there was one, to raise it with the court as contemplated by clause 9 of the Order. Any assessment of what amounts to a reasonable time for compliance should make allowance for considering whether there is anything to dispute. Although the application to the Court could have been made earlier and the objection in relation to 7 (b) is not spelt out in the correspondence I do not regard a reasonable time to have expired by 14 April 2008.

220. Accordingly I do not regard CCOG as in contempt in this respect. In those circumstances it is not necessary to decide whether it is open to the judgment creditor to advance a case of contempt on this more limited basis.

Allegation 1(C): the proceedings brought by CCOG in Yemen on 28 February 2010 constitute a contemptuous interference with the rights of the Receiver and therefore with the CCOG Receivership Order.

Date: The date of this alleged contempt is *28 February 2010* and the contempt continues whilst the proceedings remain ongoing.

221. On 28 February 2010 CCOG and CCIC brought proceedings against Mr Masri in Yemen. The Receiver was not a party to, nor has he sought to take a part in, these proceedings. The proceedings were commenced after the court of first instance in Beirut had, on 30 January 2010 decided "*to authorise the Judicial Custodian to lodge actions before the Yemeni Court seeking the recovery of the Company's right*" and to use information and documents pertaining to the company for that purpose.

222. In those proceedings CCOG alleges:

i) That its operations have been disrupted rendering it incapable of selling its quotas from the Masila Concession: see paragraph 2 of the Claim.

ii) That the inability of CCOG to ship its quotas has caused it substantial losses, as, also, has it "*harmed the financial return on the Al-Masila Block and thus the Yemeni economy*": paragraph 3 of the Claim.

iii) That these substantial losses are the direct result of the illegal actions and operations of Mr Masri: paragraph 4 of the claim.

iv) That there had been a widespread media campaign to damage the plaintiff's commercial reputation in Yemen and elsewhere; including "*threats by the defendant's British consultant directly to the plaintiff's independent agent authorised to sell the plaintiff's crude oil*": see paragraph 5 (B) of the claim. The British consultant referred to is Simmons & Simmons, Mr Masri's solicitors.

v) That Mr Masri appointed the Receiver in an attempt illegally to interfere with CCOG's rights: see paragraph 5(C) of the Claim:

> "*The defendant tried, in exchange for a fee, to appoint a consultancy firm called Deloitte to interfere in a direct and negative way in the relationship between [CCOG] and the traditional buyers of its oil from Yemen. Deloitte has confirmed that it advised a number of traditional and potential buyers of the plaintiff's oil … on 11/6/2009 and 23/10/2009*".

The Receiver is a partner in Deloitte.

223. The claim in the Yemeni proceedings is for losses said to have been suffered on account of an inability to sell oil in 2008 of about $ 44.6 million, a sum which was quite close to the amount then due under the judgments.

224. The judgment creditor contends that this is a contemptuous interference with the Receivership which the Court has ordered. The fact that the judicial administrator may have been authorised to commence the proceedings is no defence. He was not ordered to do so. He brought the proceedings on the advice of the companies' Yemeni counsel and with the consent of the Lebanese Court (see paras 66 and 67 of the judicial administrator's report to the court of November 2010). It is the judgment debtors who are the claimants, not he. They were fully aware of the existence of the Receivership and the Receiver's rights, having been represented in court throughout the Receivership hearings.

Helmore v Smith

225. Reliance was placed on *Helmore v Smith (2)* [1886] 35 Ch Div 449 in which the court held that a libel on the business carried on by a receiver and manager appointed by the Court was a contempt of Court and could be punished by committal. In that case the Vice-Chancellor had held that a purchase by Smith of Helmore's share in the partnership between them was void and the partnership was still subsisting. He ordered a dissolution, the taking of accounts, and a reference to chambers to appoint a receivership of the partnership assets. Smith gave notice of appeal and the Court of Appeal made an order, pending the appeal, appointing Smith as the receiver of the debts and assets of the partnership and the manager of the business. Helmore's son then set up business as a coal merchant on his own account and sent out circulars to the customers of the firm (using a list of customers which he had obtained when employed by the firm) enclosing a copy of the report in The Times of the case at first instance. He said that Smith had been appointed a receiver pending an appeal, enclosed his price list and invited orders. This, so the court held, constituted a libel on the firm because it suggested that the firm was at an end subject to any appeal and that there was no interim carrying on of it.

226. The case was expressed to be a novel one but , as Cotton LJ put it:

> "*the circular was in fact a libel on the business which this Court had directed the Defendant to manage and ….amounted to a contempt of Court*".

Bowen LJ described it as a:

"*libel tending to prejudice the management of the business under the order of the Court*" and a

"*wrongful act calculated to destroy property under the management of this court, and that it was done deliberately".*

The judgment debtors' submissions

227. The judgment debtors contend (i) that this contempt allegation is formulated as an interference with the rights of the Receiver; and (ii) that as at February 2010 the Receiver had no relevant rights. He had had, at best, a potential right to receive under clause 2 and a right to information under clause 7. But those paragraphs were subject to clause 15. By the beginning of 2010, the Beirut court had made both the 14 April 2008 blocking orders and also the order of 14 January 2009 which required Mr Joujou to conduct the ordinary business of the company and to seek the court's prior approval for any important matter. That required him to sell oil and not to pay the Receiver without the approval of the judge. The order of 1 June 2009 made clear that any decision on payment of the judgment sum was an important matter and that the judicial administrator was to take all necessary actions and measures to defend the interests of the company. Further, the Yemeni proceedings did not interfere with any of the Receiver's rights. He was not party to those proceedings nor has he complained about them. They have no impact on his functions. Mr Joujou's own view is said to be that they do not interfere with the rights of the Receiver. It is incorrect to characterise the proceedings, taken with the authority of the Beirut court and after legal advice, as an indirect interference and as constituting an attempt to intimidate Mr Masri into causing the Receivership to be lifted.

228. *Helmore v Smith* was they submit, a quite different case, being concerned with a direct and unlawful interference with the business which the court had ordered should be managed by the Receiver. In the present case it is no part of Mr Manning's function to manage the business. His only function is to receive money. The Yemeni proceedings did not interfere with that at all.

229. In my judgment the initiation of these proceedings by CCOG did constitute a contempt. The plain intention was to claim damages against Mr Masri alleging an unlawful interference with its business consisting of the appointment which this Court (and not Mr Masri) had made, and the communication of the Receiver's rights by the Receiver and Mr Masri's solicitors. By that means it must have hoped either to cause Mr Masri to apply to lift the Receivership or to recoup very large sums from him on account of the Receiver's appointment, equivalent to sums which CCOG was not entitled to receiver but the Receiver was. The Court, Mr Masri and the Receiver have the right not to have the order appointing the Receiver undermined in this way.

Allegation 2(A): CCOG and CCIC failed to provide copies of their audited accounts for the year ending 31 December 2007 within 14 days of those accounts being signed, in deliberate breach of paragraph 14 of the Order requiring the provision of further and better Affidavits of Assets granted by Flaux J. on 14 March 2008 ("Affidavits Order No.2").

Date: The precise date upon which the Judgment Debtors' accounts for the year 2007 were signed is not known. However, it is known that the audited accounts for

CCOG and CCIC for the year ended 31 December 2006 were signed off on 29 May 2007. On the basis that the accounts for 2007 would have been signed off by 31 May 2008, the estimated date of this alleged contempt is *14 June 2008 and thereafter*.

230. The order of Flaux J was made on 14 March 2008. It provided as follows:

> *"The Defendants shall each serve upon the Claimant copies of their respective audited accounts for the year ended 31 December 2006 and their respective unaudited accounts for the half –year ended 30 June 2007. The Defendants shall each serve a copy of their respective audited accounts for the year ended 31 December 2007 within 14 days of those accounts being signed".*

Are there any signed accounts?

231. The judgment debtors contend that it has not been proved beyond reasonable doubt that the accounts for the year ended 31 December 2007 were ever signed and, on that account alone, no contempt is established.

232. In para 2 of his second witness statement Mr Andrew says:

> *"Mr Nasser tells me that Lebanese offshore companies (such as the Companies) are not required by law to publish any audited financial accounts, since they only pay a flat rate of tax of less than the equivalent of US $ 1,000 per annum. I further understand from Mr Nasser that, whilst the Companies used to prepare and finalise their financial accounts by May of each year, so that they could then be consolidated in the CCC group accounts and used for group level purposes, the practice was discontinued in 2007/8, following the collective resignation of the Companies' board of directors".*

233. This paragraph is (a) hearsay and (b) ambiguous. Mr Nasser is not said to have said that the accounts had not been signed. Nor is it clear whether "*the practice*" is of (i) preparation of accounts; (ii) finalisation of accounts; (iii) preparation and finalisation by May; or (iv) consolidation in the CCC group accounts. I infer that it is the last of those.

234. There is more direct evidence:

i) In their letter of 31 October 2008, Olswang said that, in respect of the audited accounts, "the same applies ….as to the quantum documents which have been the subject of lengthy correspondence between us … i.e. the Lebanese orders dated 14 April 2008 order our clients not to disclose the accounts". No suggestion was made that there were no signed accounts.

ii) Mr Chedid said that it was a requirement of Lebanese law that offshore companies file annual audited accounts within eight months of the end of the financial year, breach of which could involve a fine. Professor Slim confirmed it. So did Ernst & Young Lebanon: see their letter of 26 February 2008.

iii) Professor Slim's report records that it is obligatory under Lebanese law – Decree Law No 46 dated June 24, 1983 - for such accounts to be published at the Lebanese Commercial Registry.

235. I am sure that the companies had signed audited accounts and that that they had them in or around May 2008. It would be extraordinary and unlawful for them not to have done so. In those circumstances, and in the absence of any evidence that they did not, I infer without hesitation that they did. I take into account as supporting that conclusion that the judgment debtors have, despite the allegation against them, filed no evidence, even hearsay evidence, that they did not. I regard it as inconceivable that they would not had done so if, in truth, they had no signed accounts for 31 December 2007. The only sensible inference is that the accounts were signed. I reject as fanciful the suggestion that Mr Nasser had not reported that no accounts had been signed because that would, itself be a contempt of Flaux J's order. Whether or not their accounts were consolidated in the CCC group accounts does not matter.

236. Since the judgment debtors were in breach well before the appointment of the judicial administrator it is not necessary to decide in relation to this allegation what significance, if any his appointment might have had, if it were otherwise.

The effect of the 14 April 2008 order

237. The judgment debtors contend that the protection under para 15 of the CCOG Receivership Order provided by the blocking order (which "*forbid[s] [CCOG/CCIC …from giving any information about [themselves] in execution of the three British decisions*" of Gloster J of 20 December 2007) extends to the Affidavits No 2 Order of Flaux J because the purpose of his order was to elicit further information which ought to have been but was not included in the affidavits sworn in purported compliance with the orders made on 20 December 2007.

238. I do not accept this. Flaux J's order does not contain any provision such as para 15 of the CCOG Receivership Order. His order may be regarded as supplemental to the Affidavits Order. But that contained no para 15 either. Even if it had done so, when a court makes an order requiring the provision of information subject to an exception and then makes a further order in relation to such information without that exception it is not open to a defendant subject to both orders to rely on an exception in the former when charged with a breach of the latter.

239. It may be that the *motif* of the 14 April 2008 order extends to prohibit the supply of copies of the audited accounts of a Lebanese company, audited in Lebanon, on the footing that the requirement to produce such information amounts, practically speaking, to execution in Lebanon, which may not take place without *exequatur*. I have my doubts about this since it is not at all clear to me that the audited accounts can only be accessed in Lebanon.

240. If it does, there arises for consideration what approach the Court should take, on a contempt application, if compliance with its order would require disobedience to an order of a foreign court, and there is no provision such as para 15 of the CCOG order which resolves the tension. This issue arises in relation to other allegations and it is convenient that I should deal with it here.

The significance of the position of the judicial administrator

241. The judgment debtors contend that, I should not treat as a contempt, or, at any rate, as a contempt requiring punishment, any act or omission which is the result of a decision taken by the judicial administrator as to what the judgment debtors shall or shall not do, at least insofar as any such decision can be regarded as one made in accordance with, or on account of, the direction of the judge.

242. Mr Lewis QC observed that the judge, on whose directions the judicial administrator was appointed, exercised the sovereign authority of the State of Lebanon: and any acts of his would attract State Immunity: *Propend Finance Pty Ltd v Singh* 111 ILR 611, 670. He suggested that acts carried out by the judicial administrator on the direction of the judge would attract functional sovereign immunity, (although, as I understood Mr Boyle's submissions, he did not seek to rely on any such immunity) so that he could not be in contempt either, and that the court should be slow to treat as contempt something done or omitted by the judgment debtors on the direction of a judge-appointed and judge-directed judicial administrator who constituted its directing mind.

243. Reference was made to the so called Act of State doctrine whereby the courts will not adjudicate upon actions done abroad by virtue of sovereign authority. In *Buttes Gas & Oil v Hammer* [1982] AC 888 at 933, Lord Wilberforce referred to the decision of the US Supreme Court in *Underhill v Hernandes* (1893) 65 Fed 577 and the words of Fuller, CJ:

> *"Every sovereign state is bound to respect the independence of every other sovereign state and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory. Redress of grievances by reason of such acts must be obtained through the means open to be availed of by sovereign powers as between themselves".*

244. I, of course, accept that it is not for the English Court to question the validity under the law of Lebanon of the decisions of the Lebanese Court; or to determine whether an action could lie or relief be granted by this court in respect of wrongs allegedly committed by a foreign sovereign authority in the exercise of that authority in its own territory. I do not, however, accept that if the judgment debtors, which do not exercise sovereign authority and over which this court validly exercises *in personam* jurisdiction, do acts (such as the receipt of Oil Revenues) which are forbidden by orders made in the exercise of that jurisdiction, or omit to do acts (such as the provision of information to the Receiver), which by such orders they are bound to perform, there is no contempt if the decision whether to act or not is made by a judicial administrator. (Nor, although it is not necessary to decide, does it seem to me that he is entitled to any immunity, his activities being *acta gestionis* and not *acta jure imperii*).

245. Were it otherwise, this court, which, as I remind myself, the Court of Appeal "*did not consider [to have] exceeded the bounds of international jurisdiction"* in making the CCOG Receivership Order, would find itself without a means of enforcement of orders properly made but disobeyed. It would, on this footing, be open to the judicial administrator to direct all Oil Revenues to be received by CCOG in London without CCOG being in anyway in breach, on the footing that the judicial administrator was a Lebanese court appointed official operating in Lebanon.

246. Mr Lewis accepted, as I understood him, that this line of defence would not apply in relation to acts done in this jurisdiction. It was not clear to me whether this concession extended to forbidden acts done in anywhere but Lebanon or to omissions to do acts which should have been performed in England (where the Receiver is) or at any rate outside Lebanon. In truth the basis for this line of defence is that a finding of contempt would impugn the decisions of the judicial administrator which are made in Lebanon. I cannot however accept that the Court is precluded from treating a breach of its orders (wherever committed) by the judgment debtors, not sanctioned by some provision such as para 15, as a contempt because the judicial administrator in Lebanon is responsible for it.

247. The prospect that compliance with an order of the English court may involve conflict with the decision or orders of a foreign court may be a reason for the inclusion of a paragraph such as paragraph 15 of the CCOG Receivership order. The fact, if it be such, that the judicial administrator has acted in accordance with a judicial direction may, depending on the circumstances, be a ground for treating the judgment debtors' breach as not worthy of sanction, or diminishing the penalty that might otherwise have been imposed. But it does not affect the fact of a contempt.

248. Reliance was placed on a passage from *Oppenheim's International Law,* 9th Edition:

> ***"123 Restrictions upon personal authority***
>
> *…A state must not perform acts of sovereignty in the territory of another state. Thus, for instance, a state may not use force upon its nationals abroad to compel them to fulfil their military service obligations in their home state(even though it is within its rights in imposing such obligations upon them); and a state is prevented from requiring such acts from its citizens abroad as are forbidden to them by the municipal law of the land in which they reside, and from ordering them not to commit such acts as they are bound to commit according to the municipal law of the land in which they reside"*

249. I do not regard this passage as bearing upon the issues that I have to decide. In imposing a penalty on the judgment debtors for contempt this court would not be performing acts of sovereignty in the territory of Lebanon but in London. Nor is it correct to say that an English Court can never require someone subject to its jurisdiction to do that which may be a breach of the provisions of the law of some other state. In his judgment of 13 November 2008, Collins LJ said:

> "*… on this application the judgment debtors do not grapple with the point made by the judge*[20]*, which was made in the context of the criminal law aspect, and which applies equally to all other aspects of the foreign law, namely that the court has a flexible discretionary approach when faced with the suggestion that compliance with its requirements would involve incrimination under another system of law. Consequently, in my view it is not necessary to decide whether there is anything in the points of Lebanese law, because there is no doubt that the cases to which the judge referred – and there are many cases in other common law jurisdictions to similar effect –*

[20] See para 26 of the judgment of Tomlinson J, referring to *Brannigan v Davison* [1997] AC 238; and *Morris v Banque Arab et Internationaled'Investissement*[2000] CP Rep 65.

> *show that the court has a discretion when making its own orders in light of foreign blocking orders or laws on secrecy. Consequently, the points of criticism on the interpretation of Lebanese law adopted by the judge are not in any sense decisive.*"

The approach referred to contemplates that an order of the court may require non compliance with a foreign law, including a foreign criminal law; not that, if it does or might, the order cannot be made; or that, if it is made, no contempt sanction can or should apply to its breach.

250. Lastly, if the judgment debtors are to be equated to "*its citizens abroad*" referred to in the second half of the passage from para 123 cited above, so as to preclude the English court, as a matter of public international law, from making any order which might involve a breach of Lebanese law, it would appear to follow that the order of the Lebanese court precluding compliance with the orders of Gloster J was in conflict with public international law also. In truth the passage at paragraph 123 is, as it seems to me, dealing with the exercise or purported exercise of sovereign authority in the territory of another State.

Conflict of jurisdictions

251. How then should the court approach matters if:

a) it has made an order that D, a foreign company, shall do X;

b) a court in the jurisdiction where D is incorporated orders him not to do X;

c) D fails to do X;

d) if D had done X it would have been in breach of the order of such a court, or of the criminal law of the State in question.

The same question can be posed, *mutatis mutandis*, where the order of the English Court is that D shall not do X and the requirement of the foreign court or law is that he should.

252. I was told that there was no authority bearing upon this question. That may be because the court's flexible discretionary approach means that orders which are likely to produce a conflict such as this are rarely made.

253. In response to my request for submissions as to the principles (if any) on which the Court should act Mr Boyle helpfully submitted[21] that the approach of the court should be as follows:

i) the English court cannot ignore the order of the foreign court; nor can it give preference to the order of the foreign court in every case;

ii) the English court must recognise that the Lebanese court is, as is common ground, a court of competent jurisdiction. The defendants owe allegiance to

[21] With, as should be acknowledged, the able assistance of Mr McCourt Fritz.

Lebanon and its courts and, in accordance with established principles of private international law have an obligation to comply with its orders: *Schibsby v Westenholz* (1870) L.R. 6 Q.B. 155. The English court is also a court of competent jurisdiction;

iii) in order to establish a contempt the applicant must establish, to the criminal standard, that the *primary* allegiance of the respondent is to the English court rather than to the foreign court; if it does not, it is not appropriate for the English court to exercise any contempt jurisdiction;

iv) the respondent's primary allegiance will be to the English court where, in particular:

i) the parties have concluded a valid jurisdiction clause pursuant to which all disputes are to be settled exclusively in the courts of England; or

ii) the respondent is an individual domiciled in England or a company incorporated in England and there is no valid jurisdiction clause which confers exclusive jurisdiction on the foreign court;

v) the respondent's primary allegiance will be to the foreign court where, in particular:

i) the parties have concluded a valid jurisdiction clause pursuant to which all disputes are to be settled exclusively in the courts of the foreign jurisdiction; or

ii) the respondent is an individual domiciled in the overseas foreign jurisdiction or a company incorporated in that jurisdiction and there is no valid jurisdiction clause which confers exclusive jurisdiction on the courts of England.

vi) where the respondent owes allegiance equally to the English court and to the foreign court, it will generally not be appropriate for the English court to exercise its contempt jurisdiction.

254. This test establishes a hierarchy of connections (and gradations within that hierarchy) in, it is submitted, the following order:

a) Exclusive jurisdiction in favour of England

This primacy, it is submitted, is recognised by section 32 of the *Civil Jurisdiction and Judgments Act 1982* which states (subject to exceptions) that a foreign judgment delivered in breach of an agreement to litigate in some place other than in that state shall not be recognised in England. That provision expressly overrides the general principles as to the competence of a foreign court in the eyes of

English law. *Dicey, Morris and Collins*, Rule 37 describes this as a case "*where jurisdiction does not exist*".

b) A territorial connection between the respondent and a particular country

In accordance with *Schibsby v Westenholz* (1870) L.R. 6 Q.B. 155, as applied to a corporate defendant in *Adams v Cape Industries* [1990] Ch. 433, 517-519 (CA), a foreign company owes involuntary allegiance to the state where it is incorporated and an obligation to comply with its rulings. This is the *primary* allegiance of the respondents in the present case and arises by virtue of their territorial connections to the Lebanon, rather than from their conduct

c) A non-exclusive jurisdiction clause

Where there is a non-exclusive jurisdiction agreement, there is no reason to consider the courts of one jurisdiction "more" competent than another. For that reason the Court of Appeal held in *Deutsche Bank AG v Highland Crusader Offshore Partners LP* [2009] EWCA Civ 725, [2010]1W.L.R.1023 that it should not issue an anti-suit injunction where parallel proceedings were taking place in England and overseas, since the parties, by concluding a non-exclusive jurisdiction clause conferring jurisdiction on the English courts, must have been taken to accept the possibility of parallel proceedings.

Where a clause affords the parties the right to litigate either in England or elsewhere, the scales are evenly balanced in favour of the English and the foreign court. Thus, in a head on collision case where both the English court and the foreign court derive their jurisdiction from a non-exclusive jurisdiction clause it will generally not be appropriate for the court to exercise its contempt jurisdiction.

d) Submission to the court

A party who submits to a court is estopped from denying the competence of that court, but he is not prevented from participating in foreign proceedings, or deprived of his right to litigate in another jurisdiction. A party may submit to the courts of more than one jurisdiction. Mr Masri has himself submitted to both the Lebanese court and the English court. There is no statutory (or common law) rule equivalent to section 32 of the *Civil Jurisdiction and Judgments Act 1982* stipulating that where a party has submitted to two courts, the judgment of a foreign court should not be recognised in England. In the present case where the two parties have submitted to English and to foreign proceedings, the applicant cannot discharge the burden of showing that the respondent's primary allegiance is to the English courts.

> Submission to the jurisdiction can take many different forms. At one end of the spectrum, a party who is served with a claim form may voluntarily decide not to challenge the court's jurisdiction. At the other extreme, a respondent may vigorously contest the court's jurisdiction when proceedings are instigated against it; but, if the court ultimately decides to assert jurisdiction over it, or it becomes inevitable that the court will assert jurisdiction, the respondent may consider that it has little option but to defend the claim, for fear of suffering judgment in default if it does not. In the latter case, the submission is nothing more than a pragmatic response to the respondent's predicament. It is not a voluntary acceptance that England was a proper forum, still less *the* proper forum, in which to determine its liability. This is the position in which CCIC and CCOG found themselves: see para 22 above

e) Jurisdiction is obtained over a party outside the jurisdiction who has not agreed to be bound by the jurisdiction of the English courts.

> This case is at the foot of the hierarchy since it involves the exercise of an exorbitant jurisdiction to which a defendant which owes allegiance elsewhere has not submitted.

255. In the present case, it is submitted, the applicant cannot show, let alone to the criminal standard, that the primary allegiance of the judgment debtors is to the English Court. There is no English jurisdiction clause, exclusive or otherwise. The judgment debtors owe territorial allegiance to Lebanon. They had no real alternative but to submit to the jurisdiction because Mr Masri persuaded the court that there was a real prospect of showing that CCUK was a party to the 1992 Agreement. As it turned out CCUK was not a party and the suggestion that it was a party was found to have "*an air of total unreality about it*". They fall within the fourth or fifth category in the hierarchy. By contrast the judgment debtors are incorporated in the Lebanon to which they owe involuntary allegiance. Mr Masri, himself, has submitted to the jurisdiction of the Lebanese courts. In those circumstances the English court should not exercise any contempt jurisdiction.

256. Powerful and intelligent though these submissions are, I do not think it appropriate for the court to determine whether or not to exercise its contempt jurisdiction by reference to the court to which the putative contemnor owes it primary allegiance. I say that for a number of reasons.

257. Firstly, in making its order the Court will have exercised a jurisdiction which it is entitled to exercise (and to which, in the present case, the defendants have submitted) and made an order which it required to be obeyed. Save in circumstances for which the order provides it is to be obeyed. In making it the court may have taken into account (in the exercise of the flexible discretion) the possibility of conflict with a foreign law or the order of a foreign court. Even if it has not (because the possibility was not apparent or no order had been obtained) the English order must be obeyed. If the addressee of the order thinks that the order may cause him difficulties under the law of some foreign state it must seek to persuade the English court not to make it in the terms sought, or, if it has already been made, to vary it. If an order is made and has been broken the Court should not be deprived of its powers of enforcement over a

person properly subject to its jurisdiction, whether or not he is also subject to some other jurisdiction.

258. Secondly, the approach contended for has the potential for unacceptable consequences. Litigants in this and other courts are often incorporated in foreign states. In many cases their business activities have no real connection with their place of incorporation which has been chosen so as to save tax or avoid the need to produce information or file accounts or for other reasons not all of which may be creditable. The jurisdiction is a jurisdiction of convenience. It is not difficult to think of circumstances in which an English court thinks it right to make orders (e.g. for the production of information) which would expose the company to a charge of breach of the criminal or civil law of the state in question or where a blocking order is readily obtainable. If the proposition argued for is correct there could be no sanction for contempt unless the company had agreed to the exclusive jurisdiction of the English court, even if the prospect of anybody doing anything about any breach of the foreign law obligation was unreal.

259. Thirdly, in *Brannigan v Davison* [1997] AC 238, the Privy Council decided that the common law privilege against self-incrimination does not run where the criminal or penal sanction arises under a foreign law. A person who gives evidence, including evidence under compulsion, may not refuse to do so because he might thereby be exposed to criminal penalties in a foreign country. In that case it was said to be a criminal offence under the secrecy legislation of the Cook Islands to give evidence to a commission of inquiry in New Zealand. No question arose of applying some hierarchy of allegiance. It would be odd if the judgment debtors, who are entitled to no such privilege, could rely on the legislation of a foreign country to trump their obligation to obey the orders of the English Court, on account of the greater strength of their allegiance to that country. Such an attempt failed in *Morris v Banque Arabe* [2001] I.L.Pr 568 where Neuberger J, as he then was, ordered inspection of documents notwithstanding that the French corporate defendants claimed (rightly on the evidence) that production of them was prohibited by a French "Blocking Statute" and would involve them in a criminal offence.

260. Fourthly, circumstances alter cases. The extent of the connection between the putative contemnor and the relevant foreign jurisdiction may well be relevant in any consideration as to whether to take any and, if so, what action in relation to a breach of the court's order. But they ought not to be determinative. If the approach suggested is correct it would be open to a corporation which has been ordered to do something in England to go to his home court and ask to be enjoined from doing so. If it was successful, the English court could never treat its refusal as a contempt, unless it had agreed that England should have exclusive jurisdiction.

261. In my judgment, the Court should, in relation to applications in a case such as the present, adopt a flexible approach in determining, as a matter of discretion, what action, if any, to take - just as it does in relation to the question whether to make an order in the first place. That will involve taking into account all the circumstances, including the nature of the order made by the English and the foreign court, the circumstances in which the relevant orders were obtained, the consequences of breach of the foreign order and any other relevant considerations.

Allegation 2(B): CCOG is in contempt of the Order requiring the provision of Affidavits of Assets granted by Gloster J. on 20 December 2007 (the "Affidavits Order") and the Affidavits Order No.2 for its failure to disclose CCOG's interest in shares in:-

(1) Consolidated Contractors Oil and Gas Limited ("CCOG-Nigeria");

(2) CCC Energy Nigeria Limited ("CCE Nigeria");

(3) CC Alfurt (Oil and Gas) Company Limited; and

(4) CC South Alfurt (Oil and Gas) Company Limited.

Date: The provision of affidavits pursuant to the Affidavits Order was required in stages in accordance with the value of the assets. Assets of US$1m and above were to be disclosed in affidavits by 21 January 2008; assets of US$500,000 – US$1m were to be disclosed in affidavits by 4 February 2008; and assets of US$100,000 to US$500,000 were to be disclosed in affidavits by 25 February 2008. The date of this contempt, insofar as it relates to the Affidavits Order, is therefore dependant on the value of the CCOG's interest in the shares in the above companies. The Judgment Creditor believes that the value of CCOG's interests in the shares in the above companies are likely to be in excess of US$1m and that the date of this contempt Allegation 2(B), insofar as it relates to the Affidavits Order is therefore *21 January 2008 and thereafter*.

Paragraph 7 of the Affidavits Order No.2 required its provisions to be complied with by 16 April 2008. The date of this contempt Allegation 2(B), insofar as it relates to the Affidavits Order No.2, is therefore *16 April 2008 and thereafter*.

The Nigerian Companies

262. I propose to deal first with the two Nigerian companies. Both of these companies are wholly owned subsidiaries of CCOG, which holds 99% of their shares, the other 1% being held by CC Holding. CCOG Nigeria held a 30% interest in an oil block in Nigeria named OPL 283. CCE Nigeria owned a 30% interest in another oil block – OPL 276. These interests were owned pursuant to oil prospecting licences issued following a public auction by the Nigerian government in early 2006. 60% of the interest in each field was held by Centrica Resources (Nigeria) Ltd ("Centrica") and 10% by Rayflosh Petroleum Ltd, a Nigerian company. Neither of these interests was disclosed in any of the affidavits sworn in pursuance of either of the Affidavits orders. Mr Nasser's 5th affidavit said in terms:

> *"Neither CCIC nor CCOG has any shareholdings, or beneficial interests in shareholdings, and accordingly no schedules are exhibited in this respect*"

Mr Masri submits that the non disclosure of these Nigerian assets was part of a strategy not to reveal the existence of assets in countries where enforcement might be relatively easy.

263. The relevant history, which I have largely derived from the first affidavit of Edgard Marina, in house counsel to the judgment debtors and all the companies in the CC Group, who is a qualified Lebanese lawyer, based in Athens, is as follows.

264. On **16 February 2006,** CCOG executed a charge over its shares in the two companies in favour of Centrica. That charge contained a covenant by CCOG not to sell, transfer or otherwise dispose of its shares in either company.

265. On **25 November 2007,** CCOG agreed to sell its shares in CCOG Nigeria and on **1 December 2007,** CCOG agreed to sell its shares in CCE Nigeria. Both agreements were subject to Lebanese law. It was a term of the agreements that if the consent required to *complete the transfer* (i.e. the waiver of the negative pledge in favour of Centrica) was not obtained by 15 June 2008 the transfer was to be rescinded. This is the effect of the term as stated by Mr Marina. Neither the agreement, nor the details of the purchase price, or of the purchaser have been disclosed.

266. On **20 December 2007,** Gloster J made the Affidavits Order.

267. According to Mr Marina, the sales of **25 November** and **1 December 2007** were, as a matter of Lebanese law, "*effective*" as between CCOG and the buyer as at their dates. Discussion took place with Centrica about a waiver and waivers were formally requested on **7 May 2008** in respect of CCOG Nigeria and **9 May 2008** in respect of CCE Nigeria. A waiver had not been granted by **29 May 2008**, the date of his affidavit and, as I infer, never was: see para 20 of Mr Marina's 6th witness statement where he says that since the second freezing order CCOG has taken no positive steps to obtain the third party (i.e. Centrica's) consent.

268. According to Mr Marina, the transfer was the subject of a discussion between him and Mr Nasser. CCOG's English legal team was not consulted nor made aware of the issue. CCOG did not disclose the shares in the Nigerian companies because the sales were effective on 25 November and 1 December 2007 and also because it was CCOG's belief that their value (whether book or market value) was immaterial and did not fall within the Affidavits Order. The value was regarded as so immaterial that the companies were not even included in CCOG's balance sheet. As a result of his discussion with Mr Nasser, no reference was made by the latter to the Nigerian companies' shares. If, contrary to the view which he took at the time, there was a breach, he apologises on behalf of CCOG and Mr Nasser.

269. I do not accept that the shares were not in January and February 2008 assets of CCOG. The sale is said to have been "*effective*", but, whatever that is intended to mean, it cannot mean that the sale was effective to transfer title in the shares to the purchaser since CCOG was engaged in securing the consent required to complete the transfer (see para 8 of Mr Marina's first affidavit), without which it could not dispose of the shares. In those circumstances CCOG had some interest in the shares.

270. In para 125 of his second affidavit, Mr Andrew exhibits an opinion from a Nigerian lawyer to the effect that any beneficial interest in the Nigerian companies' shares was transferred to the purchaser on execution of the sale agreements. However, Nigerian law was not the law of the sale agreements[22].

[22]In addition the advice seems contradictory since it contends, as summarised by Mr Andrew, (i) that where an agreement for sale has been executed *and the consideration in respect of this paid* (which is not suggested to have occurred), the transferor will hold the shares on trust for the transferee) and (ii) that where the agreement is subject to a condition subsequent the sale is valid when the agreement is made [apparently whether the consideration has passed or not] and the transferor is the beneficial owner from that moment.

271. So far as value is concerned, in his second affidavit Mr Andrew says that he understands from Ms Dina Nasser, a director of the Nigerian companies, that, when the licences were issued, CCOG and its partners believed that the government would also issue indemnities to hold them harmless in respect of pre-existing environmental liabilities associated with the fields. In the event, and unexpectedly, no such indemnities were ever issued. Centrica was contracted to operate the fields under two participation agreements but the fields have never been commercially operational and have produced no revenue. The licences were phased. In the first phase, which was due to expire on 15 February 2009, licensees were supposed to carry out minimum works in order to qualify for the right to hold the fields in the next phase. Centrica, which was responsible for carrying out the work, had, by mid-2007 not started any of it and, even if it did start then, it was unlikely to complete the works before the expiry of the licence. It therefore entered into discussion with the Nigerian government to extend the first phase. In reality, as Ms Nasser reportedly says, there was no prospect of a foreign company like Centrica obtaining an extension. Centrica engaged in a marketing campaign to attract interest from a third party to buy out its interests in the two fields. The Nigerian companies were unlikely to find a buyer for the minority interests; but there were "tag along" provisions in the participation agreements of which they could take advantage if Centrica did find a purchaser.

272. According to Mr Marina's 6th witness statement, in July 2007 CCOG's board decided to sell its shares in the companies because they were unprofitable and there was no real prospect of any improvement prior to the expiry of the licence. As noted in his affidavit of 29 May 2008 the value of the shares was not included in CCOG's historic balance sheets. Mr Andrew records in his 2nd affidavit that the Nigerian companies' accounts do not refer to the payment of any dividend. Further the CCC Group did not attribute any value to these shares in its budget for 2008 or otherwise.

273. Mr Kealey referred me to a document prepared for the CCC Finance Committee meeting held on 14 March 2008 in London. It has the heading "*Projects over $ 20 million"* and beneath that *"Ongoing Projects".* Reference is made to an "*Estimated Project Value - Upstream*" for OPL 276 of $ 80 million "(*2008) Budget*" and for OPL 283 of $ 35 million *"(2008) Budget – (However, up for sale)"*. These would appear to be 100% figures. There is also a reference to "*Downstream $ 12-15 billion*". In his 7th affidavit of 14 February 2011, Mr Andrew say that he has been told by Ms Nasser that these figures relate to the estimated potential future cost exposure of the partners if the project goes ahead and are not an estimate of the project's net value. Similarly, the reference to "*Projects over $ 20 million*" is not a reference to the net value of any particular project. Net value is not a concept relevant when an oil and gas project is still under development. At this stage the project is a future liability. The discussion in March 2008 related to the potential risk and exposure of the Group to whose ownership the Nigerian companies might well revert.

274. Mr Kealey submits that I should disregard this last minute hearsay evidence from Ms Nasser, who is the daughter of Suheil Nasser, is described in the CCC Directory as an accountant, and has been a director of the Nigerian companies only since July 2009 and not at the material time – late 2007 and early 2008. Further the business of the Nigerian companies continues to be managed from CCC's London office.

275. Ultimately the Nigerian government refused an extension to the first phase; but told Centrica that it could take part of the second phase of the licence and treat it as part of

the first. Mr Andrew's 2nd affidavit of 18 November 2010 stated that Centrica had been in discussions with a Nigerian company called Newcross Petroleum Limited ("Newcross") to buy out its interest in OPL 283 and that there had been similar discussions between CCOG and Newcross. A witness statement provided by Mr Richard Mew of Centrica dated 22 September 2010, as a result of Norwich Pharmacal application brought by Mr Masri, reveals that **Centrica** signed an agreement with Newcross on **17 July 2009**. Mr Mew confirmed that under the relevant OPL 283 Participation Agreement, CCOG Nigeria was entitled to "tag along" with any disposal by Centrica and had confirmed that it wished to exercise its right to do so. He also believed that CCOG Nigeria had entered into a sale and purchase agreement for the disposal of its participating interest in OPL 283 to Newcross. He expressed the belief that CCOG Nigeria would receive $ 3,000,000 for the sale of its participating interest to Newcross by virtue of the exercise of the tag along rights.

276. In that state of the evidence, it is unclear what was the value of each interest on 21 January, 4 February and 25 February 2008, the respective dates for disclosure of assets worth $ 1,000,000, $ 500,000 or $ 100,000. Despite the position in the accounts I regard it as inconceivable that the interests were not worth even $ 100,000 on 25 February 2008 – a pittance in oil field terms. The Board had decided to sell the companies in July 2007, which indicates value; it had done so (for an undisclosed consideration) in November and December 2007; the 14 March 2008 document does not indicate that that the interests are worth nothing; and in July 2009 the interest in OPL 283 was set to generate $ 3,000,000.

277. If I am wrong on that, it seems to me that CCOG is in contempt on another basis. The Affidavits No 2 Order required disclosure of details of any "*beneficial interest*" in shares whatever its value. The meaning of "*beneficial interest*" is debatable. It is an expression akin to but not the same as "*beneficial ownership*", which has been said to be similar but not identical to "*equitable ownership*": *J. Sainsbury Plc v O'Connor* [1991] 1 WLR 963 and the cases there cited. A purchaser of an asset under an unconditional contract governed by English law of which specific performance would be granted acquires the equitable ownership of the property. Whether someone has lost beneficial ownership has been said to depend simply on whether the nature and extent of the rights retained by the vendor are sufficient to merit that description: *Wood Preservation Ltd v Prior* [1969] 1 WLR 1077; *Sainsbury v O'Connor*.

278. I am satisfied that in March and April 2008 CCOG did have a "*beneficial interest*" in the shares within the meaning of the order. The expression is not to be confined to beneficial ownership or equitable ownership under English law, which is not the law of the contract. It extends, in this context, to any case in which the judgment debtors have any form of interest in an asset which is of benefit to them. In the present case the shares had not been and could not be transferred to the buyer unless Centrica consented, and, unless they did so by the stipulated date, the shares would remain, as they became, the absolute property of CCOG. That was an interest which was of benefit to the judgment debtors which, if they lost the sale, would retain the shares and could sell them as they wished.

279. Even if the matter is to be looked at in exclusively English law terms and in terms of equitable ownership, I do not regard the contract as specifically enforceable so as to vest the whole interest in the buyer in equity. Specific performance would not have been granted in the absence of Centrica's consent. That is probably so, even if the

condition may be regarded as exclusively for the benefit of the buyer and, thus, waiveable by him. There would be no specific performance unless the condition was in fact waived: per Nourse LJ at 979C-d in *Sainsbury*. In any event the requirement that such consent be obtained was not there purely for the benefit of the buyer. It was of benefit to the seller not to be bound by a contract performance of which would be a breach of its obligations to Centrica.

280. I am, therefore, satisfied that there was a breach of the Affidavits No 2 Order and that it was a contempt.

281. A contempt does not cease to be a contempt by lapse of time. This particular complaint was no doubt included when Mr Masri had, as he saw it, been driven to apply to the court following the determined and intransigent refusal of the judgment debtors to honour the court's orders and a series of contempts of which this was but one. It may, however, well be inappropriate to impose any sanction in respect of this contempt (other than in respect of costs or the scale of costs) in the light of the explanation which was given in May 2008 (after Mr Masri had come to learn of CCOG's interest) and Mr Marina's apology. I shall be dealing with sanction after hearing further submissions.

The Alfurt Companies

282. I turn now to deal with the two Alfurt Companies - *CC Alfurt (Oil and Gas) Company Limited*; *and CC South Alfurt (Oil and Gas) Company Limited*. These two companies are registered in the Cayman Islands and their function was to hold CCOG's interest in two oil concessions in Yemen known as Block 33 (the Al Furt block) and Block 45 (the South Al Furt block).

283. In his affidavit of assets of 21 January 2008, Suhail Nasser identified:

> *"Various percentages of ownership in blocks 33, 45 and 49 (still under exploration with no discovery to-date – Yemen"*

and said that their estimated book value was approximately $ 3 m.

284. The facts and matters set out in the following paragraphs are derived from Mr Andrew's 2nd affidavit, which is based on what he has been told by Mr Shehadeh.

285. In **April 2003**, CCOG signed a production sharing agreement ("PSA") with the State of Yemen ("Yemen"), Virgin Resources Limited ("Virgin") and Geopetrol Yemen Limited ("Geopetrol") in relation to these two blocks. Yemen generally prefers that any interest in the underlying asset is held by a Yemeni company but, in this case, exceptionally, permission was given for the interest to be held by CCOG because of the strength of the relationship with the CCC Group.

286. In 2006, CCOG and its concession partners wanted to begin the expensive operation of drilling in each of blocks OPL 276 and 283 and Block 14. On **30 August 2006** the two Alfurt companies were incorporated as exempted limited companies in the Cayman Islands in order to hold the interest in the two blocks. The shares in the two Alfurt companies were wholly owned by CCOG. The participating interests in each

field were then transferred from CCOG to the Alfurt companies following approval from the Yemeni Government on **2 December 2006.**

287. This was intended as a temporary arrangement. Yemen was not happy for CCOG to farm out interests to Virgin and Geopetrol, which were both non Yemeni companies, or, at least, not to do so before the expiry of the first exploration period when the Yemeni government might permit CCOG to farm out its interest to those two companies directly. The proposal was, therefore, that the interests would be held by special purpose vehicles in a common law jurisdiction with which the latter two companies were familiar.

288. On **15 December 2006,** CCOG made two declarations of trust in "*respect of all right, title and interest*" to its shares in the two Alfurt companies in favour of Virgin and Geopetrol equivalent to their participating interests under the Production Sharing Agreement in respect of the relevant fields (22.5% and 19% respectively), in return for their agreement to provide finance for initial drilling in both fields. The operation of Block 33 and 45 continued to be carried on by the parties to the PSA. By the spring of 2007, Virgin and Geopetrol had provided the funds to which they had committed and the first exploratory period was completed. On **21 April 2007,** the interests in the blocks were, it is said, transferred back to CCOG from the Alfurt companies with the express approval of the Yemen Oil Ministry. In **October 2007,** CCOG farmed out participating interests in the Blocks to Virgin and Geopetrol and the trusts of the companies "fell away".

289. From **April 2007** the Alfurt Companies have been dormant companies without assets. Since **January 2008**, oil has been discovered in the fields, which it is problematic to develop, and Virgin has ceased to be involved in the project. CCOG and Geopetrol are in discussion as to which of them should assume its participating interest.

290. CCOG admits that it did not disclose its beneficial interest in 58.5% of the shares of the Alfurt companies as at 16 April 2008. The underlying Alfurt field assets were disclosed but, in the limited time (42 days) allowed to produce an affidavit in response to the order of Flaux J the ownership of the shares was not picked up. Mr Nasser did not, he says, intentionally omit reference to these assets and apologises for the fact that he did not specifically mention the Cayman Islands companies in the ownership structure of the Alfurt assets.

Discussion

291. Documentary evidence has been produced of the approval by Yemen in 2007 to the transfer of the participating interests back to CCOG, but not of the transfer itself. My attention has been drawn to a CC Energy Development Drilling Operations Review dated 15 April 2009 which stated that the "*Company/Contractor*" in relation to blocks 33 and 45 was "*Originally Consolidated Contractors (Oil & Gas) Company SAL, B33 assigned to CC Al Furt (Oil and Gas) Company Ltd, B45 assigned to CC South Al Furt (Oil and Gas) Company Ltd.*". No reference is made to any re-assignment to CCOG. In those circumstances the Court, the judgment creditor submits, cannot conclude that the Cayman Island companies were of no value even if that was a defence.

292. I note, however, that the passage quoted comes in a table headed "*General Information*", that the information is said to be derived from the terms and condition of the PSA of 2 April 2003 and to have that Effective Date. At the same time, if the interest had been transferred back to CCOG one would expect some reference to that in the document.

293. If the participating interests in the two fields had not been returned to CCOG prior to 15 April 2009 the shareholdings in the Alfurt companies were valuable or, at least, potentially valuable, their value being, for practical purposes, the then value of 58.5 % of the two blocks. The matters referred to in the previous paragraph mean that I cannot be sure that the participating interests were *not* returned to CCOG, and I cannot, therefore, find a breach of the Assets Order proved. But, even if the interests were returned, a breach of the Affidavits No 2 Order is established. The shares were an asset and were covered by the order whatever their value.

294. Accordingly, I regard that breach as amounting to a contempt, even if the participating interests were transferred back. Further CCOG, which has few subsidiaries, must know who they are and such information is important, not least because it may give rise to inquiry as to whether the subsidiary in question does or does not possess valuable assets.

295. The potential significance of that breach depends, at least in part, on whether the shareholdings had any value; and that depends on whether at the material time the participating interests had been returned. Whilst I cannot be sure that they were not I am not prepared to find on the balance of probability that they were, when the evidence adduced to that effect is hearsay, has not been supported by documents which must exist, and does not appear to tally with subsequent documentation. I see no difficulty in CCOG producing such documents in order to minimise the significance of its breach in like manner as they have, through Mr Andrew, given the account set out above.

296. But, in the light of the fact that the underlying asset was declared, it may be that I should not regard it as worthy of sanction, save in respect of costs, upon which I will hear further. I am not satisfied to the criminal standard that the non disclosure was part of a strategy to ensure that information about assets upon which it was relatively easy to enforce was hidden.

Allegation 2(C): CCOG is in contempt of the Affidavits Order and the Affidavits Order No.2 for its failure to disclose the fact that debts of in excess of US$100,000 are owed to CCOG from CCOG-Nigeria and that debts of in excess of US$500,000 are owed to CCOG from CCE Nigeria.

Date: The value of the debts owed to CCOG from CCOG-Nigeria are such that the date of CCOG's contempt of the Affidavits Order in this regard is *25 February 2008*. The date of CCOG's breach of the Affidavits Order No.2 in respect of debts owed to CCOG from CCOG-Nigeria is *16 April 2008 and thereafter*.

The value of the debts owed to CCOG from CCE Nigeria are such that the date of CCOG's contempt of the Affidavits Order is *4 February 2008*. The date of CCOG's breach of the Affidavits Order No.2 in respect of debts owed to CCOG from CCE Nigeria is *16 April 2008 and thereafter*.

297. The accounts of CCOG Nigeria for 2007 record $ 317,096 as due to CCOG. The accounts of CCE Nigeria for 2007 record $ 628,172 as due to CCOG. The notes to the accounts state that these debts relate to preliminary and pre-operational expenses paid by CCOG and CC Holding, the two shareholders of the Nigerian companies and that they are "*Due to Related Companies*". These accounts are signed by the directors, Marwan Salloum, a first cousin of Wael, Tawfic and Samer Khoury and a CCC Group employee based in its London office, and Gary Kvintus for CCUK, a lawyer and senior legal adviser based in CCC's London office, who was present for at least two days of the hearing but from whom I have not heard. Both sets of accounts have been audited. Neither of these debts was disclosed by CCOG.

298. In his second affidavit Mr Andrew says that he has been told by Mr Suhail Nasser, now Chief of Administration and Accounts of the companies in Beirut, (i) that the amounts mentioned in the financial statements represent the cumulative preliminary and pre-operational expenses incurred by the companies since incorporation; (ii) that the companies have no revenue or liquidity so that the expenses have to be covered by the shareholders; (iii) that there is no contract between the shareholders and the companies which governs these payments; (iv) that the only reason why the sums are included as liabilities is to balance the accounts; and (v) that in practice these amounts are treated as having been made on an *ex gratia* basis. The amounts are not treated as recoverable sums. Neither debtor has any money to pay. The only reason the accounts were prepared at all was because the registration of the resignation of the two directors on 16 July 2009 prompted compliance with the requirement to file accounts, none having been filed since incorporation.

299. I am satisfied that these amounts were assets and choses in action which the Affidavits Orders required to be disclosed. The audited and signed accounts state that the amounts in question are "*due to related companies*". In the absence of evidence from the directors or the auditors I decline to accept that those words are inaccurate, or that the description given by the directors and vouched by independent accountants is inaccurate. The description is what one would, in any event, expect. The expenditure in setting up the company is treated as an asset on the footing that an established company is worth the cost of its establishment, balanced by the obligation owed to those who have actually paid its expenses to repay the monies expended on its behalf. The objective evidence speaks for itself.

300. These assets were disclosable whether or not the amounts due were in practice recoverable. As it happens, (see the evidence of Mr Mew referred to in para 276 above) CCOG Nigeria had been due to receive $ 3 million from Newcross in exchange for its sale of OPL 283. Although this entitlement arose after 2007, the fact that it did shows that the prospect of the companies having funds to repay the amount due was not fanciful.

301. I am, accordingly, satisfied that a contempt has been established. The relevant breach is of the Affidavits Order, not the Affidavits No 2 Order, which only relates to the receivables of CCIC.

Allegation 2(D): CCIC is in contempt of the Affidavits Order and the Affidavits Order No.2 for failing to disclose its interest in the Pearl GTL Project.

Date: The date of this allegation of contempt, insofar as it relates to the Affidavits

Order, is *21 January 2008*. Insofar as it relates to the Affidavits Order No.2, it is *16 April 2008 and thereafter*.

302. The Pearl GTL Project is a large construction project in Qatar. CCIC participated in it through an unincorporated joint venture with Teyseer Contracting Company WLL, which is referred to by CCC as a "subsidiary" or "close affiliate" of the CCC Group. The client is Qatar Shell GTL Limited and the contract price is of the order of $ 1 billion. The project was not referred to in the affidavits sworn in pursuance of the Affidavits Order or the Affidavits Order No 2.

303. The evidence of Mr Ryad Qussini of Teyseer Contracting filed in the Supreme Court of Bermuda in enforcement proceedings brought by Mr Masri there is that there are two contracts: P1 -107 of 15 December 2007 and P1 - 125 of 2 November 2006. The joint venture is the subject of a Joint Venture and Subcontracting Agreement of 19 December 2006, which was subject to Swiss Law. Under the Affidavits Order, CCIC was bound to disclose all assets above $ 100,000 of whatever nature. Under the Affidavits No 2 Order, it was bound to disclose "*information concerning all joint ventures in which it is involved (and in respect of which its interest in the joint venture, or the assets owned by it through the joint venture, has or have a value of more than US $ 100,000*)".

304. Under Article 3 of the Joint Venture Agreement, CCIC has a right to receive 5% of the 125 Contract Price which was "*attributed to CCIC upon payment of the first half of the advance payment of 10% of the "Contract Price" by the Owner ….*". Thereafter all "*profits, losses and liability shall accrue solely to Teyseer*". That 5% ($ 48 million) was paid in January 2007. Article 9.1. provides that Working Capital shall be provided by Teyseer. Article 9.2. provides that in the event that CCIC advances any sums to the Joint Venture such sums shall be repaid to CCIC prior to any distribution of profits to Teyseer. Article 15 provides that upon completion of the Project any profits or losses then outstanding shall be allocated exclusively to Teyseer after various payments and provisions have been made including *"(b) payment of all remaining sums due to CCIC under Articles 3 and 9.2"*. The Agreement also provides that construction equipment may be either purchased by the joint venture or hired from CCIC or Teyseer or from third parties.

305. There is a dispute in the proceedings in Bermuda, which the judgment creditor does not ask the court to resolve, as to whether any further sums due from the client are to be regarded as owed exclusively to Teyseer. The judge in those proceedings has held that:

> *" … if I was required to determine this issue finally on the basis of the evidence presently before the court on the narrow issue contended for by Mr Woloniecki I would on balance have concluded that Teyseer had established it was solely entitled to the balance of the contract revenues."*

Conclusion

306. The judgment creditor has not established that there was any non disclosure. CCIC's entitlement to its 5% was fulfilled in January 2007. It is not established that CCIC had provided any working capital which remained unpaid or that the joint venture owed it

more than $ 100,000 or that it had an interest in the joint venture or its assets of that value. Mr Nasser's affidavit of 4 February 2008 reveals the existence of 8 items of CCIC equipment worth $ 500,000 or more in Qatar at 31 December 2007. That does not establish that there was any outstanding debt from the project.

Allegation 2(E): CCIC is in contempt of the Affidavits Order and the Affidavits Order No.2 for failing to disclose the existence of a bank account held by it in Greece.

Date: The date of this allegation of contempt, insofar as it relates to the Affidavits Order is *between 21 January and 25 February 2008 and thereafter* since the value of the asset is unknown. Insofar as it relates to the Affidavits Orders No.2 the date is *16 April 2008 and thereafter*.

307. The affidavits of assets served on behalf of CCIC did not identify any bank accounts in Greece. But in the course of proceedings for enforcement of the judgments brought by Mr Masri in Greece it emerged that CCIC had an account with Marfin Egnatia Bank SA in Athens.

308. Mr Nasri, who is an officer of CCIC in Greece, gave oral evidence before the Court of First Instance in Athens on **6 November 2008.** Mr Bartlett was present at the hearing. He does not speak Greek. But he was told by Mr Masri's Greek lawyers that Mr Nasri said that the account was used to pay CCIC's several hundred employees in Greece and had an average balance of several million euros. Mr Andrew exhibits a witness statement of Mr Maravelis, a Greek lawyer for CCIC, who says that he does not recall Mr Nasri having made any suggestion that millions of euros were kept in a bank account held by CCIC at Marfin Egnatia Bank. What he said was that CCIC did not hold deposits in Greece and only processed cash remittances made from abroad to pay its employees each month and that the money was not held on deposit there for more than 2 or 3 days at a time. The result of the hearing was that the judge concluded that freezing all of CCIC's assets in Greece could jeopardise the payment of the company's employees and should not be ordered. Mr Andrew records that CCIC did not carry out any commercial activities in Greece and was prohibited from doing so by reason of Law 89/1967. Its employees perform administrative functions.

309. In an affidavit of 2 February 2010, Mr Said Nasri said that, at that time, CCIC's offices in Greece had about 75 employees (down from a previous total of more than 600); that they were paid as a result of money transfers which were made between 26th and 28th of each month, the total amount of money paid being approximately € 170,000 per month. In his 2nd affidavit, Mr Andrew said that he had been shown a copy of the bank statement for the relevant period and that on 14 April 2008 the balance of the account was $ 25,288.53. He did not exhibit the statement.

310. On 30 January 2011, Mr Andrew swore his fifth affidavit which exhibited three documents from Marfin Bank. These are not bank statements in the ordinary sense (to which Mr Andrew must previously have been referring) but letters from the bank specifying the account outstanding on individual days. They show the following account balances:

Date in 2008	*Balance*	*Threshold for disclosure*
January 21	$ 252,888.78	$ 1,000,000

February 4	$ 288,862.49	$ 500,000
February 25	**$ 115,058.11**	**$ 100,000**
April 14	$ 25,288.83	$ 100,000

311. There has, therefore, been a breach of the Affidavits Order in that the balance on February 25 exceeded the $ 100,000 threshold and should have been disclosed. A breach of the Affidavits No 2 Order has not been established. That order required service of a schedule setting out any amount standing to the judgment debtors' credit in any individual bank account if that sum exceeded $ 100,000 and provided that the information must be no more than 48 hours out of date. The affidavit was sworn on 16 April so that the earliest date to which it could relate was 14 April, at which date the balance was less than $ 100,000.

312. CCIC accepts that there was a breach in respect of 25 February, but submits that, in all the circumstances, it was *de minimis*. Further, the judgment creditor had complained that the affidavits originally filed were deficient as a result of which Flaux J made Affidavits Order No 2, which must be taken as superseding the Affidavits order, and of which CCIC were not in breach.

313. The judgment creditor contends that what appears to have been happening is that sums kept in the account were deliberately and artificially reduced so as to seek to evade the obligation of disclosure in respect of an account in Greece where enforcement would be relatively simple. On the order as drafted it was open to CCIC to reduce the holding in its account so as to fall below the level at which disclosure of the account was required.

314. I do not accept that the Affidavits No 2 Order replaced or revoked the Affidavits Order or turned a breach of the latter into no breach at all. I cannot tell whether the amount in the account was deliberately reduced so as to avoid having to declare it. It is, however clear, that the account was one which (a) existed; and (b) was not limited to having about € 170,000 in it for three days at the end of the month. It should have been disclosed. Further, if the number of employees in early 2008 was 600 odd compared with the 75 employed in 2010 then, assuming the same average rate of pay, the monthly figure for salaries would have been over € 1,000,000.

315. Accordingly, as I find, the failure to reveal the bank account was a breach of the Affidavits Order and a contempt.

Allegation 2(F): CCOG is in contempt of the Affidavits Order and the Affidavits Order No.2 for failing to disclose its interest in the Gaza Marine Gas Project.

Date: The date of this allegation of contempt, insofar as it relates to the Affidavits Order is believed to be *21 January 2008*, since the Judgment Creditor believes that the value of the Gaza Marine Gas Project is in excess of US$1m. Insofar as it relates to the Affidavits Order No.2, the date is alleged to be *16 April 2008 and thereafter*.

316. On **19 October 1999,** the Upstream Development and Marketing Agreement for the Gaza Marine Concession ("the Gaza Agreement") was signed on behalf of the Palestinian National Authority, BG International Ltd and "CCC Oil and Gas SAL",

and the Palestinian Petroleum Authority. This related to natural resources off the coast of the Gaza strip. On **9 November 2009,** the Gaza Agreement was approved by President Arafat.

317. On **17 November 1999,** Articles of Incorporation were signed by three individuals in respect of **Consolidated Concession Corporation Oil and Gas SAL** ("Concession") and notarised. The individuals were Youssef Kanaan (described in CCC's 2008 Group Directory as Area General Manger for "Consolidated Contractors Company SAL"), Nassib Chedid (the judgment debtors' lawyer) and Faysal Tarabay, his law partner. They were all nominees for Said Khoury.

318. According to Mr Chedid's evidence, when Mr Khoury was about to sign the Gaza Agreement, he told Mr Chedid of that and asked him which company should hold the asset. Mr Chedid advised him, that, because of the situation between Lebanon and Israel, it would not be advisable that a company of the CCC group should take the concession and that a separate company would be better. If there were any problems with it they could be dealt with when they arose but they would not then involve the whole CCC Group. Mr Khoury agreed and this is why the articles of Concession were signed. Under Lebanese law it is possible to sign in the name of a company which is to be incorporated. So he was asked to prepare and file the articles but no capital was to be paid up nor was incorporation to be completed before something happened to justify that, because it was doubtful whether the whole project would work. No steps were taken to take matters forward until 2009 because nothing had been done in Gaza to carry the project forward. The name CC Concession was chosen because Mr Said Khoury wanted it to have the appearance of a CC company. He denied that the original intention was for CCOG to be the owner of the asset.

319. On **25 May 2002,** the Gaza Concession was extended by an agreement signed on behalf of the two Palestinian Authorities, BG Great Britain Ltd, and "CCC Oil and Gas S.A.L."

320. No reference was made in the affidavits sworn pursuant to the Affidavits Orders to the Gaza Marine Gas project. But Mr Masri became aware from reports in the media that the CCC Group held an interest in this project. On **23 December 2008,** British Gas confirmed to Simmons & Simmons that the contract was with "CCC Oil and Gas SAL". Mr Masri understood that to mean CCOG and applied for a freezing order over the asset.

321. That order – Freezing Order No 5 - was made by Field J on **2 February 2009** and continued by Gloster J on **10 March 2009**. CCOG was represented at both hearings, the former being ex parte but with short and informal notice. At the latter hearing, CCOG did not oppose the continuation of the order. But by a letter of 20 February 2009, Olswang had indicated that CCOG did not accept that it was a party to the Gaza Agreement. CCOG was precluded by the order from disposing of its interest in the Project which was defined to mean:

> *" the Gaza Marine Gas Project in Palestine in respect of which [BG] and CC (Oil & Gas) are contracting partners (each holding a percentage interest in a gas exploration licence) and in respect of which revenues are due or will become due from [BG] to CC (Oil & Gas)".*

CCOG was ordered to pay the judgment creditor's costs in the sum of £ 15,500. When consenting to the continuation of the order CCOG indicated in correspondence that it reserved the right to contend that it was not the owner of the asset and that this point would be pursued in the Palestinian proceedings.

322. Meanwhile, Mr Masri had brought enforcement proceedings in respect of the asset before a Palestinian Court in Ramallah against CCOG. On **13 November 2008,** he obtained ex parte interim orders (i) recognising the quantum order of 15 June 2007 and (ii) attaching all CCOG's Palestinian assets including sums due to it from BG. **On 20 April 2009,** he obtained an ex parte provisional order of attachment of CCOG's share in the Project. On **20 May 2009,** Concession intervened in those proceedings claiming to be the true owner of the asset.

323. On **3 June 2009,** there was a meeting of the founders of Concession, i.e. the signatories to the Articles who subscribed for shares: 1994 went to Mr Kanaan, 3 to Mr Chedid and 3 to Mr Tarabay. It was Mr Chedid's evidence, which I accept, that the shares in the company were beneficially owned by Mr Said Khoury for whom all three named shareholders acted as nominees. He indicated that the Gaza asset was held by a company outside the CCC group because of the potentially delicate situation arising from a Lebanese company holding an asset in Gaza. The first board meeting took place after the founders' meeting on that day. There was another one on 1 July 2009.

324. On **5 June 2009,** Concession was registered at the Lebanese Commercial Registry.

325. On **3 November 2010,** the Palestinian Court rejected Concession's claim and concluded that Concession had been created after the commencement of Mr Masri's enforcement proceedings; that it had no connection with the project; and that its objects did not include the ownership of oil and gas concessions outside Lebanon.

326. Professor Slim gave evidence as to the status of a company in the course of formation and of contracts made with it. He explained that there are four major steps in setting up a company (*societé anonyme*) in Lebanon

    a) drafting the articles of association and their execution by the founders;

    b) subscription of the capital and payment of contributions;

    c) the constitutive meeting which approves the articles and appoints the directors and auditors. The company acquires legal personality when the directors and auditors appointed during the constitutive meeting accept their duties, but this legal personality cannot be put forward vis à vis third parties until registration; and

    d) registration of the company at the Commercial register.

    Before the constitutive meeting and the acceptance by the directors of their appointment, the founders can do the acts necessary for the company to start its activities which can be ratified after registration as acts of the company. He says that it is necessary for the founding shareholder who signs the act to state expressly that he does so on behalf of the company *en formation*. If he does so these acts are deemed to

be the acts of the company after its registration. He refers to a decision of the French Cour de Cassation upholding a decision that a loan agreement was invalid when it had been signed by the company itself before registration as opposed to being signed in the name of a company "*en formation";* and another in which an agreement signed by a founder could not be ratified later as an act of the company under formation if it had not been expressly stated that the agreement had been concluded on behalf of a company *en formation*.

327. It seems somewhat illogical that a contract signed by a founder expressly on behalf of a company said to be *en formation* may become binding after registration but one signed by the same founder in the name of the company (not expressed to be *en formation*) cannot. In the former case the third party is aware that the company does not yet exist. In the latter case he may well think it does exist, and might be thought the more deserving of protection on that account. I am not completely convinced that the Lebanese Court would necessarily follow the Cour de Cassation in this respect.

CCOG's submissions

328. CCOG contends that Concession is the owner of the asset and that, in any event it is of no value. The judgment creditor submits that this makes no sense for the following reasons:

i) At the date of the Gaza Agreement even Articles for Concession did not exist. They were not drawn up for another month and the company was not incorporated for another decade.

ii) The fact that the party to the Agreement is named as "*CCC Oil and Gas*" does not signify that the Gaza Agreement is with Concession. CCOG and CCIC belong to what is known as the CCC Group. "CCC" is a term commonly used to refer to companies in the CCC group: see para 127 [E] of Mr Bartlett's 1st affidavit; and CCC Oil and Gas is used to mean CCOG.

iii) It would be very odd to have a potentially valuable project made with a company that did not exist and was not declared to be *en formation* because of the high risk of its being declared invalid as having been made in the name of an entity which did not exist and in respect of which no step had been taken to form it.

iv) Concession was registered as a company on 5 June 2009. At the constitutive meeting on 3 June and at the first directors meeting, no mention was made of the Gaza Agreement or the project or of confirming or ratifying it (nor did that occur at the second). The timing of Concession's springing to life shows that, once the existence of Mr Masri's attempts to enforce against the asset began, it became convenient to say that Concession was its owner. No suggestion that Concession (a) existed and (b) owned the asset surfaced until after Mr Masri obtained a freezing order in early 2009.

v) Mr Chedid's explanation lacks sense. If the aim was to distance the asset from the CCC Group, why give the owning company the name CCC Oil and Gas? Why was the asset held out as belonging to a CCC Group company? Why did Mr Chedid say (as he did) in his affidavit to the Ramallah Court that

Concession is a company in the CCC group when, if his evidence is correct it is not a group company at all? Why was the Gaza asset discussed, as it was, at meetings of the CCC Energy Group Management Committee in London, which was concerned with projects belonging to the Group?

vi) Per contra, there is the strongest evidence in favour of the asset being held by CCOG. CCOG was the CCC Group company which held its oil and gas assets. The amendment agreement of May 2002 was signed by Mr Max Brawley as "Managing Director". The Gaza Agreement had provided that notices were to be delivered to him at the London offices of Consolidated Contractors International (UK) Ltd. He was not a director of Concession of any kind at that date. Concession had no directors then. Nor was he employed by it. He did, however, hold the title, but not the office, of Managing Director of CCOG.

vii) The Gaza project was managed at Energy Group Management meetings at CCC's offices in London which were also concerned with CCOG's other oil and gas interests such as Masila and Al Furt in Yemen and its Nigerian interests: see Mr Bartlett's 1st affidavit at para 129(B) and the documents there referred to.

viii) CCOG was held out to third parties as the owner of the Gaza Marine operation: see CCIC's letter to the Provisional Governor of Kurdistan. Mr Chedid told the Ramallah Court on Mr Marina's instructions that this was written by a commercial and not a legal person.

329. These are powerful points. However, taking them all into account, I am not satisfied to the criminal standard that CCOG was the owner of the asset. There seem to be two realistic possibilities. The first is that the Gaza Agreement was and was always intended to be with CCOG, the company in the CCC Group which was used to hold the CCC Group's oil and gas assets. The Articles of Concession were prepared either for some purpose which had nothing to do with the Gaza project or because it might become convenient at a later date, for political reasons, to say, contrary to the fact, that the project was owned by Concession and not CCOG. Concession was, therefore, given a name similar to CCOG. The Agreement was put in the name of CCC Oil and Gas which, although strictly inaccurate, was a description which was sometimes used for CCOG.

330. The second is that it was always intended that Concession should be the contracting party. Mr Khoury wanted to use the CCC appellation to suggest a link with the CCC group but also wished to ensure, from the beginning, that the company holding the asset was not a CCC Group company, to avoid potential political problems (arising from a Lebanese corporation doing business in Israeli controlled territory). For that reason, the Gaza Agreement and the supplemental agreement of May 2002 referred to CCC Oil and Gas, CCC being used as an abbreviation of the full name.

331. I am not sure that the first of these scenarios must be right. In reaching that position I take into account the following:

a) I regarded Mr Chedid as an honest witness, although not one who was necessarily informed about everything that was going on either in the Group or in relation to the judgment debtors. He could, of course, have

been mistaken as to events that occurred in 1999 but I am not convinced that he was. He was party, on his evidence, to deciding what corporation should take the interest and to the establishment of Concession.

b) If there was a concern in 1999 that it might be desirable to have the interest held outside the CCC Group, it is not easy to see why it should have been taken into CCOG on the basis that, if need be, it could be represented as belonging to Concession rather than taken by Concession in the first place.

c) The 1999 Agreement and the 2002 supplement are in the "correct" name of Concession in the sense that "CCC" can be interpreted as an abbreviation (in the right sequence) of the first three words of the full name of Concession.

d) If Mr Chedid is right the documentation was unsatisfactory in that the agreement was entered into before the Articles so that the company was not even *en formation*. That could have had the result that it was ineffective to create a valid agreement with anyone. The May 2002 supplement may have solved that problem, unless Professor Slim's view is right, but a decision cannot have been made in 1999 on the basis that things would be put right later. If on the other hand the first possibility is right, the documentation was devious as were its authors. I am not convinced that a cunning plan can assuredly be regarded as the true explanation rather than a failure to address potential legal problems.

332. In the light of this conclusion it is not necessary to determine whether the assets had a value of $ 100,000 or more. As to that, it is said that, unless and until the dispute between Palestine and Israel is resolved commercial production of gas is impracticable. Further the Gaza Agreement was signed with the Palestinian National Authority which has lost control of the Gaza Strip to Hamas, which is said to have asserted that it is the rightful owner of the gas and should receive more than 10% of the royalties from the sale of the gas (see Olswang's letter of 20 February 2009). In December 2007 BG withdrew from negotiations with the Israeli government in respect of possible monetisation of the gas and closed its office in Israel. Discussions for implementation of the project through an agreement with Egypt have fallen through. And there is said to be a prohibition as a matter of Lebanese law on any Lebanese person engaged in commercial operations with any entity working for or in the interest of an Israeli entity.

333. I am satisfied that the asset has substantial value and certainly over $ 100,000. It is inconceivable that even these parties would spend such time and energy arguing about it in this country and in Ramallah if it was practically worthless. Further the documentation gives an estimated value for the project of $ 800 million when CCOG's interest is 10% with an option to increase to 30%.

334. Accordingly I do not find this contempt proved

Allegation 2(G): CCIC is in contempt of the Affidavits Order and the Affidavits Order

No.2 for disclosing misleading and inaccurate information in respect of its interest in the BTC Pipeline Project.

Date: The date of this allegation of contempt, insofar as it relates to the Affidavits Order is believed to be *21 January 2008 and thereafter,* since the value of this asset was at that time in excess of US$1m. Insofar as it relates to the Affidavits Order No.2, the date is alleged to be *16 April 2008 and thereafter*.

335. The No 2 Affidavits Order required, by paragraph 8, that CCIC disclose in respect of all receivables all categories of information contained in a schedule to Mr Nasser's fourth affidavit. That affidavit exhibited a schedule of CCIC projects. In the body of the affidavit, Mr Nasser indicated that he was giving information about, *inter alia*, the registered office of the counterparty. However the schedule to his affidavit had a column headed "*Jurisdiction of incorporation*". The two are often the same but not always, especially as a corporation may be registered in different places for different purposes. Since the order related to the information in the schedule what it required was the information specified in the schedule.

336. The affidavit sworn in response also used the heading "*Jurisdiction of incorporation*" and under it specified Azerbaijan in relation to the BTC Pipeline project. This was inaccurate. BTC was incorporated in the Cayman Islands and had its registered office there. It is true that it had a representative office in Azerbaijan registered at the Ministry of Justice and the Ministry of Taxes, and that it was that office which entered into the contract, which was to be carried out in Azerbaijan, where its assets and, in particular, the pipeline, were. None of that affected its jurisdiction of incorporation.

337. There was, therefore, a breach of the order and a contempt. The judgment creditor suggests that it is not accidental that the information which has not been revealed is that the company was incorporated in a common law jurisdiction where enforcement is relatively easy. I am not convinced that there was a deliberate decision to mislead. That said, I do not regard this breach as insignificant. The place of incorporation of a company is important in relation to execution against a corporation since that is a place in which the corporation can usually, subject to any question of a stay on *forum non conveniens* grounds, be sued. It was not difficult to comply with the order, which required information in categories which Mr Nasser had himself used.

338. I should record that the fact that BTC was registered in the Cayman Islands was confirmed by Mr Joujou's witness statement in the Grand Court of the Cayman Islands of 16 September 2009.

Allegation 3: The Judgment Debtors are in breach of paragraph 4 of the Freezing Order granted by Tomlinson J. on 21 October 2008 ("Freezing Order No.2") since they failed to provide details of the balances of the bank accounts listed in Freezing Order No.2 by 28 October 2008 or at all.

Date: *28 October 2008 and thereafter*.

339. Paragraph 2 of Freezing Order No. 2 - Bank Accounts of 21 October 2008 provided as follows:

> "*CCIC and CC (Oil and Gas) must by 4.pm on 28 October 2008 and to the best of their ability inform the Judgment Creditor's solicitors of the balances in the Relevant Bank Accounts as at 19 May 2008 and the date of this order (each of CCIC and CC (Oil & Gas) being obliged to give this information in respect of their own respective accounts).*"

340. Steel J had originally made an order in respect of CCIC's and CCOG's bank accounts *ex parte* on **19 May 2008**. That Order was continued by Tomlinson J at the *inter partes* hearing on **16 July 2008** and continued in the judgment of **21 October 2008**. Tomlinson J refused a stay. An application was made to the Court of Appeal for permission to appeal and for a stay, but on **13 November 2008** this was dismissed. After the judgment of the Court of Appeal of that day, Simmons & Simmons wrote pointing out that the Judgment Debtors were in contempt, but offered not to pursue CCIC and CCOG for that contempt if the relevant information was provided by 4pm the following day. On **20 November 2008**, Olswang, for the judgment debtors reiterated their clients' position that they were unable to comply with the orders made against them by virtue of the Lebanese court orders of 14 April 2008. An offer was made to place the information in escrow with the Beirut court and/or a notary public in Lebanon pending the decision of the Lebanese court on Mr Masri's application to set aside the prohibition against the judgment debtors providing the information. On **20 February 2009**, that offer was rejected.

341. The Order froze the bank accounts of CCIC and CCOG set out in paragraph 3 which, save for one, were at banks outside Lebanon in Cairo, UAE, Doha, Dubai, and Qatar up to the value of $ 65,646,251.19 and £ 236,895.49. Paragraph 4 of the Order further directed CCIC and CCOG to provide information as to the balances of the bank accounts which had been frozen. The information required by the Order should have been provided to Mr Masri's solicitors by 4pm on 28 October 2008. It was not provided then and never has been.

342. The judgment debtors rely on the 14 April 2008 blocking orders. These provide no defence for a number of reasons.

343. First, Freezing Order No. 2 does not contain any provision such as that contained in para 15 of the CCOG or CCIC Receivership Order. The judgment debtors had argued for the inclusion of a paragraph in the CCOG form in the CCIC Receivership Order but had not succeeded. Tomlinson J had declined to do so, holding that he was:

> *"wholly unconvinced by the suggestion of the [Judgment Debtors] that they are constrained in what they can disclose to the court or to the receiver about their contractual arrangements by the provisions of the Lebanese criminal law, by the Lebanese civil law and/or by a specific order of the Lebanese court made on 14 April 2008.*"

On the application for permission to appeal, the Court of Appeal found it unnecessary to consider the question given that the court had a discretion even if the order required a breach of Lebanese law.

344. Second, the Blocking Orders do not by their terms purport to affect the Order made by Tomlinson J. Nor, in my judgment, does any *motif* of the judgments of 14 April 2008 to which the *dispositif* was directly and tightly linked forbid compliance. The Order is

not an attempt to execute in Lebanon. It requires provision by a Lebanese company in London of information about predominantly non Lebanese bank balances, all of which can be accessed from outside Lebanon by judgment debtors whose operational business is carried on outside Lebanon (as by the law of Lebanon it has to be) and who have offices outside Lebanon from which their affairs are administered.

345. Reliance is placed on the words "*to the best of their ability*" in para 4 of the Order. This does not avail the judgment debtors. They were perfectly able to provide the information. The provision takes account of the fact that bank balances fluctuate from hour to hour and of any practical difficulty that may arise in obtaining information from the bank. The words were plainly not intended to have the effect of, or an effect similar to, para 15 of the CCOG Receivership Order or the more limited para 15 of the CCIC Receivership Order, which was made at the same time as Freezing Order No 2 and which is not replicated therein; and they should not be so interpreted.

RSC 45

346. Reliance was also placed on RSC 45. which provides:

> ***Enforcement of judgment to do or abstain from doing any act***
>
> *5 (1) Where*
>
> *(a) a person required by a judgment or order* ***to do an act*** *within a time specified in the judgment or order refuses or neglects to do it within that time or, as the case may be, within that time as extended or abridged under a court order …or*
>
> *(b) a person disobeys a judgment or order requiring him to abstain from doing any act,*
>
> *then, subject to the provisions of these rules, the judgment or order may be enforced by one or more of the following means, that is to say –*
>
> *(i) with the permission of the court, a writ of sequestration against the property of that person;*
>
> *(ii) where that person is a body corporate, with the permission of the court, a writ of sequestration against the property of any director or other office of the body;*
>
> *(iii) …*
>
> ***Judgment, etc. requiring act to be done: order fixing time for doing it***
>
> *Rule 6*

(1) Notwithstanding that a judgment or order requiring a person to do an act specified a time within which the act is to be done, the court shall have power to make an order requiring the act to be done within another time, being such time after service of that order, or such other time, as may be specified therein;

Service of copy of judgment, etc., prerequisite to enforcement under rule 5

Rule 7

(1) In this rule references to an order shall be construed as including references to a judgment

(2) Subject to paragraphs (6) and (7) of this rule, an order shall not be enforced under rule 5 unless –

(a) a copy of the order has been served personally on the person required to do or abstain from doing the act in question; and

*(b) in the case of an order **requiring a person to do an act**, the copy has been so served before the expiration of the time within which he was required to do the act.*

*(3) Subject as aforesaid, an order **requiring a body corporate to do or abstain from doing an act** shall not be enforced as mentioned in rule 5 (1)(b)(ii) or (iii) unless-*

(a) a copy of the order has also been served personally on the officer against whose property permission is sought to issue a writ of sequestration or against whom an order of committal is sought ; and

(b) in the case of an order requiring the body corporate to do an act, the copy has been so served before the expiration of the time within which the body was required to do the act.

*(6) An order requiring a person **to abstain from doing an act** may be enforced under rule 5 notwithstanding that a service of a copy of the order has not been effected in accordance with this rule if the court is satisfied that pending such service, the person against whom or against whose property it is sought to enforce the order has had notice thereof either –*

(a) by being present when the order was made, or

(b) by being notified of the term of the order whether by telephone telegram or otherwise.

> *(7) The court may dispense with service of a copy of an order under this rule if it thinks it just to do so".*

347. In the present case the order was not personally served until December 2008. That was after time for compliance with it had expired.

348. The Rule, when applicable, provides that if X is required to do something by a specified date, the remedies to which it applies shall not be available if X is not served before that date, subject to the power under sub rule (7) to dispense with service of a copy of the order. The exception in RSC 45 (6) relates to orders requiring a person to abstain from any act. It is not obvious to me why enforceability against a person who is present when an order is made should depend on whether the order is positive or negative in form. The Court has power to dispense with service in either case.

349. RSC 45 rule 5 is not applicable. This is not an application for a writ of sequestration against either the judgment debtors or any director or officer of theirs but an application to fine the judgment debtors for contempt. It may be that Rule 45 was drafted in the way it was because it was thought in earlier times, that contempt in civil courts should be punished either by committal to prison or sequestration: see *Arlidge, Eady & Smith* on *Contempt* 14-101 which indicates that Lord Selborne, LC had said as much in Parliament in 1883. But the jurisdiction to impose a fine undoubtedly exists (*ibid*) and RSC Order 45 is not concerned with it.

350. RSC 52 contains provisions relating to applications for committal and contains certain procedural safeguards, such as a requirement for service of the application notice. RSC 52 Rule 9 provides:

> *"**Saving for other powers***
>
> ***Rule 9***
>
> *Nothing in the foregoing provisions of this order shall be taken as affecting the power of the court to make an order requiring a person guilty of contempt of court, or a person punishable by virtue of any enactment in like manner as if he had been guilty of contempt of the High Court, to pay a fine or to give security for his good behaviour, and those provisions, so far as applicable, and with the necessary modifications, shall apply in relation to an application for such an order as they apply in relation to an application for an order of committal."*

The rule thus recognised the jurisdiction of the High Court to impose a fine and applies the provisions of RSC 52 to any such application; but not those of RSC 45. In those circumstances, I do not regard myself as bound by the constraints of Rule 45.

351. The notes to RSC 45 in the White Book refer to two cases, which do not appear to me to take the matter much further. In *Century Insurance v Larkin* [1910] Irish Reports 91 the Court of Appeal decided that the Court would not attach a person for disobedience to an order of the court requiring him to do a given act within a given time unless a copy of the order had been served upon him in due time. The defendant was present in court when the order was made. The relevant rule required service of

"*Every judgment or order made in any cause or matter requiring any person to do an act thereby ordered*" and does not appear to have allowed the court to dispense with service.

352. In *Haydon v Haydon* [1911] 2 KB 191 the Court of Appeal held that where proceedings were taken under section 5 of the *Debtors Act 1869* to commit a judgment debtor to prison for default in payment of a debt due from him in pursuance of an order of a competent court, it was not necessary that the order for payment should have been served upon him personally although personal service of the judgment summons was required by the relevant rules. In that case the judgment debtor had been present in court when the order for payment was made. The Court distinguished *In re Tuck* [1906] 1 Ch 692 where it was held in the Chancery Division that a writ of attachment would not usually be issued against a trustee for disobedience of an order directing him to pay money into court, and that the fact that the trustee was in court when it was made would not make personal service unnecessary. This later authority shows that, where the rules permit, it may be legitimate to impose penalties for contempt where personal service has not occurred.

353. It would not, however, be just to exercise a contempt jurisdiction against a defendant who had not had notice of the order in order to be able to comply with it.

354. In the present case, however, the judgment debtors knew of the order the moment it was made, since they were represented, by Leading and Junior Counsel, at the hearing at which they opposed its making and were present by counsel when it was handed down. I am in no doubt that the judgment debtors were aware of its terms and of the potential consequences of non-compliance from then onwards. The order was served on Olswang by fax and DX on 24 October 2008. It was served on CCIC and CCOG under cover of letters from Simmons & Simmons dated 2 December and 25 November 2008 respectively sent by recorded delivery. Personal service on CCIC was effected by a judicial officer of the Greek court in Athens on 15 December 2008. Personal service was effected on CCOG by a Lebanese court bailiff on 26 December 2008.

355. In those circumstances if, as I find to be the case, the judgment debtors have deliberately refused to comply with the order without justification it is just to enforce it. Insofar as it may be necessary to do so I shall dispense with service of the order. Since RSC 45 is not applicable the power to do so does not arise under RSC 45 (7) but under the court's general management powers. The power under RSC 45 may be exercised retrospectively: see *Davy International Ltd v Tazzyman* [1997] 1 WLR 1256. The discretion is "*wide and unfettered*", but is to be "*exercised relatively sparingly*": *Bell v Tuohy* [2002] EWCA Civ 423, [2002] 1 WLR 2703 at [41] per Neuberger J (as he then was) and see also *Jolly v Jolly* [2000] 2 FLR 69 and *Benson v Richards* [2002] EWCA Civ 1402. For a recent exercise of the discretion on not dissimilar facts (so far as the present issue is concerned) see *Hydropol Hot Tubs v Roberjot* [2011] EWHC 121.

Allegation 4: CCOG is in breach of paragraph 3 of the Freezing Order (No.4 – Shares) granted by Tomlinson J. on 21 October 2008 ("Freezing Order No.4") since it failed to provide an estimate of the value of its shareholding in CCOG-Nigeria or CCE Nigeria by 4 November 2008 or at all.

Date: *4 November 2008 and thereafter*.

356. Freezing Order No. 4 was initially made by Steel J *ex parte* on 4 June 2008. The Order was continued by Tomlinson J on 16 July 2008 and was made *inter partes* at the hearing which took place on 21 October 2008. No stay was granted. The judgment debtors' application for permission to appeal was dismissed by the Court of Appeal on 13 November 2008.

357. By paragraph 2, CCOG was enjoined from disposing of, dealing with or diminishing the value of any legal or beneficial interest of the shares held by it in (i) CC Oil and Gas Nigeria Limited, and (ii) CCC Energy Nigeria Limited. By paragraph 3, CCOG was directed to provide an estimate of the value of its shareholding in the two Nigerian companies (and the basis for that valuation). The information required by the Order should have been provided to Mr Masri's solicitors by 4pm on 4 November 2008. It was not provided then and never has been since.

358. Reliance is again placed on the 14 April blocking orders. Mr Boyle submits that Freezing Order (No 4) was intended to give effect to the order of Gloster J, relating as it does to information which should have been given pursuant to Freezing Order No 1, and that it therefore falls within the prohibition contained in the 14 April orders.

359. I do not accept this. Freezing Order No 4 is not one of the "*three British decisions issued by [Gloster, J] on 20.12.07*". It was made in order to give better effect to one of those decisions, Freezing Order No 1, but it exists as an order in its own right. Nor does the provision of a valuation of the shares in a Nigerian company amount to the execution of the order in Lebanon. Paragraph 3 provides that CCOG must "*to the best of its ability*" inform the judgment creditor's solicitors of its estimate of the value of the shares. For the reasons already stated that phrase does not provide them with an excuse for non compliance.

360. CCOG relies on the matters referred to in paras 268-9 above in support of its contention that the shares had no value. I do not accept that that assertion is correct, but, even if it was, CCOG was bound to provide an estimate of value and of the basis for it.

361. Lastly, reliance is placed on the fact that the order was not personally served until 26 December 2008 when it was served on Mr Chedid by a Lebanese court bailiff. The order was served on Olswang by fax and DX under cover of a letter of 24 October 2008 and on CCOG by recorded delivery under cover of a letter from Simmons & Simmons dated 25 November 2008. For the reasons stated above I do not regard this as a defence. Insofar as necessary I shall dispense with service of the order.

Allegation 5(A): CCIC is in breach of paragraphs 7(A), 7(B) and 7(D) of the Order appointing a Receiver granted by Tomlinson J. on 21 October 2008 (the "CCIC Receivership Order") for failing to provide the information required in paragraph 7(A); for failing to provide confirmation of the Receiver's authority to collect revenues to its contractual counterparties as required by paragraph 7(B); and by receiving revenues in respect of which the Receiver has been expressly authorised to receive contrary to paragraph 7(D).

Date: Insofar as CCIC are in contempt of paragraph 7(A) of the CCIC Receivership Order, the date of that contempt is *11 November 2008 and thereafter*. Insofar as

CCIC are in contempt of paragraph 7(B) and 7(D) of the CCIC Receivership Order, the date of those contempts are both *21 October 2008 and thereafter*.

362. The CCIC Receivership Order was the third of the orders made by Tomlinson J at the hearing on 21 October 2008. It was made *inter partes* and stayed until (in the end) 12 November 2008, but not thereafter (Andrew 2nd, para. 223). On 13 November 2008, CCIC's application for permission to appeal (and for a further stay) was dismissed by the Court of Appeal.

363. The Order appointed a receiver over CCIC and granted him various powers, as contained in paragraphs 2 and 3. The Receiver was empowered to receive in the name of and on behalf of CCIC all amounts due and/or payable to it after the date of the Order from the entities identified in Schedule B to the Order in respect of the projects there identified.

364. By paragraph 7 of the CCIC Receivership Order, CCIC and its directors and officers were obliged to co-operate with the Receiver in various ways. These included:

i) *Paragraph 7A* – providing information and documents as to

a) the whereabouts at any time of the Contract Revenues or any assets representing the proceeds of the same;

b) copies of any contracts from which any Contract Revenues were derived (and any amendments thereto); and

c) the amounts of the Contract Revenues due and payable to CCIC in respect of the specific projects set out in Schedule B to the Order.

The time for compliance with paragraph 7A was ordered to be "*within 21 days of the date of the Order in respect of all Contract Revenues, and subsequently, within 7 days of any request being made by the Receiver.*"

ii) *Paragraph 7B* – providing such written confirmation to third parties anywhere in the world as the Receiver might reasonably require of the Receiver's rights under the order to act on behalf of CCIC and to receive the Contract Revenues in that capacity. A letter substantially in the form of the wording of the letter attached to the Order at Schedule C was to be deemed to be reasonable. The order required provision to the Receiver of copies of such confirmations.

iii) *Paragraph 7D* – paying any Contract Revenues received by CCIC or by any person acting on its behalf to the Receiver within 2 working days of receipt by CCIC or any such person save in so far as inconsistent with any contractual obligation owed to an independent third party undertaken in the ordinary course of business. In the event that any Contract Revenues were not paid to the Receiver pursuant to that saving CCIC was to disclose to the Receiver, within 5 working days of receipt of such Contract Revenues, the amount not paid, the contracts to which they relate, and details of the contractual obligation relied upon including a copy of it in writing.

The "Contract Revenues" were defined in paragraph 2 of the Order as the amounts due from the entities and projects described in Schedule B to the Order.

365. The order ends with the words:

> *"17 This order shall not come into effect until 4pm GMT on 5th November 2008.*
>
> *Dated 21st October 2008."*

366. The judgment creditor contends that CCIC is in breach of all of these provisions of the CCIC Receivership Order in that:

i) The information and documents required by paragraph 7A of the Order have never been provided;

ii) The written confirmations which should have been sent to CCIC's counterparties pursuant to paragraph 7B of the Order were never sent; and

iii) Contrary to paragraph 7D of the Order, no Contract Revenues have ever been paid to the Receiver, notwithstanding that it is common ground that such Revenues have continued throughout to be received.

The second and third of these matters have been confirmed by the Receiver in letters dated 24 April and 10 May 2010. The failure by CCIC to produce the information and documents specified in paragraph 7A of the Order is not in dispute.

Paragraph 7 (A)

Timing

367. In respect of paragraph 7 (A) CICC says that it is not in breach because the order never came into effect before the time specified for its performance. The relevant dates are these:

2008	
21 October	Order Made
5 November	Effective Date of the Order. Stay granted until 12 November by Court of Appeal
11 November	**21 days after 21 October**
12 November	Stay expires
13 November	Court of Appeal decision
26 November	**21 days after 5 November**
3 December	**21 days after 12 November**

368. CICC submits that the order required compliance by 11 November; but, being stayed until 12 November, it never became effective at any time during or by which it had to be performed. CCIC cannot therefore have been in breach or contempt of it. Where information is required within a specified time, there is no such thing as a continuing contempt. Either the information is provided within the time stipulated or it is not. If it

is not, the contempt is committed by the non-compliance within the period. There is no further contempt (as opposed to a failure to purge the original contempt) because the information is not provided later. What the judgment creditor should have done was to obtain from the Court of Appeal an order that the information be provided by a revised date. Not having done so he cannot establish a breach.

369. This is an unattractive point. It is not, in my judgment, well founded. It was apparent when the order was made that the date when it was to come into effect was not the same as the date upon which it was made. CCIC argues that when the order is expressly dated 21 October 2008 the requirement of compliance "*within 21 days of the date of the Order in respect of all Contract Revenues*" must mean that the order is to be complied with within 21 days from when the order was made.

370. I do not agree. Para 7 (A) of the Order requires the provision of information within a period of 21 days from a date. Such an order comes into effect when the time for the provision of the information starts to run. It is only when that happens that it has any effect at all. In the light of that the "date of the order" must be the *operative* date of the order i.e. the date when the order becomes effective (in the event 12 November), and not the date when the order was made.

371. Mr Lewis submitted that, at the lowest, the order was ambiguous and, therefore, the judgment debtors must be given the benefit of the doubt. I do not regard the order, when properly analysed, as ambiguous. But, if that is too robust a view, then, as it seems to me the ambiguity does not assist CCIC. The critical question must be as to the date by which the information had to be provided. If no stay had ever been granted it would have been necessary to decide whether that date was 11 November (21 days after the date when the order was made) or 26 November (21 days after the effective date). To give CCIC the benefit of the doubt would lead to taking 26 November as the answer. CCIC cannot have it both ways, so that, for the purpose of deciding the last date for compliance you take 26 November; but, for the purpose of deciding whether there has been contempt you take the last date for compliance as 11 November. If resort is to be had to this principle it must, as it seems to me, apply to *extend* the date for performance. The fact that there was a further extension from 5 November does not alter the position. On this footing also the relevant date from which the 21 days start is the effective date of the order.

372. Accordingly, CCIC was bound to supply the information within 21 days of 12 November. In failing to do so it was in breach. I regard the judgment creditor's contention to this effect as open to him on the application notice by reason of the words "*and thereafter*". If I had taken a different view I should have granted permission to amend the notice.

373. In any event, on **28 November 2008,** the Receiver wrote to CCIC in Athens and Beirut with a copy to Olswang enclosing a copy of the CCIC Receivership Order. In his letter he said:

> *"Pursuant to Section 7 (A) of the Order I should be grateful to receive the information and documents detailed as a matter of urgency.*
>
> *Without delay, please send written confirmation to third parties regarding my appointment as receiver in a letter in the form of Schedule C of the Order.*

Please send me a copy of such documentation in accordance with paragraph 7 (B) of the Order to me to confirm you have met your obligations under the Order".

374. Under paragraph 7 (A) CCIC was bound to provide this information within 7 days of the request. It has failed to do so and, unless, as is alleged, there are no Contract Revenues as defined, it is in breach of the order.

Abeyance

375. CCIC relies on the correspondence which followed 21 October 2008 as showing that the request fell into abeyance.

376. On **13 November 2008,** Simmons & Simmons wrote to Olswang to say that, in the light of the judgment of the Court of Appeal, it was clear that any failure to provide information required by the Freezing Orders and the Receivership Order would constitute a contempt; but that if the judgment debtors undertook by 4 pm on 14 November 2008 that they would provide the information within 7 days their client would not contend that the judgment debtors were in contempt by failing to provide the information by the dates set out in the relevant orders.

377. On **20 November 2008,** Olswang replied to say that the judgment debtors' position was that they were prohibited by the 14 April 2008 orders from providing the information. They indicated their understanding that the Beirut Court had indicated that it would hand down judgment on 30 January 2009 on Mr Masri's application to set aside the 14 April 2008 orders so that on that date a decision would be given as to whether the provision of information to Mr Masri prior to the grant of *exequatur* to the English order in Lebanon would constitute a fraudulent circumvention of Lebanese Law and a breach of the principle of judicial sovereignty.

378. On **28 November 2008,** the Receiver sent the letter referred to in para 369 above. On **5 December 2008**, Olswang replied. They repeated their clients' inability to provide the information or send the letters requested because of the 14 April 2008 orders. They enclosed copies of their letters of 29 October and 20 November to Simmons & Simmons.

379. On **8 December 2008** Olswang informed Simmons & Simmons that it remained their instructions that CCIC's Contract Revenues were subject to security in favour of its lending banks and that its finance arrangements imposed contractual obligations on CCIC to have any receivables paid into specified accounts and they referred to the para 7(D) exclusion. On **11 December 2008** the Receiver acknowledged receipt of that letter and said that he would revert in due course. There appears to have been no reply from him to that letter thereafter.

380. It was after that that the judicial administrator was appointed. On **16 January 2009,** the unsuccessful appeal against the May 2008 order of Steel J was heard and judgment was handed down on **6 February 2009**. On **18 May 2009** the Receiver wrote to Olswang in relation to CCOG saying that "*in order to ensure that **CCOG** and its representatives respond to my request I consider it necessary to obtain the variations to the order as outlined in Simmons & Simmons letter dated 20 February*

2009[23]*. Please note that I do intend to apply to Court to seek the variations of the Order and should be grateful to receive your clients consent to the variations*". That application which, if it had been made, would have been to vary para 15 of the CCOG Receivership Order so as to make it similar to para 15 of the CCIC Receivership Order, or to omit it altogether, was never made.

381. On **11 June 2009,** Olswang replied to the Receiver saying that it was not clear from his letter what the substance of the proposed application would be and asked for clarification of what was proposed and invited him to desist from any such application. On **2 October 2009,** the Receiver replied, saying, *inter alia*, that he had reconsidered the position and had suggested that it would be sensible for Mr Masri's legal advisers to make the application for the variation of the CCOG Receivership Order as they had a better understanding of the legal issues involved.

382. CCIC was not absolved from compliance with the Receiver's 28 November 2008 request by reason of the correspondence. The request was complete on 28 November 2008. I reject the submission that, in the absence of a response to the points in the Receiver's letter of 5 December 2008, in which Olswang stated their clients' reasons for non compliance, relying on the same contentions as had already been unsuccessfully deployed before Tomlinson J with a view to preventing the Receivership Order from being made, the request or the request process was incomplete. The request was never withdrawn; nor was it abandoned.

Para 15 of the CCIC Receivership Order

383. Next, Mr Lewis QC submitted that the judgment debtors had not proved that the facts fell within the first sentence of para 15 of the CCIC Receivership Order:

> *"Nothing in this order shall, in respect of assets located outside England and Wales, require the Defendants and/or their directors or officers to disobey the orders of any court of competent jurisdiction in the jurisdiction in which those assets are located. "*

384. The assets in questions are Contract Revenues due from clients in various countries in the Middle East, Kazakhstan, Azerbaijan, Equatorial Guinea, Botswana, Namibia, and Yemen. The submission, as I understood it, was that if monies were due from a client in, say, Qatar, the Qatar Court might recognise the Lebanese Court as a court of competent jurisdiction in relation to the debtor. If so, the Lebanese Court was a court of competent jurisdiction in Qatar. Therefore, unless such recognition was shown by the judgment creditor not to be the case under the laws of the countries of the specified clients, para 15 would be engaged.

385. I disagree. Para 15 of the CCIC order refers to courts of competent jurisdiction in the jurisdiction in which those assets are located. That means that the court must be physically within the location of the asset in question. It is irrelevant whether a Court in, say, Qatar would or would not recognise a court outside Qatar as a court of competent jurisdiction for some purposes. Since this is an order of the English Court

[23] The second letter of that date is in the material before me. But the relevant letter appears to have been the first letter of that date.

the location of the assets to which it refers must be determined by English law. The Contract Revenues are not located in Lebanon since all the debtors are outside Lebanon. Nor will payment be made in the Lebanon; as is apparent from the location of the debtors and the projects and the fact that no Lebanese bank account of CCIC was disclosed in the affidavits of assets.

386. Mr Lewis QC also submitted that the reference to "*assets located outside England & Wales*" in para 15 must or could be taken as referring to the underlying debt which gave rise to the judgments against the judgment debtors in the first place, and that, because such debt was located in Lebanon, the relevant court of competent jurisdiction was the Lebanese court. I reject this submission which, if correct, would achieve the opposite of that which Tomlinson J and the Court of Appeal sought to achieve. The assets to which the expression refers are those potentially caught by the operative provisions of the order.

Para 7(B)

387. In relation to 7 (B), CCIC relies on the submission, which I have rejected, that the request fell into abeyance and the submissions in relation to timing which I have also rejected. The Receiver requested that confirmation of his authority be sent by CCIC to its clients but this has (I infer) not occurred because no copies of any such letters have been provided, as the order requires.

Are there any Contract Revenues?

388. CCIC submits that there are no Contract Revenues falling within 7 (D). I disagree.

389. Para 2 of the Order appoints the Receiver to receive:

> *"in the name of and on behalf of CCIC all amounts due and/or payable to CCIC after the date of this Order from any of the entities set out in the attached Schedule B to this Order in relation to the projects described in the Schedule B (such amounts to be referred to as "Contract Revenues") and to hold such Contract Revenues for the account of this action and to the order of the Court**, save that this paragraph shall not apply to any sums received by CCIC or any person acting on its behalf which fall within the saving in paragraph 7 (D) below**."*

390. Paragraphs 7 (A) and (B) impose obligations to give information in relation to the "*Contract Revenues*", including the production of the contracts from which they are derived. Paragraph 7 (B) provides for a letter to be sent in relation to the Receiver's rights in relation to those Revenues. They are defined by para 2 as:

> "*amounts due and/or payable to CCIC after the date of this Order from any of the entities set out in the attached Schedule B to this Order in relation to the projects described in the Schedule B*".

Neither the saving provision in paragraph 2, nor the provisions of paragraph 7 (D) affect any change in the definition of Contract Revenues. What paragraph 7 (D) does do is to provide an exception to the obligation to pay what are in fact Contract Revenues to the Receiver where any such payment is inconsistent with a subsisting

contractual obligation. That distinction is apparent from the wording of paragraphs 2 and 7 (D) and also from paragraph 7 (B) which prescribed an alternative letter in the case of Contract Revenues in relation to which CCIC demonstrated to the satisfaction of the receiver that receipt by him directly would be inconsistent with a contractual provision requiring that payment be made to a particular bank account.

391. Since, however, the amounts payable by the Schedule B entities are due to CCIC under the relevant contracts and payable to CCIC bank accounts (and, thus, to CCIC) they are Contract Revenues and the Receiver is entitled to information about them under 7 (A) if he asks for it, as he did, and to have the letters provided for by 7 (B) sent. There can be no doubt that there were and continued to be monies due under the Schedule B contracts which were all high value current projects.

392. A more difficult question is whether the saving provision in 7 (D) is applicable. If so, CCIC would not be in breach of paragraph 7 (D).

393. In his 6th witness statement, Mr Marina says that CCIC and CCOG are in difficulty in providing details about the conduct of their business without disclosing further information about the companies and thus breaching Lebanese law and exposing their directors to criminal liability. He gives, however, a general explanation of CCIC's business as involving construction contracts typically lasting for at least 2 to 4 years. Its business model is, he says, one widely used in the construction business in the Middle East:

> *" 18.1 CCIC's business involves construction contracts which typically last 2 to 4 years. Its business model is just the same as that used widely in the construction business in the Middle East. In such a model, the project is financed by banks who have* ***rights of set off*** *against the construction contractor's receivables. When payments are made by the clients under the construction contract they are paid into accounts with the bank (or one or more of the consortium of banks) which have provided the project finance, where they are subject to a set off. While, as I have said, I cannot say anything about specific CCIC bank accounts, an independent observer familiar with this model of finance would have no difficulty concluding that bank accounts such as those subject to the Second Freezing Order, would form part of this financing arrangement and would be subject to security in favour of the banks who finance the projects.*
>
> *18.1.1 During the course of the construction project, the contractor has to expend funds in paying staff, suppliers and sub-contractors. In the jurisdictions in which CCIC's construction projects take place, these persons usually have preferred creditor status in respect of the receivables due or received from CCIC's clients, i.e. they rank ahead of unsecured creditors. In addition, under the "direct agreement" system that is used for large construction projects in the Middle East, the obligation of the contractor (i.e. CCIC) to fulfil its obligations under the project, including payment of employees and third parties out of the receivables paid into bank accounts, is enforced and directly controlled by the bank. Thus, the "direct agreement" is described as follows in literature about the construction business in the Middle East:*

> *"The direct agreements are between an agent bank, the project company and the counter party to each major project contract. Their purpose is to protect the lenders against the loss of their investment if the project company defaults under one of the key contracts it has entered into and, as a result, termination of that contract is threatened. The direct agreement provides the lending banks with a direct contractual link with the project company's key contractual counterparties ...Project financing relies on the future project cash flows to service the debt. From the lender's perspective, maintaining the major projects contracts is critical to the ability of the project company to repay the debt. Lenders will monitor progress under all the key project contracts and reserve for themselves the ability to 'step in' to a project contract and work out any problems under that project that the project company cannot resolve itself. Under a direct agreement, the lenders will typically require the contractors to provide notice of any potential defaults under the project contract; allow a representative of the lenders, usually a lender-controlled company, to 'step in' to the place of the project company under the project contract, and assume its rights and obligations; allow an additional curer period for that representative to remedy any outstanding project company defaults that would otherwise allow the counterparty to terminate the contract; and acknowledge the lender's security over the project contract" ("Direct Agreements: Necessary, But Evil?", Construction Law UAE, March 2008, p. 4. at "EJM10", pp.24 to 33).*

394. In his 3rd affidavit of 1 July 2008 he expanded on that explanation in these terms:

> *"42. I explained in paragraphs 18.1 and 18.1.1 of my sixth statement how CCIC's project receivables are subject both to preferred creditor status in favour of employees, suppliers and sub-contractors and to security in favour of the project finance banks, which collect the receivables on CCIC's behalf. To expand on that explanation, receivables are paid by customers into accounts* ***in the name of CCIC. CCIC is contractually obliged by its finance arrangements with its banks to require payment into those accounts****. CCIC fulfils that obligation either by including it as a requirement in the relevant contract with its customer or by an irrevocable letter of instruction sent to the customer. Both the receivables and those collection accounts are subject to* ***assignments by way of security*** *in favour of the banks. The payments to employees, suppliers and sub-contractors are then made by one of two methods. Either (a) the bank simply makes the necessary payment to the third party directly, or (b) the bank allows the necessary amount to be transferred from the collection account to another account (sometimes held in another country) from which CCIC makes the payment, though the bank retains a right to prohibit payments out of that payment account.*
>
> *43. On one reading, the bank's security rights are therefore such that, while projects are ongoing, there are no "amounts due and/or payable to CCIC", to use the wording in paragraph 2 of the draft order provided by Simmons & Simmons to Olswang on 23 June 2008 (EJM11, p. 35), because the receivables are payable to the banks."*

395. At para 217 of his 2nd affidavit, Mr Andrew referred to the arrangement referred to by Olswang in their letter of 8 December 2008 whereby Contract Revenues were subject to security in favour of lending banks under financial arrangements which imposed obligations on CCIC to have any receivables paid into specific accounts in the following terms:

> "*217. Such arrangements made in relation to the funding for the project to construct the Baku-Tbilsi-Ceyhan pipeline have been disclosed in the Azeri proceedings. All sums payable by BTC Co (CCIC's counterparty in Azerbaijan) were assigned to CitiBank in Bahrain in 2002. As I set out below, the Azeri Court has recently held such assignments to be valid. Mr Nasser has told me that similar arrangements exist in relation to each of the other projects listed in Schedule B to the CCIC Receivership Order (either under specific financial arrangements for a specific project, or under a general financial arrangement covering a number of different projects. Accordingly, all sums due and payable in respect of such projects fall outside the monies which the Receiver has seen appointed to collect."*

396. In his report to the Lebanese court of 12 November 2010, Mr Joujou informed the court that he had not sought to interfere in any payment by CCIC's construction contract counterparties to CCIC's financial institutions and that, since his appointment, save for a single payment which had not yet been made, the payments had been made to CCIC's banks under financing arrangements and facilities "*and therefore outside the requirements of the order*".

397. Mr Lewis also drew my attention to an e-mail sent by the judicial administrator on 4 March 2009 to BTC's legal counsel, which had indicated its intention to pay into the Cayman Islands courts amounts due under the relevant contract. The judicial administrator said that, as BTC should be aware "*the proceeds due by BTC to the Company under this contract have been assigned to Citibank and BTC has acknowledged receipt and its acceptance of this assignment of the Contract proceeds*". He put them on notice that any payment into Court would be made at BTC's risk and in breach of BTC's obligations including under the assignment letter that affect rights of the Citibank.

398. He also referred me to a letter from Broadhurst Barristers LLC in Grand Cayman, on behalf of CCIC to Ogier on behalf of the Receiver in Cayman. In that letter they explained that works under the contract to build the Azeri section of the BTC pipeline were financed with assistance from facilities provided by Citibank from its Bahrain branch. Citibank NA Bahrain agreed to provide a $ 30 million framework facility to CCIC and other companies in the CCC Group. Within that framework CCIC requested Citibank to issue an advance payment guarantee in mid 2002. The contract was made on 5 August 2002. After its execution Citibank requested that all payments due from BTC be assigned to it and paid to its account. On 12 August 2002 CCIC and Citibank agreed that sums due from BTC would be assigned to Citibank. The assignment was evidenced in a letter from CCIC to BTC dated 2 October 2002 which recorded that (i) the assignment was absolute; (ii) it related to all payments due under the contract and (iii) it was not made by way of charge, since no charge was mentioned and there are no other circumstances to suggest that it was. Formal notice of the assignment was given to BTC by CCIC's letter of 2 October 2002. The letter instructed BTC to make a payment to a specified account of Citibank. It also

confirmed that payment to Citibank would be the sole valid discharge of the obligations BTC owed under the contract. On 29 November 2002 BTC formally acknowledged notice of the assignment and confirmed that it accepted and expressly consented to the assignment and said that until further notice all future payments would be made to Citibank Bahrain. On 9 December 2002, CCIC forwarded to Citibank the letter of assignment sent to BTC and BTC's acknowledgment of the same and confirmed to Citibank that CCIC would not at any time or for any reason instruct the Client to pay any monies to an account other than "*our account ..with Citibank in Bahrain*". The letter referred to the fact that on 28 February 2009, the Lebanese court had confirmed that the judicial administrators were entitled to provide documents and evidence in foreign proceedings provided it was in CCIC's interest to do so.

399. Mr Lewis submits that this material shows that there are no Contract Revenues from the projects in Schedule B which fell to be paid because all payments thereunder fall within the exclusion in para 7 (D); or, in any event, that the judgment creditor, on whom the burden of proof lies, has not shown that that cannot have been so.

400. Mr Kealey submits that Para 7 (D) sets out a procedure that must be followed if reliance is to be placed on its saving provisions. The procedure requires disclosure of the contracts in question. Not having provided the information called for by Para 7 (D), CCIC cannot rely on the exception by a combination of (i) reference to the inhibitions imposed on it by Lebanese law (relied on as a reason why the Court should draw no adverse inference from the lack of evidence from CCIC); (ii) general observations designed to reveal what is supposed to be hidden without appearing to do so; and (iii) reference to what has been selectively revealed in other proceedings.

401. I do not agree. However unmeritorious the point may be, the exception is not made conditional on the provision of the information. Failure to provide information (which is not the contempt presently alleged under this sub-paragraph) may entitle the Court to draw adverse inferences but it does not disentitle CCIC from relying on the saving. Further, once there is evidence or material which raises an issue as to the effect of the saving provision (as there is), the legal burden of showing that the exception is inapplicable rests with the judgment creditor, unless there is some statutory provision to the contrary: *Woolmington v DPP* [1935] AC 462,481; *R v Hunt* [1987] AC 352. There is none.

402. I am satisfied, however, on the evidence before me, that CCIC, by itself or its agents, has received Contract Revenues which are not revenues payment of which to the Receiver would be inconsistent with a contractual obligation owed to independent third parties. The fact that the incidence of the burden of proof requires the judgment creditor to negate the application of the exception does not require assertions that the exception applies to be taken at face value. The tenor of what is said by CCIC is that it has arrangements with banks which require payments to be made to specific accounts *in the name of CCIC*, such that the banks will have rights of set off, and that the Contract Revenues and accounts are subject to assignments by way of security in favour of the banks. That is consistent with what appears in the 1st Affidavit of Mr Grant dated 18 October 2010 ("the Grant Affidavit"). That does not mean that payment out to the Receiver of any sum is necessarily inconsistent with whatever contractual arrangements have been made. The accounts are in CCIC's name. The fact that a bank may have rights of set off against a customer's account or that the account

is charged by way of security does not without more mean that nothing can be paid out from it by CCIC without the bank's consent.

403. CCIC has chosen not to put the full picture before me and not to produce a single example of any applicable banking agreement, even in redacted form, notwithstanding the obligation to provide such documentation imposed by para 7 (D) of the order. Mr Chedid told me he could not give the court any information about the contracts which CCIC had actually entered into with its bankers because of the orders of the Lebanese Courts and because he was the debtors' lawyer. Instead CCIC has made generalised reference to business models in the Middle East which are said to be the same as its own. Those references do not go so far as to say that any payment to the Receiver would be inconsistent with the arrangements made with the banks in every case, a state of affairs inconsistent with the fact, as confirmed by Mr Chedid, that the contracts were profitable. I am sure that if there was such a provision in the arrangements I would have been told of it "*in order to ensure there is no risk that the court could be left with a misleading impression if the documents exhibited were not made available to the court*". The judgment debtors do not appear to have any difficulty in producing information of this kind when it suits their interests to do so. Their failure to do so can only sensibly be attributed to the fact that information which would establish their contention does not exist. I decline to entertain a doubt which, on the evidence before me I do not have, on the supposition that, if CCIC had chosen to produce the relevant documentation, it might have led to a different conclusion.

Allegation 5(B): That the proceedings brought by CCIC in Azerbaijan on 15 April 2009 constitute a contemptuous interference with the rights of the Receiver and therefore with the CCIC Receivership Order.

Date: *15 April 2009 and thereafter*.

404. Mr Masri began proceedings in the Cayman Islands seeking, in effect, the recognition of the CCIC Receivership Order in the light of information which had been received from CCIC pursuant to the Orders made by Gloster J and Flaux J for affidavits of assets. This included the fact that CCIC was involved in the construction of the Baku-Tbilisi-Ceyhan Pipeline, a project which was among those included in Schedule B to the CCIC Receivership Order where BTC Co. ("BTC") was identified as the CCIC client.

405. Mr Masri discovered that BTC was incorporated in the Cayman Islands. On 18 November 2008, he obtained an Order recognising the CCIC Receivership Order and authorising the Receiver to collect the revenues due to CCIC from BTC[24].

406. The Cayman Islands Order was materially identical to the CCIC Receivership Order. BTC understood the order to require it to pay any amounts that fell due and payable by it to CCIC after the date of the Order into the Cayman Court or into a bank account in Cayman. Since a sum of $750,000 was to fall due and payable by BTC to CCIC after the date of the Cayman Court Order, BTC took legal advice as to what it should do. It decided that the safest course was to pay that amount into the Cayman Court. BTC gave CCIC's (then) Cayman Islands counsel notice of this proposed course of

[24] This Order was subsequently set aside on the procedural basis that there were no grounds for service out of the jurisdiction of the Cayman Court, although the money paid into court (see para 410) by BTC Co. remains in court (Bartlett 1st, para. 77).

action on 26 February 2009. Mr Joujou responded by emails to BTC's legal adviser dated 4 and 30 March 2009, objecting to BTC's proposal on the basis, as he alleged, that the monies owed and payable to CCIC by BTC had been assigned by CCIC to Citibank.

407. Since, however, CCIC's standing payment instructions to BTC on which BTC had always acted required payment into a CCIC account with Citibank – and not to Citibank – it was unclear to BTC whether there had truly been an assignment. Therefore, on 6 April 2009 BTC paid the sum it owed to CCIC into the Cayman Court, see the Grant Affidavit: paragraphs 11-18.

408. CCIC maintains that the Contract Revenues due from BTC in respect of the construction of the BTC Pipeline had been previously assigned to Citibank in 2002, as a result of which they are not caught by the terms of the CCIC Receivership Order (Andrew 2nd, paras. 217, 236ff.) or by the terms of the Cayman Islands Court Order. The revenues due to CCIC from BTC were, in fact, disclosed in its affidavit of assets.

409. On 7 March 2009, the judicial administrator made an application to the Lebanese Court to authorise him to take all the necessary steps to preserve the interests of CCIC and to ensure "*the respect of its obligations towards City (sic)Bank*". To this application the First Instance Court of Beirut acceded.

410. It might have been thought that CCIC would apply to the Cayman Court, since that is where the money had been paid in and where BTC was incorporated. The asset constituted by the Revenues was either located in Cayman, where BTC was incorporated, or, perhaps, England, where any arbitration would probably take place. As it was, on **15 April 2009,** CCIC commenced proceedings against BTC in the Baku Local Economic Court No 1 of Azerbaijan, notwithstanding that the relevant contract is governed by English law and subject to LCIA arbitration. On **21 April 2009,** it obtained an *ex parte* Order restraining BTC from paying the amounts it owed to CCIC to any third party, and, in the event that BTC had already paid the money into court in Cayman, ordering BTC to inform the Cayman court that it should not be transferred to Mr Masri. The sum due from BTC to CCIC had in fact already been paid into court in the Cayman Islands on 6 April 2009.

411. In **June 2009,** CCIC successfully applied to join the CCIC Receiver as a party to the Azeri proceedings. Mr Masri suggests that this was in order to found jurisdiction in the face of the London Arbitration clause in the contract between CCIC and BTC. CCIC submits that it was because the Receiver was a claimant to the monies. Moreover on **26 May 2009,** Ogier on his behalf had said that, if CCIC continued with these proceedings, the Receiver would have no option but to consider intervening. BTC and the CCIC Receiver challenged the jurisdiction of the Baku court but these challenges have failed.

412. On **16 April 2010,** the Azeri Court held that the assignment of the relevant right to receive the BTC Contract Revenues was valid and that the letter dated 2 October 2007 sent to BTC by CCIC about the assignment of the right to receive payment to Citibank was a contract between CCIC and BTC to the benefit of Citibank, that CCIC could claim under it, and that CCIC was acting in accordance with the law when seeking execution of that contract.

413. The Court ordered that the sum of $ 750,000 be "*withheld from*" BTC "*to the benefit of CCIC*". This looks as if it was an order for payment to CCIC. According to the advice of CCIC's lawyers in Azerbaijan, Baker & McKenzie, as related by Mr Andrew, that was not what the Court was ordering. It would have been inconsistent with the finding of a valid assignment. Rather the court was giving effect to the assignment by effectively holding that BTC had not yet discharged its obligation to pay. Only the upshot of that advice has been revealed.

414. Mr Masri does not accept the conclusion reached in those proceedings to which he was not party, that there was a valid absolute assignment of the BTC Contract Revenues, at least to the extent that any such assignment is said to have affected the Receiver's rights under the CCIC Receivership Order. In this respect Mr Masri relies on the following:

i) Notwithstanding any purported assignment, absolute or otherwise, BTC has throughout made payment to CCIC's bank account maintained with Citibank (who provided BTC with the account details), not to Citibank itself: see paras 14 and 15 of the Grant Affidavit.

ii) The Order of the Azeri Court obtained by CCIC stated that the relevant sum due from BTC "*shall be withheld from [BTC] to the benefit of [CCIC]*", i.e. it required BTC not to pay the relevant Contract Revenue to Citibank (the party to whom it had supposedly been absolutely assigned) but to CCIC. Citibank – the party on CCIC's case in whose favour this assignment is supposed to have operated – was surprisingly neither a plaintiff nor defendant in the Azeri proceedings.

iii) The documents which were supplied to BTC did not make clear to BTC whether there had been a true assignment or merely an alteration in payment instructions, see paragraph 17 of the Grant Affidavit.

iv) The Azeri Court came to its decision without hearing from BTC, solely on the basis of submissions from CCIC at a hearing of which neither BTC or the Receiver was given any notice: see paragraph 34 of the Grant Affidavit.

415. The evidence contained in Mr Andrew's 2nd affidavit is based on his and Olswang's instructions. The relevant documents have not have been exhibited and the evidence of Mr Grant of BTC to the Cayman Court indicates that they are at best ambiguous, see paragraph 17 of the Grant Affidavit.

The judgment creditor's submissions

416. The judgment creditor submits that, as a matter of law, it is a contempt to seek to interfere with or dispossess a receiver of property which he has been directed by the Court to receive. There is no right to resort to self-help without the permission of the Court, see *Arlidge, Eady & Smith on Contempt* (3rd ed., 2005) at paras. 11-318ff;

Hawkins v. Gathercole (1852) 1 Drewry 12; *Ames v. The Trustees of The Birkenhead Docks* (1855) 20 Beav. 332

417. As CCIC was fully aware the Receiver was specifically directed by this Court to receive revenues which included those due in respect of the BTC Pipeline from BTC, even if the Contract Revenues represented by the sums due to CCIC from BTC had properly been assigned to Citibank prior to 21 October 2008 – something that was never suggested to either Tomlinson J or the Court of Appeal in connection with CCIC's opposition to the CCIC Receivership Order and the inclusion of the BTC pipeline project in Schedule B – the proper course, Mr Kealey submits, was for CCIC to apply to this Court, either for a further Order excluding the BTC Contract Revenues from the scope of the receivership, or for an Order permitting the commencement of the Azeri proceedings.

418. That would be so even if there was a valid contractual obligation in accordance with the saving in paragraph 7(D) of the Order since, by paragraph 2 of the Order, the Receiver was appointed to receive all amounts '*due and/or payable*' to CCIC from BTC. As the Grant Affidavit confirms, the BTC Pipeline Contract Revenue was not only payable to CCIC, it was paid to CCIC, albeit at an account maintained at Citibank. The commencement by CCIC of the Azeri proceedings was therefore a contumacious interference in the receivership of its assets, namely the BTC Pipeline Contract Revenues, as directed by the Order of Tomlinson J of 21 October 2008. This was made clear to CCIC at the time in correspondence, both on behalf of the Receiver and by those acting for Mr Masri (Bartlett 7th, para. 146).

419. The Azeri proceedings were, it is submitted, not a *bona fide* attempt to resolve a dispute about entitlement to a debt but an attempt to interfere with the Receivership by creating a situation of double-jeopardy for the third party debtor (here BTC) so as to seek to ensure that the money paid into Court in Cayman would be paid back out again to BTC (an application which BTC has now made[25]), and thereafter onto CCIC. In any event, the permission of the English court was not obtained to commence the proceedings.

420. If the Azeri proceedings are permissible, then, it is submitted, whenever the Receiver obtains a third party debt order anywhere in the world in execution of his functions under the Receivership order, it will be open to the judgment debtors to create a situation of double-jeopardy for the third party debtor by obtaining an order in the Courts of some other country, far from the centres of international commerce and litigation, requiring that the debt be paid to CCIC instead.

421. I do not accept that there has been a contempt by CCIC in bringing the Azeri proceedings. The Receiver was appointed to receive the amounts due and payable to CCIC but that was not to apply to any sums received by CCIC which fell within para 7 (D) because it would be inconsistent with any prior contractual obligation for the sums to be paid to the Receiver. Whether or not the sums in question are sums which ought not to be received by CCIC or, if received, ought to be paid to the Receiver depends on whether that condition is satisfied. It does not seem to me to be a breach of the order or a contempt to seek to establish before a foreign court that the condition is satisfied. That would be so even if the Order contained no para 15. But, if there

[25] This is the application in support of which Mr. Grant's affidavit was given.

were no such paragraph, success before the Azeri court would not necessarily constitute a defence to any claim of breach or contempt since the English Court might nevertheless conclude that the exception in para 7 (D) did not apply.

The authorities

422. The cases relied on are of a different character. In *Hawkins v Gathercole* (1852) 1 Drewry 12, a receiver was in possession of the tithes of the benefice of Chatteris Nuns of which the Reverend Gathercole was the incumbent for the benefit of the plaintiff. Mr Carrack obtained judgment against Gathercole and, by way of execution, procured the issue by the Bishop of Ely of a writ of sequestration. The sequestrator had not taken or received any funds. The writ of sequestration directed the person to whom it was addressed (who was the receiver) to collect, levy and receive all the profits of the living and to apply them for the benefit of creditors. The Vice Chancellor said:

> *"..it is quite clear that when the Court has appointed a receiver, it will not allow the possession of that receiver to be disturbed by anybody, however good his right may be; but the party thinking he has a right paramount to that of the receiver, or rather to that of the person who has got the appointment of the receiver, must, before he can presume to take any steps of his own motion, apply to this court for leave to assert his right against the receiver. That is a plain rule and a very necessary rule because if it were otherwise it would be impossible for this Court to administer justice between the parties…*
>
> *..it appears to me that the act in this case does amount to a disturbance of the possession of the receiver. Any tithe-payer, or any person liable to pay any of those dues which belong to the incumbent of the living, would be in this predicament... that there is a demand made upon him …for the payment by the receiver appointed by this Court, and at the same time a counter demand made upon him by a sequestrate appointed by the authority of the bishop of the diocese under the Queen's writ of sequestration issuing out of the Queen's Bench; and it is quite obvious that the moment the sequestrator appointed does anything whatever in the performance of the duty imposed on him by the sequestration that instant he actually disturbs, in point of fact, the possession of the receiver, and taking steps towards that end appears to me to be doing that which the Court would not permit. It appears to me, then, that Mr Carrack ought, before he issued the sequestration... to the bishop... to have come to the court stating the facts of the case, and asking leave to do it.,,*

423. In *Ames v The Trustees of the Birkenhead Docks* (1855) 20 Beav 332, a receiver was appointed at the suit of the mortgagees of the Birkenhead Docks of the rates and tolls of the dock. A judgment creditor of the trustees of the dock (who constituted a statutory body) proceeded to attach the tolls. This was held to be a contempt as being an interference with the possession of the receiver. The Master of the Rolls said:

> *"There is no question but that this Court will not permit a receiver, appointed by its authority, and who is therefore its officer, to be interfered with or dispossessed of the property he is directed to receive, by anyone, although the order appointing him may be perfectly erroneous; this Court requires and insists that application should be made to the Court, for permission to take possession of any property of which the receiver either has taken or is directed*

> *to take possession, and it is an idle distinction (which could not be maintained if it were attempted, which it is not by counsel at the bar although suggested by the affidavits), that this rule only applies to property actually in the hands of the receiver. If a receiver be appointed to receive debts, rents, or tolls, the rule applies equally to all these cases, and no person will be permitted, without the sanction or authority of the Court, to intercept or prevent payment to the receiver of the debts, rents, or the tolls, which he has not actually received but which he has been appointed to receive."*

424. In neither of these cases was the action of the alleged contemnor directed to determining whether on the facts an exception to the order appointing a receiver was applicable so that the receiver had no relevant rights. In each of them the acts complained of were steps taken by the alleged contemnor towards establishing a right paramount to that of the receiver (and not the existence of facts which would mean that he had no right) and to seizing for himself the assets which the Receiver was appointed to receive.

Conclusions

425. In short my conclusion is that Mr Masri has established the following in relation to the several allegations of contempt;

a. Allegation 1A: Proven in relation to the March 2008 sale but not otherwise.

b. Allegation 1B Not proven

c. Allegation 1C Proven

d. Allegation 2 A Proven

e. Allegation 2 B Proven

f. Allegation 2 C Proven

g. Allegation 2 D Not proven

h. Allegation 2 E Proven

i. Allegation 2 F Not proven

j. Allegation 2 G Proven

k. Allegation 3 Proven

l. Allegation 4 Proven

m. Allegation 5 A Proven

n. Allegation 5B Not proven

Mitigation

426. I turn now to consider the extent to which any of the contempts that I have found proved are mitigated by the circumstances in which they occurred. The principal matter upon which the judgment debtors rely is that they have been constrained by the orders of the Lebanese Court and, since the appointment of the judicial administrator, have had no choice in what shall be done or not done by them.

427. Powerful though these considerations might be in other contexts, I regard them as of very little weight in the extraordinary circumstances of the present case. Such dilemma as the judgment debtors may face is entirely of their own creation. They have deliberately refused to honour the judgments of this court, to whose jurisdiction they have submitted, which they have always been able to pay, and which the board could have decided to pay at any time in 2007 or 2008. Although proclaiming themselves not to be liable to Mr Masri they have declined to take advantage of the permission to appeal granted to them by the Court of Appeal because they are unwilling to comply with the condition that they should provide security for the claim. Members of the family have resigned as directors in favour of nominees in order, as I infer, to distance themselves from the judgment debtors. Blocking orders have then been obtained at the behest of the judgment debtors with a view to ensuring that the judgment creditor is deprived of information which might enable him to secure payment of what is due. When the nominee directors found themselves in a position where they might face sanction for contempt they resigned. They then sought the appointment of a judicial administrator, the application being made by Mr Chedid, the judgment debtor's lawyer at the judgment debtors' expense, and with no objection from the shareholders, with a view to holding a general meeting which the shareholders then declined to attend.

428. I am quite satisfied as was Gloster J – see her decision in relation to the Third Receivership Order [2011] EWHC 409 (Comm) – that the failure of the shareholders to elect a new board leading to the application to the Lebanese Court for the appointment of judicial administrators by Mr Chedid, the lawyer of the judgment debtors and at their expense, followed by the failure of the shareholders to attend meetings summoned to elect new directors (such an election being the stated primary aim of the judicial administration) was part of a deliberate strategy of the judgment debtors and their controlling shareholders designed to frustrate any attempt at enforcement and to render the judgment debtors judgment proof. The shareholders have shown that they intend to keep the companies without an elected board. I have no doubt that this is because it is in their interests to have them under judicial administration because it enables the companies, through the judicial administrator, to secure the type of orders that the judicial administrator has obtained and to contend that, because of them, this court either cannot or should not do anything about the breach of its orders by any process of contempt.

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.

432. As I have previously indicated I would do, I shall now hear any submissions that the contemnors and the judgment creditor wish to make on the sanction that I should impose in the light of the contempts that I have found established.