In The Supreme Court of Bermuda

CIVIL JURISDICTION

(Commercial List)

2008: 142

IN THE MATTER OF THE JUDGMENTS (RECIPROCAL ENFORCEMENT)

ACT 1958

AND IN THE MATTER OF JUDGMENTS AGAINST CONSOLIDATED

CONTRACTORS INTERNATIONAL COMPANY SAL AND CONSOLIDATED

CONTRACTORS (OIL AND GAS) COMPANY SAL OBTAINED IN THE HIGH

COURT OF ENGLAND AND WALES DATED 15 JUNE 2007, 5 OCTOBER 2007,

11 FEBRUARY 2008 AND 9 APRIL 2008

BETWEEN:

MUNIB MASRI

Applicant/Judgment Creditor

-v-

CONSOLIDATED CONTRACTORS INTERNATIONAL COMPANY SAL

Respondent/Judgment Debtor

-and-

TEYSEER CONTRACTING COMPANY *WLL*

Intervenor

RULING

(APPLICATION BY INTERVENOR TO SET ASIDE EX PARTE APPOINTMENT OF RECEIVER)

Date of Hearing: February 15-17, 2010

Date of Ruling: March 22, 2010

Mr. Jan Woloniecki and Mr. Peter Dunlop,

Attride-Stirling & Woloniecki, for the Intervenor

Mr. Beltrami QC of Counsel & Mr. Ben Adamson,

Conyers Dill & Pearman, for the Judgment Creditor

Mr. David Kessaram, Cox Hallett & Wilkinson, for Qatar Shell

Introductory

1. The walls of the legal temple are shaken but not shattered when recalcitrant judgment debtors launch a concerted attack on the judgment enforcement armoury of the courts. The challenge for courts and judgment creditors is to devise effective enforcement techniques which neither unduly prejudice innocent third parties nor undermine the moral fabric of the law. The complexity of enforcement problems is only magnified in the cross-border context which engages questions not just of local law but of private international law as well.

2. The Bermudian courts have never seemingly had to grapple with a contested receivership application such as the one presently before this Court. The present action commenced when the Judgment Creditor, a substantial Palestinian businessman, applied to register two English judgments for roughly $50 million ("the English Judgments") here under the Judgments (Reciprocal Enforcement) Act 1958. The English Judgments awarded the Judgment Creditor monies claimed by him under a 1992 Agreement relating to the Masila Oil Concession in Yemen. The Judgment Debtor, ("CCIC"), is a company incorporated in Lebanon but has its principal office in Greece. It is said to be controlled by a Mr. Khoury, the Palestinian former business partner of the Judgment Creditor. The Order sought by Originating Summons dated June 11, 2008 was granted by me on an ex parte basis on June 13, 2008.

3. On the same date, Mark W.R. Smith of Deloitte was appointed as Interim Receiver against the Judgment Debtor "*to receive all amounts due to CCIC from Qatar Shell GTL Limited (such amounts to be referred to as 'Contract Revenues')*". On August 15, 2008, Qatar Shell, a Bermuda-registered company, was ordered to produce documentation relating to the Joint Venture in which CCIC was a participant. On August 26, 2008, Teyseer Contracting Company ("Teyseer"), a Qatari company, applied for leave to intervene. Upon the Receiver's undertaking to take no steps to enforce the 'Interim' Receivership Order without further leave of this Court, on August 28, 2008 Teyseer was

granted leave to intervene in the proceedings and directed to supply the Receiver with a confidential affidavit in support of its application.

4. On January 22, 2009, I refused Teyseer's application for security for costs from the Plaintiff. On March 24, 2009, I gave directions for the filing of factual evidence and expert evidence on Swiss law and fixed the hearing of Teyseer's application for a two-day hearing commencing on June 10, 2009. The Judgment Creditor undertook only to use documents received from Teyseer for the purposes of the present proceedings, unless otherwise agreed. Although the application was formally an intervention summons, it was common ground that Teyseer's substantive application was to discharge the Receivership Order on the grounds that it (and not CCIC) was solely interested in the Contract Revenues.

5. On March 26, 2009, at a hearing attended by the Judgment Creditor and CCIC, the June 13, 2008 Receivership Order was amended by deleting the word "interim" from paragraph 1 and, *inter alia*, by requiring CCIC to provide discovery by list with copies in relation to (a) specified classes of documents, within 14 days, and (b) the Contract Revenues, within 21 days. By Summons dated April 28, 2009, Teyseer applied for further directions in respect of the June 15-16 hearing. The Judgment Creditor applied by Summons dated May 5, 2009 for a stay of the March 26, 2009 Order to "*allow the Receiver to bring proceedings before the English Courts to determine the ownership of the Contract Revenues.*"

6. These two Summonses were both listed for hearing on May 8, 2009. In the meantime, on February 11, 2009, I had refused CCIC's application to set aside the ex parte Order of June 13, 2008 registering the English Judgments[1]. Before the present application can be properly understood, it is necessary to consider in more detail both (a) the terms of the Receivership Order and the basis on which it was obtained, and (b) the directions ordered for the further conduct of Teyseer's

[1] [2009] Bda LR 12; affirmed on appeal in *Consolidated Contractors International Company SAL-v-Munib Masri* [2009] CA (Bda) 16 Civ (19 November 2009).

application on May 8, 2009 and the anticipated function of the effective hearing of its application to set aside.

The Receivership Order

7. The Receivership Order obtained ex parte on June 13, 2008 provided in salient part as follows:

> "*1. This is an order for the appointment of an interim receiver until further order made against Consolidated Contractors International Company SAL ("CCIC") on the application of the Applicant. The Judge accepted the undertakings set out in Schedule A at the end of this Order.*
>
> *2. This Order was made on an ex parte basis. CCIC or any other party affected by this Order has a right to apply to the court to vary or discharge the order on at least 24 hours' notice.*
>
> *3. Without prejudice to paragraph 2, this matter shall be set down for mention on 24 July 2008 at 11am before Kawaley J., or on some other date as may be agreed.*
>
> *4. Subject to paragraph 7 below, Mark W.R. Smith be and hereby is appointed to receive all amounts due to CCIC from Qatar Shell GTL Limited (such amounts to be referred to as "Contract Revenues").*
>
> *5. That the receiver be entitled to do the following:*
>
> > *(A)to open an interest bearing bank account or accounts with a bank authorised to take deposits within Bermuda for the purpose of receiving the Contract Revenues;*
> >
> > *(B) to bring, defend, continue or compromise any proceedings or any other action in any jurisdiction as he*

may think fit, acting on behalf of CCIC as receiver, whether using his own name and/or the name of CCIC , in order to collect, gather in and/or recover the Contract Revenues, provided, however, that in the case of proceedings brought in a jurisdiction outside Bermuda, such right is subject to the receiver's right to bring such proceedings as receiver being (i) admitted by the Respondent to the proceedings or (ii) recognised by the Court or the legal system of the jurisdiction where the proceedings are brought before they are commenced or (iii) raised formally by the receiver as an issue in the proceedings at his first opportunity to do so.

(C) to instruct legal advisers or other professional advisers as and when he thinks fit; and

(D) to seek further directions from the Court as and when he sees fit by application in these proceedings.

6. *That the receiver be entitled to charge on a monthly basis (in arrears) for the time properly given by him and his staff to the receivership at his usual professional rates.*

7. *That the receiver shall not without leave of the court receive more than the amount necessary to provide for the charges of the receiver and the allowed fees and costs of obtaining this order, and to collect the amount of USD 53,564,905.30 (BMD$ 53,564,905.30) due under the Judgment of the Supreme Court of Bermuda dated 13 June 2008 in this matter (in relation to the registration of judgments of the Courts of England & Wales). The parties and the receiver have liberty to apply to the court to obtain directions as to the amount outstanding from time to time.*

8. *That the receiver shall pay into court for the credit of this action any sums collected within 3 working days of the receiver's receipt of cleared funds.*

9. *That the receiver shall submit his accounts to the Supreme Court every 4 calendar months from the date of this order, or so soon as the amount receivable by him under the clause 7 of this order has been received, whichever shall first happen, or whenever he may be called upon by the Court so to do. The receiver and any of the parties have liberty to apply to the Court for directions as to the disposition of any sums held by the receiver or standing in court.*

10. *The receiver is directed and granted the power to obtain in the name of CCIC details of the Contract Revenues due and payable to CCIC as at the date of the request and, where amounts are not yet payable but are likely to become payable in the future, the date on which payment is expected to become due*

    PROVIDED THAT if the receiver shall make a request under this paragraph which the recipient believes is unreasonable, the recipient shall notify the receiver and shall have the right to apply to the court for directions in respect thereof before being obliged to comply.

11. *The receiver shall hold any information provided under paragraph 10 above on a confidential basis and shall not disclose that information to any person other than himself, his staff, the Applicant and his lawyers without order of the court, save insofar as is necessary for the proper performance of his functions under this order. Any such information passed to the Applicant or his lawyers shall be treated as confidential and*

shall only be used for the purposes of this litigation and for the purpose of enforcing any judgments in these proceedings, in accordance with the undertaking set out in Schedule A to this order, unless the permission of the court is obtained.

12. *Until further order of the court, CCIC must not:*

    (A) in any way dispose of, deal with or diminish the value of its right to receive the Contract Revenues

    PROVIDED THAT CCIC may agree with Qatar Shell to make such minor variations to contracts from which the Contract Revenues are derived as may be appropriate in the ordinary course of business,

    (B) take any steps to procure, encourage or assist in the payment of Contract Revenues to any entity other than the Receiver.

INTERPRETATION OF THIS ORDER

13. *A defendant/respondent 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.*

14. *A defendant/respondent which is not an individual which is ordered not to do something must not do it itself or by its directors, officers, partners, employees or agents or in any other way.*

PERSONS OUTSIDE BERMUDA

15. Except as provided in paragraph 16 below, the terms of this order do not affect or concern anyone outside the jurisdiction of this Court.

16. The terms of this order will affect the following persons in a country or state outside the jurisdiction of this Court:

(A) the Respondent or its officers or agents appointed by power of attorney

(B) any person who—

(1) is subject to the jurisdiction of this Court;

(2) has been given written notice of this Order at his residence or place of business within the jurisdiction of this Court; and

(3) is able to prevent acts or omissions outside the jurisdiction of this court which constitute or assist in a breach of the terms of this Order; and

(C) any other person, only to the extent that this Order is declared enforceable by or is enforced by a court in that country or state.

17. Nothing in this order shall, in respect of assets located outside Bermuda, prevent any third party from complying with—

(A)what it reasonably believes to be its obligations, contractual or otherwise, under the laws and obligations of the country or state in which those assets are situated or under the proper law of any contract between itself and CCIC, and

(B) any orders of the courts of that country or state, provided that reasonable notice of any application for such an order is given to the Applicant's attorneys.

SCHEDULE A: Undertakings given to the court by the Applicant

18. *The Applicant will serve upon CCIC as soon as practicable together with this order copies of the affidavits and exhibits containing the evidence relied upon by the Applicant, and any other documents provided to the court on the making of the application.*

19. *Anyone notified of this order will be given a copy of it by the Applicant's legal representatives.*

20. *If this order ceases to have effect the Applicant will immediately take all reasonable steps to inform in writing anyone to whom he has given notice of this order, or who he has reasonable grounds for supposing may act upon this order, that it has ceased to have effect.*

21. *The Applicant will pay the costs reasonably incurred by the Receiver in the event that the Order is discharged at the return date hearing or in the event that the registration of the English judgments in Bermuda is set aside.*

22. *The Applicant will pay the reasonable costs of anyone other than the Respondent which have been incurred as a result of this order including the costs of finding out whether that person holds any of the Respondent's assets and if the court later finds that this order has caused such person loss, and decides that such person should be compensated for that loss, the Applicant will comply with any order the court may make.*

23. *The Applicant will not without the permission of the court use any information obtained as a result of this order for the purpose of any civil or criminal proceedings, either in Bermuda or in any other jurisdiction, other than this claim and any related enforcement proceedings.*"

8. The registration application was supported by the First Affidavit of Simon Morgan. Registration of the judgments was sought "*in order that they be executed in Bermuda*" (paragraph 40). Paragraph 41, the final paragraph of First Morgan, concluded as follows: "*The Judgment Debtors have assets in Bermuda and accordingly these proceedings are necessary if the Judgment Creditor is ever to obtain effective relief.*" The application for the appointment of the Receiver was supported by Second Affidavit of Simon Morgan. Many of the grounds for seeking the appointment were not challenged on the present application, because CCIC was not before the Court. Nevertheless, the reasons for making the appointment cannot be ignored when considering whether Teyseer's application to set aside the Receivership Order should be acceded to.

9. Firstly, Second Morgan summarized the background in the English proceedings, noting in paragraph 12 that: "*It is undisputed in the English proceedings that the Defendants have more than sufficient assets to satisfy the judgments but that they have deliberately chosen not to comply with the Orders of the English court*". On December 20, 2007, Gloster J appointed a Receiver in respect of CCIC's fellow judgment debtor and affiliate's revenues from the Concession and required both English judgment debtors to provide affidavits of assets. Flaux J on March 19, 2008 ordered the production of further affidavits of assets to comply with Mrs. Justice Gloster's initial order. On April 4, 2008 the English Court of Appeal dismissed the appeals against her December 20, 2007 orders. On June 6, 2008, the Judgment Creditor obtained a freezing injunction against CCIC in respect of receivables due under various construction contracts.

10. Next, Second Morgan rehearsed various judicial pronouncements made in the English courts about the risk of dissipation of assets, which this Court was invited

to accept, and made reference to the evidence filed in those proceedings and the failure of the English Receiver to collect any oil revenues although such revenues ought to have been payable on a monthly basis. The deponent then moves on to explain how an affidavit of assets filed in the English Proceedings by a Mr. Nasser of CCIC disclosed the existence of Contract No. Pl-125 with Qatar Shell GTL, a Bermuda company, covering the period November 2, 2006 to December 31, 2011.

11. In addressing why it would be just and equitable to appoint a receiver in Bermuda, Second Morgan, *inter alia*, avers that: "*I believe that the appointment of a receiver by the courts of Bermuda would be one of the few effective methods of preserving the Judgment Debtors' assets for future enforcement purposes with* [sic] *the jurisdiction of Bermuda*" (paragraph 77(D)). It is also asserted that: "*The situs of the debt in relation to which the receivership order relates is Bermuda, on the basis of the location of the debtor, Qatar Shell. I do not believe therefore that this is a case involving the appointment of a receiver over foreign debts*" (paragraph 103). When dealing with prejudice, the deponent notes that: "*...These enforcement proceedings are only necessary because of CCIC's contempt of the Orders of the English court.*" It is also suggested that as CCIC has such substantial assets, the prejudicial effect of any temporary interruption of the revenue flow as regards the Contract Revenues will likely be minimal.

12. It was only after the June 8, 2008 application had been made, and limited discovery obtained, that it became apparent that (a) the Contract Revenues were on the face of the relevant contracts owed jointly to CCIC and Teyseer; (b) the relevant contracts contained an English governing law and exclusive jurisdiction clause ("the EJC"). Against this background, Teyseer sought to set aside the Receivership Order on two broad grounds. Firstly, and legally, it was contended that the Contract Revenues were owed by Qatar Shell to CCIC and Teyseer jointly and that joint debts could not be collected by the Receiver in satisfaction of CCIC's sole debt to the Judgment Creditor. Secondly, and factually, it was argued that under the Joint Venture Agreement between CCIC and Teyseer ("JVA"),

which was governed by Swiss law, CCIC's rights to the Contract Revenues were limited to an up-front fee which it had already received. Accordingly, the debt the Receiver had been appointed to collect belonged to Teyseer alone in any event. In addition the "no prejudice" argument was challenged vigorously, it being asserted that the Contract Revenues were needed to pay thousands of migrant workers employed on the largest oil refinery plant currently under construction in the world.

13. This challenge raised the possibility that the Receivership Order might have no useful purpose and that, fairly shortly, Teyseer might be able to demonstrate this fact. However the new jurisdictional facts also brought home to the Judgment Creditor that a "slam-dunk" enforcement mechanism in Bermuda was clearly not available. These two opposing positions clashed at the May 8, 2009 hearing at which Teyseer sought to expedite the hearing of its application to set aside the Receivership Order and the Judgment Creditor seeking to put this application on hold while the Receiver took enforcement steps in the English courts.

The May 8, 2009 directions hearing

14. Mr. Woloniecki in opening for Teyseer characterised the hearing as "*like a Ground Hog Day moment. We seem to be here all over again, doing essentially the same application...*" In the event, I elected to hear from Mr. Elkinson first in support of the stay application. This was based on the recent discovery of the EJC and, in essence, the comparatively simple proposition that as the Receiver stood in the shoes of CCIC in respect of the right (if any) to collect the Contract Revenues, any recovery action would have to take place in the English courts. I had great difficulty in grasping this point, perhaps because at a gut level I was uncomfortable with the spectre which the relief sought conjured up. It seemed like litigation strategy of the highest order, on the eve of an application to determine whether or not the Receiver had any right to collect the Contract Revenues from a Bermuda company for the Receivership to be stayed while somewhat ill-defined action was taken by the Bermuda Receiver in London.

15. Mr. Elkinson referred to Fifth Morgan, sworn on May 1, 2009, paragraph 15 and submitted that the "*court competent to assert personal jurisdiction over Teyseer, CCIC and Qatar Shell, would be able to require disclosure and the production of evidence by all the relevant parties*." When Fifth Morgan was sworn, the Judgment Creditor's attorneys had not had sight of Teyseer's evidence and did not yet know of the EJC. This affidavit suggested that this Court was competent to order CCIC to make the requisite discovery, and contemplated the continuation of the Bermuda Receivership. The Second Mark Smith Affidavit was also cited as demonstrating that the Receiver was unable to determine, in light of the copious redactions in the versions of the contracts disclosed by Qatar Shell, whether or not CCIC had any interest in the Contract Revenues. Attempting to give effect to the Overriding Objective, I sought to avoid such a long-winded enquiry, asking:

> "*...isn't it obvious that CCIC has some commercial interest in the contract and isn't the only question whether their interest is so direct that it can be attached to enforce your client's judgment?...I mean isn't that a...short legal point which, if resolved in favour of Teyseer, would make all of this enquiry into what lies beneath the surface of these arrangements totally irrelevant?*"[2]

16. While Mr. Beltrami, nine months later, would submit that the first limb of my question was conceptually flawed, in broad-brush terms I was seeking to have determined at the earliest possible point the legal question of whether, assuming (as was now common ground) the Contract Revenues were a joint debt, the Receiver could collect them at all. This seemed to me to be quintessentially a question for the Court which had appointed the Receiver to determine, particularly in circumstances where the Judgment Creditor was seeking to stay the Receivership proceedings altogether. Most importantly, however, I anticipated that the present application would have been heard in early course and dates in August were tentatively canvassed by counsel at the end of the hearing.

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[2] May 8, 2009 Transcript, pages 28, 48.

17. Nevertheless, Mr. Kessaram made the cogent point that Qatar Shell did not want to make a payment to the Receiver valid under Bermuda law which could be challenged elsewhere. Absent clear undertakings from both joint venture partners, a determination under the EJC might be required. This concern did not appear to me to militate against the desirability of affording Teyseer the opportunity to put the entire receivership question to bed in this jurisdiction, which the Judgment Creditor had plainly submitted to, if it could show that the Receiver had no right to collect the Contract Revenues at all.

18. Finally, Mr. Martin for the Receiver understandably indicated that his client took no position on his own appointment, but indicated that there appeared to be a possible need for the Receiver to take steps outside the jurisdiction to obtain an English order. This stance did not appear to me at the time to militate against refusing the stay application and directing the rescheduling of the hearing of Teyseer's application to set aside, which had been fixed for June 15, 2009.

19. Accordingly, I gave directions for the filing of further evidence, including evidence of Swiss law, and directed that Teyseer's application be listed for hearing after August 25, 2009. I adjourned the stay application generally and reserved the costs thereof, being anxious that subsequent events might bear on the merits of this application which had essentially been provisionally refused on the grounds that it was premature.

Teyseer's evidence

20. The First Riyad Qussini Affidavit was sworn on August 24, 2008 by the General Manager for Contracts. Paragraph 4 stated as follows:

> "*At the outset I wish to make clear that Teyseer Contracting is seeking to challenge and set aside orders made by this Court which adversely and unfairly affect its interests. This application is expressly without prejudice to Teyseer Contracting's contention that the Bermuda Court does not have jurisdiction to make such Orders, and it does not*

therefore-by making this application-submit to the jurisdiction of the Bermuda Court."

21. The second sentence of this paragraph is classic "lawyer-speak", and can only sensibly be read as signifying that Teyseer is merely submitting to the jurisdiction of this Court for the limited purpose of seeking to set aside the Receivership Order. In paragraph 5, the deponent proceeds to summarise the grounds on which Teyseer disputes the Receivership Order:

> "*a) It purports to interfere with monies which Teyseer Contracting is entitled to;*
>
> *b) The monies due for works performed for Qatar Shell by the Joint Venture between Teyseer Contracting (the Qatar Shell Contract") and Consolidated Contractors international Company SAL ("CCIC") do not belong to CCIC, and as such are not to be collected by the Receiver under the Interim Receivership Order;*
>
> *c) It purports to deny Teyseer Contracting its right to receive payment for works performed for Qatar Shell. These monies provide Teyseer Contracting and the Joint Venture with necessary working capital which it needs to fund the construction of a major new gas-to-liquid plant in Qatar (the GTL Pearl Project). Any interruption to Teyseer Contracting's receipt of stage payments for the work will significantly impact the project, jeopardising the completion of key stages and dates in the intervening period. Interruption to the project will not only affect Teyseer Contracting as contractor, but also (1) the international operator of the plant Qatar shell, (2) Qatar Petroleum (the state-owned petroleum company for which Qatar Shell is constructing the plant), as well*

as (3) affecting thousands of workers and suppliers to the project who will not be paid, and the Qatari State itself;

d) if the payments for these works (which are required to supply the contractor with the necessary working capital and funds for the project) are diverted in this way, Teyseer Contracting will not have the working capital it needs to discharge its overheads and perform the works; and

e) There are proper grounds for denying the Applicant, Mr. Masri, equitable relief of the kind sought by him. Ultimately, there are no good grounds for conferring any preference or priority on him over Teyseer Contracting, which is innocent and independent third party otherwise unconnected with these judgments or enforcement proceedings."

22. The first four grounds for impugning the Receivership Order (the fifth being conclusory) seemingly fell into two broad categories: (1) a legal and factual assertion that CCIC had no legal or beneficial interest in the Contract Revenues ((a)-(b)); and (2) the factual assertion that the collection of the monies due to Teyseer under the contracts would be prejudicial to innocent third parties. The prejudice issue was not central to the substantive hearing of the present application, it being somewhat obvious that if the CCIC Receiver collected the Contract Revenues in circumstances where CCIC had no interest in them at all, this would constitute an unjustifiable interference with third party interests.
23. First Qussini went on to explain the ownership and status of Teyseer itself. It is a Qatari registered company based in Doha and part of a prominent Qatari corporate group. It is 30% owned (as of March 1, 1999) by the Lebanese Consolidated Contracting Holding ("CCH"). Teyseer is said to be a Class A Civil Contractor, and the Pearl GTL Project is one of the largest it has ever been engaged on. Shell itself described the project as "*the largest ever construction project in Qatar*" (paragraph 24(b)). Teyseer itself has an estimated workforce of up to 10,000, and

the total contract price to be paid to Teyseer by Qatar Shell is US$1 billion, in respect of works commenced on February 11, 2006 and due to finish on December 31, 2011(paragraph 27). An important averment is made in paragraph 28, which provides as follows:

> "*To date, payments of or in the region of US $ 150 million have been made, in other words a very small percentage (about 15%) of the total price due for the Works. As a sponsor of the project, CCIC has already received the only payment to which it was entitled as a Joint Venture* [sic] *by taking half the 10% advance payment made by Qatar Shell for the Works, which equates to 5% of the price paid by Qatar Shell for the Works. As a result, CCIC is not entitled to receive the whole or any part of the remaining payments which fall due from Qatar Shell to the Joint Venture for the works performed.*"

24. The remainder of First Qussini explains the early skirmishes leading up to the application and the directions sought, including directions to protect confidential information supplied to the Receiver from being disclosed to Mr. Masri.

25. Second Qussini was sworn on September 18, 2008, after Teyseer had been granted leave to intervene and required to disclose the contracts to the Receiver. Mr. Qussini confirmed that the relevant contracts between the Joint Venture and Qatar Shell are numbered PI-125 and PI-107. He also indicated that Teyseer and Qatar Shell had reached an agreement as to what portions of the documentation could be voluntarily disclosed by Teyseer in discharge of Qatar Shell's obligations under the August 18, 2008 Order (paragraphs 12-16). These extracts revealed, *inter alia*, the following:

    (a) an unincorporated Joint Venture between CCIC and Teyseer is defined as "CONTRACTOR" while Qatar Shell is defined as the "COMPANY";

    (b) CCIC and Teyseer jointly and severally guarantee and are liable for the obligations and liabilities of the Contractor;

    (c) the Contractor cannot assign any interests in or benefits under the contract without the Company's permission;

(d) English law is the governing law of the contracts and the parties each submit to the exclusive jurisdiction of the English courts for all purposes save where arbitration is provided for;

(e) the contracts impose strict confidentiality obligations on the Contractor in relation to information about the Complex and the nature of the work carried out. However, the redactions in the disclosed documents appear to include matters which are not obviously confidential in that sense (e.g. Articles 3.1-3.2) ("Project Manager") and even the headings of various other articles.

26. Second Qussini also exhibits the CCIC-Teyseer Joint Venture Agreement dated December 19, 2006. This document is not significantly redacted at all. Article 3.1 provides that Teyseer shall be liable solely for "*...profits and losses…and…any liability arising out of any guarantees or securities*". Clause 3.2 provides that "*CCIC shall receive 5% of the 'Contract price' referred to in Section 3 of the PI-125 contract as fixed compensation for acting as the Sponsor of the Joint Venture for the Project*". It is then deposed that the 125 Contract Price is US $977,058,000 (making this the more significant of the two contracts) and that payment in this regard was received by CCIC on January 30, 2007 (paragraph 31). The Agreement expressly provides that Teyseer shall provide all the working capital ("unless otherwise agreed by the Board"). Article 17 provides as follows:

> "*17.1 In the relations with the Owner, the Joint Venture, CCIC and TEYSEER are jointly and severally responsible for the proper fulfilment of the Contract.*
>
> *17.2 In the relations between CCIC and TEYSEER, the latter shall indemnify and keep CCIC fully indemnified from any claim, demand, or suit raised against CCIC by the Owner or any third party as a result of the execution of the contract by the Joint Venture except where such claim, suit, or demand is the direct result of CCIC's action or inaction as the Sponsor or as a subcontractor.*"

27. The Agreement provides that the business address of the Joint Venture shall be at the Pearl GTL Project in Qatar. It further provides that the Agreement shall be governed by the laws of Switzerland (Article 22)Second Qussini concludes (paragraph 36) by averring:

> "Accordingly, I believe it is clear that CCIC is not legally or beneficially entitled to any of the Contract Revenues due from Qatar Shell. Teyseer Contracting's rights to receive the 'Contract Revenues' will be interfered and Teyseer contracting will suffer loss and damage and Mr. Munib Masri will be unjustly enriched at the expense of Teyseer Contracting if this Honourable Court orders the receiver to collect all or any part of the 'Contract Revenues' from Qatar Shell."

28. The First Affidavit of Maneh Nasser Saleh was sworn on December 1, 2008 by a Qatari lawyer and explained the circumstances in which Teyseer applied in November 6, 2008 for an ex parte order from the Qatari Court. This was motivated by Teyseer's view that the Receiver in seeking further disclosure was exercising an exorbitant jurisdiction which wrongfully interfered with the GTL project. The effect of the Qatari order was to restrain Qatar Shell from complying with Receivership Order without first obtaining an exequatur in Qatar. Peter Dunlop of Teyseer's Bermuda attorneys filed four affidavits dealing with non-substantive matters, such as costs and directions.

29. The Second Saleh Affidavit sworn on January 28, 2010 explained how on June 30, 2009, the November 6, 2008 Qatari injunction was set aside by a Judge of the Court of Summary Jurisdiction on the application of Qatar Shell. It also responded to Seventh Morgan in various respects. Firstly, it was asserted that there had been longstanding collaboration between Teyseer and the CCC Group so there was nothing surprising about a CCC website referring to CCC staff working on the GTL project and advertising its role in the project generally. Secondly, it was asserted that the fact that an internal CCC document described Teyseer as a subsidiary could not alter the fact that CCC held only a non-controlling minority interest in the Qatari company. The deponent also explained why, in the Qatari

context, the contracts between CCIC and Qatar Shell were considered as a sub-contract. This was because the primary contract was considered to be that between Qatar Shell as a foreign company and the Qatar State oil company, and CCIC as another foreign company could only operate in Qatar under the primary authority conferred upon Qatar Shell. As far as the Qatar Shell promotional video on the GTL project cited in Seventh Morgan, Second Saleh referred the Court to the YouTube colour version of the film to illustrate (a) the fact that Teyseer's logo appeared in the background as well as CCC's, and (b) the scale and importance of the project.

30. Fifth Morgan sworn on March 20, 2009 in support of the Judgment Creditor's application to amend the Interim Receivership Order to make " *a post judgment final order, rather than interim*" (paragraph 3). This was essentially to bring the Receivership Order into conformity with the Registration Order, which was effectively made final on February 11, 2009 when I dismissed CCIC's application to set aside the June 13, 2008 "interim" registration Order. Paragraph 15 of this Affidavit also stated as follows:

> "*Furthermore, on the basis of the information that I have been able to obtain relating to the Pearl GTL Project and the relationship between CCIC and Teyseer, I believe that it would be inappropriate for the assertions that CCIC is not beneficially entitled to any revenues under the contracts with Qatar Shell GTL Ltd. to be accepted without being properly tested at a trial and through full disclosure.*"

31. So it appears that, before the Judgment Creditor and his legal advisers discovered that the contracts contained the EJC, it was proposed to oppose Teyseer's application on the grounds that a fuller enquiry was required "*in order to determine the true nature of the beneficial ownership of the project revenues*" (paragraph 18). On May 1, 2009, a second "Fifth" Morgan was sworn in response to the discovery of the existence of the EJC. The deponent stated (paragraph 10):

> "*In view of this, I believe it would be inappropriate for the Courts of Bermuda to seek to determine ownership of revenues due under such contracts since any such determination, without submission to the jurisdiction by all the relevant parties (Teyseer, CCIC and Qatar Shell) and a waiver in respect of the EJCs, would not be a determination by a competent court and would give rise to the potential for double jeopardy. The English court might well determine the same issues (and potentially come to a different conclusion) and would not recognise any decision of the Bermuda Court as having been granted by a court of competent jurisdiction.*"

32. The Affidavit went on to assert that the Receiver should be permitted to bring proceedings in the English Courts in the name of CCIC to determine this issue. This was apposite because CCIC was in breach of this Court's March 26, 2009 Order to provide further discovery by April 9, 2009. The English courts would be able to require disclosure by all relevant parties. It was on the basis of presently available information doubtful whether the Joint Venture Agreement truly reflected the position between the parties to it, having regard to (a) the corporate relationship between CCIC and Teyseer, and (b) publicly available information about the involvement of CCIC and Teyseer in the project. The May 1, 2009 Fifth Morgan concluded as follows:

> "*The current receivership should be maintained while the English Courts deal with this particular issue. Once the English Courts have made the ruling, the parties can return to this honourable Court for further directions. Naturally if the English Courts rule that CCIC has no entitlement to the Project revenues this is likely to affect the balance of convenience in respect of the maintaining of the Receivership Order...I cannot see any substantive prejudice to Teyseer in adopting such a course since the mere existence of the Receivership Order only impacts on CCIC (preventing it from receiving revenues)*

and I note that CCIC has never objected to the terms or existence of the receivership."

33. The message that this Court should direct the Receiver to determine the issue of whether CCIC's interest (if any) in the Contract Revenues in the English Courts was somewhat distorted by the oral application made on May 8, 2009 for a stay of the present proceedings. This suggestion was reiterated, in purer form, on the substantive hearing of Teyseer's application to set aside the Receivership Order. It was rejected on May 8, 2009 not just because the submission, advanced in summary form, was not fully understood. It was also rejected because it seemed inappropriate to me to authorize the Receiver to issue proceedings in a foreign court without being first satisfied that there were no cogent grounds for challenging the validity of his appointment. And that question, despite the existence of the EJC referring all disputes to the English Courts, seemed to me to be quintessentially a matter for this Court to determine, at the earliest possible opportunity.

34. Seventh Morgan was sworn on December 15, 2009 by way of further response to Teyseer's application to set aside the Receivership Order. This Affidavit presented "*further evidence demonstrating the nature of the relationship between CCC and Teyseer which has become available to me since my affidavit dated 1 May 2009*" (paragraph 4). This further evidence consisted of CCC directories, CCC, Teyseer and Qatar Shell websites, Qatari Government documents referring to CCIC as a sub-contractor and further evidence in the English proceedings.

Evidence of the Receiver

35. The First Affidavit of Mark Smith was sworn on August 7, 2008.This Affidavit most significantly stressed the importance of Qatar Shell providing, if necessary, redacted copies of the relevant contracts. However, the Receiver also propitiously deposed as follows:

"*15. I am advised by my attorneys and believe that these principal issues will probably turn on the following factual issues:*

(A) the situs of the debt from Qatar Shell to CCIC (and potentially Teyseer) by reference to the governing law of the relevant contracts and any jurisdiction/arbitration clauses establishing the forum for resolution of disputes;

(B) *whether the Contract revenues are payable to CCIC.*"

36. Second Smith sworn on April 1, 2009 essentially explained why the Receiver was unable to accept the relevant contracts at face value, particularly in light of redactions of portions thereof which were potentially relevant to determining whether CCIC enjoyed commercial benefits thereunder. Further disclosure had accordingly been requested of Qatar Shell. Third Smith was sworn on February 4, 2010. This Affidavit described the efforts made over the course of the next four months to procure further information about the relevant contracts which eventually bore fruit on August 3, 2009 when unredacted versions of the relevant contracts were supplied. However, Qatar Shell maintained its position that requests for further information (such as the accounts to which the Contract Revenues were paid) fell outside the scope of this Court's Disclosure and Receivership Orders. On August 20, 2009, Qatar Shell confirmed that approximately $300 million would still be payable after year end 2009. Third Smith concluded as follows:

> "*Based on the information received since 6 April 2009, I am still unable to form a view that CCIC is not entitled to the Contract Revenues. I have been unable to form a view about the real nature of the rights and obligations of the parties involved or whether there was indeed a genuine arm's length contractual relationship. These issues will have to be resolved by the Court after legal argument between the parties.*"

Expert evidence as to Swiss law

37. Professor Pierre Tercier provided a Legal Opinion dated April 1, 2009. This explained, uncontroversially, that the Joint Venture Agreement only governed the rights of the parties *inter se* and that the relevant contracts governed the relationship between CCIC and Teyseer on the one hand and Qatar Shell on the other. The Professor also opines that under Swiss Federal law the joint venture agreement creates a partnership and a presumption that rights are jointly owned and liabilities joint and several. Professor Girsberger responded to Dr. Peter Schaufelberger's opinion submitted on behalf of the Judgment Creditor, making various points of tangential relevance about conflicts of laws and joining issue with the proposition that the Joint Venture Agreement could be set aside on various hypothetical grounds if it was designed to assist CCIC to evade its judgment debts. Dr. Schaulfelberger opines that whether or not the debt owed under the relevant contracts is joint or joint and several is a matter of English law to be determined by the law governing the construction contracts.

38. There was at the end of the day no controversial Swiss law issue which this Court which was required to resolve to fairly dispose of Teyseer's application to set aside the Receivership Order.

Teyseer's submissions

39. Teyseer's Skeleton Argument firstly dealt with the evidence before the Court. It was submitted that there was no evidence that the Joint Venture Agreement was a sham or that Teyseer was owned more than 30% by CCC. The joint debt issue was characterised as "*the only relevant issue*". It was then submitted that clearly the Construction Contracts contemplated a single joint payment obligation on Qatar Shell's part: "…*it is not possible in law (or equity) to carve out from the monies due to the JV by Qatar Shell any discrete sums that could be classified as 'amounts due to CCIC from Qatar Shell GTL Limited'*" (paragraph 37). It had never been possible to garnish a joint debt.

40. It was then argued that the Receivership Order could not be sustained because this Court lacked subject-matter jurisdiction "*in circumstances where (a) neither Teyseer nor CCIC have any connection with Bermuda, and (b) the monies are payable from an account outside of Bermuda to another account outside of Bermuda*" (paragraph 57(1). In addition it was contended that a receiver could not be appointed in respect of a debt which was not assignable (paragraph 57(2)). These arguments were fleshed out in '*Teyseer's Appendix Private International Law Issues*", in a separate binder with a separate set of supporting authorities.

41. It was not just and convenient, it was next argued (at paragraph 59), to appoint a Receiver where prejudice was caused to innocent third parties:

> "*A Court of equity cannot simply turn a blind eye to the effect an order diverting the project revenues to Mr. Masri will have on thousands of innocent people not only in Qatar, but across the Middle East, on the Indian subcontinent and in the Philippines. The Court is being asked , in the exercise of its equitable jurisdiction, to act as a reverse Robin Hood, taking money from poor contract workers and their families to give it to a man who is, by any standard, already very rich. Such a result would be profoundly unjust and shocking.*"

42. Teyseer's trenchant submissions reached their climax with the following conclusory paragraphs:

> "*62. It is respectfully submitted, that the only findings of fact which a reasonable trier of fact can make on the evidence before the Court on this application are the following:*
>
> > *(1) The debt owed by Qatar Shell under the construction contracts is (as has been admitted by Mr. Masri's solicitor) a debt owned jointly by Teyseer and CCIC.*

(2) Teyseer and CCIC are separate legal entities incorporated in Qatar and Lebanon, respectively. 70% of Teyseer's shares are owned by Teyseer Trading (a company in the Teyseer Group). Consolidated Contractors Group SAL (Holding Company) (a company in the CCC Group) owns the remaining 30%. Teyseer is not a subsidiary of CCIC (regardless of how often the contrary may have been stated on websites mentioned by Mr. Morgan).

(3) There is no evidence to support any suggestion that the JVA between Teyseer and CCIC is a "sham".

(4) The evidence of Prof. Tercier as to the juridical nature of the JVA, as a matter of applicable Swiss law, is uncontroverted. The joint debt owned by CCIC and Teyseer, as joint venture partners, is a partnership asset.

(5) There is no evidence to support any suggestion that CCIC has any entitlement or claim to the project revenues once they are paid by Qatar Shell to the joint venture partners.

(6) The uncontroverted evidence of Mr Qussini is that the project revenues paid by Qatar Shell are used by Teyseer to pay the wages of the project contract workers which Teyseer employs and provide the working capital for the project.

63. It is further respectfully submitted that the Court is not entitled either to make up facts (without any evidential basis), or ignore firmly established principles of law, simply because it dislikes CCIC and/or feels sorry for Mr. Masri. In particular, this Court cannot disregard the property rights of an innocent third party, Teyseer, depriving Teyseer of the moneys it needs to pay thousands of contract workers toiling in the Qatari desert, in order to satisfy a debt owned by CCIC to Mr. Masri. To do so would be the worst form of palm tree injustice."

43. These points were fortified in Teyseer's Notes of Rebuttal, which made two additional points. Firstly, it was submitted that the *situs* of the debt was Qatar as the place where the debt would in the ordinary course of business be paid by Qatar Shell, notwithstanding the fact that payment is in fact made to a bank account in Abu Dhabi. Secondly it was contended that the English Courts before which it was proposed the present dispute be resolved lacked the jurisdiction in any event to resolve issues properly arising under the Joint Venture Agreement.

The Judgment Creditor's submissions

44. The Court was firstly reminded of the statutory jurisdiction under which the Receivership Order was made and of the fact that CCIC, against whom the Order was made, had not challenged the making of the Order. It was submitted that Teyseer only had standing to challenge on discretionary grounds any impermissibly prejudicial impact of the Order on it as a third party. It was not necessary for the Court to consider whether in any wider sense the Order was just and convenient.

45. Secondly, the Judgment Creditor submitted that the Receivership Order was by its nature interim. No final factual findings would ordinarily be required to justify the making of such an order. The jurisdiction in this regard was analogous to that exercised in relation to pre-judgment or post-judgment mareva injunctions. All that had to be demonstrated was an arguable case that the Receiver might be able to collect the Contract Revenues.

46. With respect to the jurisdictional arguments, it was conceded that whenever a receivership order was made in relation to foreign assets, as had occurred in the present case, subject matter jurisdiction will be lacking if the order made is so exorbitant as to contravene international law or comity. However, as the English Court of Appeal had noted in the related English receivership proceedings, an appropriately drafted receivership order does not have such impermissible effects. Moreover, there was no legal impediment to a receivership in respect of joint

debts. The joint ownership issue merely added a layer of complexity to the collection process which would not exist in relation to a single debt.

47. The Judgment Creditor's comparatively understated Skeleton Submission concluded as follows:

> "*146. For all the reasons given above, Mr Masri invites the Court to dismiss the application. In summary, the Receivership Order was plainly within the jurisdiction of the Court and Teyseer can establish no illegitimate prejudice to it to justify the exercise of the Court's discretion in its favour. This is not only because the Receivership Order does not have the effect for which Teyseer apparently contends, but also because there are real issues which need to be resolved between the parties as to the Receiver's actual entitlements. This is neither the forum nor the occasion for their resolution.*
>
> *147. More broadly, and to the extent that it is necessary, Mr Masri further submits that the Court can remain comfortable that this is a case in which it is both just and convenient to retain the Receivership Order. As is very apparent, this is an extraordinary case in which the respondent has devoted much time and expense in finding ways to avoid meeting a judgment debt properly arising following a fully contested trial. There is every chance the present application is simply one more tactical ploy to achieve the same end but, even if it were a properly independent application, this is a case where the balance weighs heavily in favour of interlocutory relief.*
>
> *148. Gloster J considered that the application before her was a "paradigm case for the appointment of a receiver", and the same applies equally to the present appointment. Absent appointment, the monies will assuredly be dissipated and/or put further out of the reach of the judgment creditor.*"

Qatar Shell's submissions

48. In paragraph 4 of its Skeleton Argument, Qatar Shell states that it is "*(i) concerned to cooperate with the Bermuda Court, (ii) neutral between the adverse*

parties, and (iii) concerned not to be exposed to any legal risk". It is also pointed out that the only operative contract is now PI-125, and contended that the duration of the Contract and its US$1billion value evidence its importance to Qatar Shell.

49. Without adopting a firm position on these issues, it is submitted that "*the Court might have no subject matter jurisdiction in respect of the Contract revenues*" (paragraph 24) and that "*an argument could be made...that the Receiver cannot collect the Contract revenues because of the prohibition in Article 35.1 (a) of the Contract against an assignment by the Joint Venture without Qatar Shell's previous agreement, which will only be given, so the Article provides, in exceptional circumstances*" (paragraph 27).

50. The main substantive submission advanced on Qatar Shell's behalf was that of double jeopardy. The contract was governed by English law so only an order of the English Court directing Qatar Shell to pay the Receiver rather than the Joint Venture would discharge the relevant debt under the Contract's governing law, having regard to the EJC.

Findings: the Court's jurisdiction to appoint a receiver

51. This Court's jurisdiction to appoint receivers arises under the following provisions of section 19 of the Supreme Court Act 1905:

> "(c) *an injunction may be granted, or a receiver appointed, by an interlocutory order of the court in all cases in which it appears to the Court to be just or convenient that such order should be made; and any such order may be made either unconditionally or upon such terms and conditions as the court thinks just; and if any injunction is asked for either before, at, or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted, if the Court thinks fit, whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim the right to do*

the act sought to be restrained under any colour of title, and whether the estates claimed by both or either of the parties are legal or equitable…"

52. Mr. Beltrami rightly submitted that the "*statute is entirely unconstrained in what it says and in the absence of any Parliamentary restriction, there's not an obvious jurisdictional restriction unless there is good reason for it*"[3]. The Bermuda provision is substantially the same as the more abbreviated modern provisions of section 37 of the United Kingdom Senior Courts Act 1981: "*The High Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the court to be just and convenient to do so*." The Bermuda provision is only narrower in that our section 19(c) does not create a statutory jurisdiction to grant permanent injunctions or to appoint a receiver by way of a final order. English judicial and text authorities on the scope of the English courts' jurisdiction to appoint receivers by way of an interim order are accordingly highly persuasive.

53. It is self-evident that the primary jurisdictional question is whether or not it is on the facts of the case before the Court shown to be "*just and convenient*" to appoint a receiver. Decisions on other cases where receivers have been appointed in aid of execution will not likely be dispositive; rather they are illustrative of the circumstances in which receivers have been appointed and serve as a useful guide to the proper exercise of a broad statutory discretionary power. Experience is usually a good teacher. In this light, the following passage set out at paragraph 16.012 of Gee, '*Commercial Injunctions*' is instructive:

> "*These considerations show that in deciding whether or not to appoint a receiver post-judgment the court should take into account whether, unless the appointment is made, the relevant assets are liable to be dissipated, and that the limits of 'equitable execution' as operated by the former High Court of Chancery are no longer*

[3] Transcript, page 446 lines 17-22.

determinative. Instead the court should proceed in each case on the basis that s.37 confers on it a jurisdiction to make the appointment, but there remains a question of discretion, which will be exercised flexibly, taking into account all the circumstances of the case, including practical convenience, avoiding unnecessary delay, cost or expense, and considering whether the appointment is likely to provide the claimant with satisfaction of his judgment."

54. I also find helpful the following *dictum* of Colman J in *Soinco SACI –v-Novokuznetsk* [1998] QB 406 at 421 upon which the Judgment Creditor's Counsel also relied:

> "*Half the attraction of the remedy of the appointment of a receiver is that it is inherently capable of great flexibility. In particular, if any question of double jeopardy arose in respect of any particular debt when it fell due for payment, that matter could be referred to the court for further consideration, a fortiori where, as in this case, the third party debtor…is already a party to the action. The court could then satisfy itself as to how real the danger of double jeopardy was and, if necessary, vary the receiver's mandate.*"

55. Thirdly, I am guided by the observations of Lord Donaldson in *Derby & Co.-v-Weldon (Nos 3 and 4)* [1990] 1 Ch 65 at 77, where a mareva injunction was granted and a receiver was appointed at the pre-judgment stage:

> "*What changes is not the power or the principles but the circumstances, both special and general, in which courts are asked to exercise this jurisdiction. This can and does call for changes in the practice of the courts. We live in a time of rapidly growing commercial and financial sophistication and it behoves the courts to adapt their practices to meet the current wiles of those defendants who are prepared to devote as much energy to making themselves immune to the*

courts' orders as to resisting the making of such orders on the merits of their case."[4]

56. These sage remarks, enunciated 20 years ago, apply with even greater force today, both generally and to the particular factual matrix of the present case. The obtaining of the English Judgments was fought ferociously at all court levels in England just as it appears their enforcement has been as well. The registration of the English Judgments in Bermuda has generated two judgments of the Court of Appeal for Bermuda[5]. It has also seemingly generated an appeal to the Privy Council as well[6].

57. I accept Mr. Beltrami's submission that Teyseer lacks sufficient interest to challenge the jurisdiction of this Court to determine that it is just and equitable, as between Mr. Masri and CCIC, to appoint a receiver. The crucial portion of the Receivership Order provides that "*Mark W.R. Smith be and hereby is appointed to receive all amounts due to CCIC from Qatar Shell GTL Limited* " (paragraph 4) Paragraph 12 sets out an injunction also directed at CCIC alone. Teyseer may complain that enforcement of the Receivership Order will cause impermissible prejudice to it as an innocent third party and seek to procure appropriate directions from this Court to the Receiver to mitigate such damage. It has no legitimate basis for seeking to set aside the Receivership Order altogether.

58. One technical jurisdictional point which was not alluded to by counsel (understandably in light of the absence of CCIC from the hearing) is whether this Court was right to remove the word "*interim*" from paragraph 1 of the

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[4] These dicta were set out in a discussion of the granting of the injunction, but in my judgment may fairly be read as applying with equal force to the power to appoint a receiver.

[5] *Consolidated Contractors International Company SAL-v-Munib Masri* [2009] CA (Bda) 11 Civ (19 June, 2009); [2009] CA (Bda) 16 Civ (19 November 2009).

[6] The application in relation to CCIC's appeal against the Court of Appeal's decision of November 19, 2009 upholding this Court's inter partes Registration Order of February 11, 2009 was heard on March 4, 2010.

Receivership Order on March 26, 2009. Although section 19(c) restricts the power to appoint receivers to interim orders, a final appointment could likely be justified exercising the powers developed by the old English Court of Chancery, which jurisdiction was preserved by section 12 (1)(c) of the Supreme Court Act 1905 in relation to its Bermudian counterpart. Section 12 (2) provides as follows:

> "*The jurisdiction transferred to the Supreme Court by virtue of this Act shall include the jurisdiction which, at the commencement of this Act [6 June 1905], was vested in, or capable of being exercised by, all or any one or more of the Judges of the aforementioned courts, respectively, sitting in court or chambers, when acting as Judges or a Judge in pursuance of any Act, law or custom, and all powers given to any such court, or to any such Judges or Judge, by any Act or Act of the Parliament of the United Kingdom, and also all ministerial powers, duties and authorities, incident to any and every part of the jurisdictions so transferred.*"

59. It appears that prior to 1876, the Governor-in-Council was Chancellor and exercised the functions of the Court of Chancery. However, the Court of Chancery Act, 1876 (repealed in 1905) provided in section 4 that:

> " *The Court of General Assize of these Islands shall be and constitute the Court of Chancery of and for these Islands and shall have, exercise, possess and enjoy power and authority to hear, examine, judge, determine and decree all matters, causes and things whatever of an equitable nature as fully and effectually to all intents and purposes as the Chancery Division of the High Court of Justice in England may or can do, and shall have power to make and establish such rules, regulations and orders respecting practice and pleading in the said Court of Chancery as may be necessary or expedient, provided that such rules, regulations and orders shall not be repugnant to this or any other Act of the Legislature of these Islands, and shall be as nearly*

as conveniently may be agreeable to the rules and regulations of the said Chancery Division of the High Court of Justice.

All proceedings under this Act shall be entitled 'In the Court of General assize in Bermuda in Chancery."'[7]

60. It appears that the English statutory power to appoint a receiver between 1873 and 1925 was found in section 25(8) of the Judicature Act 1873[8]. However, this power was also (as under section 19(c) of the 1905 Bermuda Act) restricted to an appointment "*by an interlocutory order*". Nevertheless, section 16 of the 1873 UK Act transferred to the new 19th century English High Court the even older jurisdiction exercised by the former High Court of Chancery. If legal support for the appointment of a receiver by this Court by way of a final order is to be found, it is to the pre-1873 English case law that one must turn. I am willing to assume that based on the longstanding practice of this Court that such judge-made law supports the grant of permanent or final injunctions. However, I leave open for future determination (should the need ever arise) whether this Court is jurisdictionally competent to appoint a receiver by way of a final order. The present application in any event proceeded on the basis that for all practical purposes the Receivership Order was an interim order.

61. Accordingly I find that this Court manifestly possessed the jurisdiction to make the Receivership Order on just and convenience grounds. It remains to consider whether its discretion to do so should or should not be exercised in all the circumstances of the present case, having regard to (a) the fact that the debt is owed jointly to CCIC and Teyseer and is not easily assignable, (b) the contention that by virtue of the Joint Venture Agreement, the Contract Revenues do not belong to CCIC at all, and (c) taking into account the now agreed fact that the

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[7] The fees provided for under the Act if still in force today might well curb over zealous litigation. The daily fees recoverable for a contested hearing were £2 and 1 shilling for the first day and £1 and 1 shilling for each subsequent day.

[8] Gee, '*Commercial Injunctions*', paragraph 16-009.

situs of the debt is outside Bermuda and the Contract contains (i) an English governing law clause and (ii) the EJC selecting England as the exclusive dispute resolution forum.

Can a receiver be appointed to collect a joint debt?

62. I find that a receiver can be appointed to collect a joint debt and reject Mr. Woloniecki's forceful submissions to the contrary. It is true that the authorities relied upon by the Judgment Creditor are somewhat indirect, but this does not undermine the clarity of the true legal position in this regard. While the collection of a joint debt may be somewhat problematic in practical terms, there is no reason in principle why a judgment debtor's joint assets should be considered as a matter of law to be outside of the scope of the enforcement process altogether.

63. At the directions hearing in May I asked various questions which amounted to little more than thinking aloud, somewhat like a stranger on a dark road trying to talk himself into finding the way. One such question was whether or not a joint debt could be "attached". Mr. Woloniecki seized on this remark, as if it were a considered legal pronouncement, blurring the distinction between the process of execution and receivership as a result. Whether a joint debt can be attached by way of execution or garnishee order is not the point. The appointment of receivers was developed in equity precisely to extend enforcement relief to those parts of a judgment debtor's estate common law execution could not reach.

64. It seems clear that interim freezing injunctions may be granted not just in respect of joint bank accounts in proceedings where only one of the joint account holders (joint creditors in respect of the relevant bank account) is a defendant: *SCF Finance Co. Ltd-v- Masri* [1985] 1 WLR 876. Such injunctive relief may also be granted in respect of third party assets which are arguably beneficially owned by the defendant: *C-v-L* [2001] 2 All ER Comm 446 (at paragraph 37). It follows that a receiver can also be appointed to collect a joint debt, as Tomlinson J contemplated in *Masri-v-Consolidated Contractors International SAL and*

Consolidated Contractors (Oil and Gas) Company SAL [2008] EWHC 2492 (Comm) (at paragraph 19):

> "*The total receivables under the 38 contracts are in excess of the judgment debt – I have set them out at paragraph 12 above. Of course, not all of the amount receivable will be profit and there may well be contractual obligations upon CCIC to permit the use of some of the funds for the payment of designated expenses, a point to which I shall revert. I am satisfied that in the first instance it is appropriate to restrict any receivership order which may be made at this stage to one in respect of the 25 projects where CCIC is the sole contractor. I do not rule out that the court might in the light of experience regard the interests of justice as requiring its extension, but the task for the receiver will be sufficiently large to render it sensible to proceed by an incremental approach.* ***If the receiver is to have to grapple with the complexities of joint venture or consortium agreements, he will be better equipped to do so in an economical and expeditious manner in the light of experience with the more straightforward contracts.***" [emphasis added]

65. So there can be no fundamental legal objection to the notion of a receiver being appointed to collect a judgment debtor's share of a joint debt. Difficult practical questions may arise for a receiver, and a court asked to give discretionary directive relief, in circumstances where enforcement action is contemplated against assets which are either (a) not held in the judgment debtor's name at all, or (b) held, prima facie, on a joint basis. Before leaving this point, mention must be made of the authorities upon which Teyseer's counsel relied.

66. In *Beasley-v-Roney* [1891] 1QB 509, Pollock, B held that " *the debt owing by a garnishee to a judgment debtor which can be attached to answer the judgment debt must be a debt due to the judgment debtor alone, and... where it is only due to him jointly with another it cannot be attached.*" A similar holding was made in *Macdonald-v-The Tacquah Gold Mines Company* (1884) 13 QBD 535 and other garnishee cases discussed in Lafferty and Jarvis, '*Commercial Enforcement*', 2nd edition, at paragraphs 3-44-3-53. The garnishee procedure, as Mr. Beltrami

rightly responded, is an entirely different process forming part of the ordinary execution process. As regards foreign debts, it appears the more intrusive effects of a garnishee order mean the courts will take a more restrictive approach than in the mareva injunction or receivership context. The nature of garnishee proceedings was lucidly explained by Lord Bingham in *Hong Kong and Shangai Banking Corporation-v-Societe Eram Shipping Company Limited* [2003]UKHL 30, where the first instance decision of Tomlinson J was restored by the House of Lords:

> "*The attachment of debts*
>
> *10. As many a claimant has learned to his cost, it is one thing to recover a favourable judgment; it may prove quite another to enforce it against an unscrupulous defendant. But an unenforceable judgment is at best valueless, at worst a source of additional loss. This was a problem which our Victorian forebears addressed with characteristic energy and pragmatism. The Judgments Acts of 1838 and 1840 allowed choses in action to be taken in execution. Then, in the Common Law Procedure Act 1854, a new garnishee procedure was introduced. The essential features of this procedure were laid down in sections 61-63 and 65 of the Act:*
>
> > *'61. It shall be lawful for a judge, upon the ex parte application of such judgment creditor, either before or after such oral examination, and upon affidavit by himself or his attorney stating that judgment has been recovered, and that it is still unsatisfied, and to what amount, and that any other person is indebted to the judgment debtor, and is within the jurisdiction, to order that all debts owing or accruing from such third person (hereinafter called the garnishee) to the judgment debtor shall be attached to answer the judgment debt; and by the same or any subsequent order it may be ordered that the garnishee shall appear before the judge or a master of the court, as such judge shall appoint, to show cause why*

he should not pay the judgment creditor the debt due from him to the judgment debtor, or so much thereof as may be sufficient to satisfy the judgment debt.

62 Service of an order that debts due or accruing to the judgment debtor shall be attached, or notice thereof to the garnishee, in such manner as the judge shall direct, shall bind such debts in his hands.

63 If the garnishee does not forthwith pay into court the amount due from him to the judgment debtor or an amount equal to the judgment debt, and does not dispute the debt due or claimed to be due from him to the judgment debtor, or if he does not appear upon summons, then the judge may order execution to issue, and it may be sued forth accordingly, without any previous writ or process, to levy the amount due from such garnishee towards satisfaction of the judgment debt.

65 Payment made by or execution levied upon the garnishee under any such proceeding as aforesaid shall be a valid discharge to him as against the judgment debtor to the amount paid or levied, although such proceeding may be set aside or the judgment reversed.' ...

11. The procedure so established was regulated by the Rules of Court scheduled to the Supreme Court of Judicature Act 1875 when that Act took effect, and by the Rules of the Supreme Court promulgated in 1883 when those replaced them. In each of these codes of rules Order 45 regulated garnishee proceedings. When the rules were revised in 1965 (Rules of the Supreme Court (Revision) 1965, SI 1965/1776, made under section 99 of the Supreme Court of Judicature (Consolidation) Act 1925), Order 45 was substantially reproduced as Order 49. It is apparent from the terms of

rules 1(1) and (2), 3 and 8 of this Order that the nature of the 1854 procedure remained essentially unchanged…

13. As the cited provisions made clear, the procedure has from the beginning made provision for a two-stage process, first an order nisi or interim order, then an order absolute or final order. The decided cases leave no room for doubt about the legal effect of each of these orders.

14. Section 62 of the 1854 Act describes the order nisi as binding the judgment debtor's chose in action in the hands of the garnishee. The effect of the order, as Chitty J put in Re General Horticultural Company, Ex p Whitehouse (1886) 32 Ch D 512, 515, is "to give the judgment creditor execution against the debts owing to his debtor". In Rogers v Whiteley [1892] AC 118 Lord Halsbury LC spoke (p 121) of the order attaching all debts, and Lord Watson (p 122) said:

> *'The effect of an order attaching 'all debts' owing or accruing due by [the garnishee] to the judgment debtor is to make the garnishee custodier for the Court of the whole funds attached; and he cannot, except at his own peril, part with any of those funds without the sanction of the Court."*

As Lord Morris put it (page 123),

> *'. . . all debts due and owing by the above-named garnishee are attached to answer the judgment creditor's demand - that is, they are all captured for the purpose of afterwards answering that demand.'*

In Galbraith v Grimshaw and Baxter [1910] 1 KB 339, Farwell LJ pointed out that the order nisi

'does not, it is true, operate as a transfer of the property in the debt, but it is an equitable charge on it, and the garnishee cannot pay the debt to any one but the garnishor without incurring the risk of having to pay it over again to the creditor.'

Atkin LJ made the same point in Joachimson v Swiss Bank Corporation [1921] 3 KB 110, 131:

> *'The service of the order nisi binds the debt in the hands of the garnishee - that is, it creates a charge in favour of the judgment creditor.'*

The point was again made by Lord Denning MR in Choice Investments Ltd v Jeromnimon [1981] QB 149, 155:

> *'[Service of the order nisi] prevents the bank from paying the money to its customer until the garnishee order is made absolute, or is discharged . . . The money at the bank is then said to be 'attached'. . . . But the 'attachment' is not an order to pay. It only freezes the sum in the hands of the bank until the order is made absolute or is discharged. It is only when the order is made absolute that the bank is liable to pay.' ...*" [9]

67. The distinction between garnishee orders (or third party debt orders, as they are now known in England) and freezing orders (and, by analogy, receivership orders as well) as regards joint debts is, in any event, acknowledged by Lafferty & Jarvis. This confirms the point made by the Judgment Creditor's counsel in argument :

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[9] Although this case was not referred to in argument it provides a helpful illustration of the distinction between a garnishee order and a receivership order and, incidentally, the experience that Tomlinson J has of thorny judgment enforcement problems in the international commercial context.

"*The standard form freezing injunction extends to assets held jointly by a respondent and another person. However, it appears for the time being that at least the position will remain that a joint account cannot be attached under a third party debt order...Were the law in relation to the attachment of joint debts under a third party debt order process to change, this would invariably entail the court having to direct a trial of an issue at the hearing to consider whether a final order should be made whenever the debt involved is a joint debt...to enquire what share of that debt rightly belongs to the judgment debtor...*" [10]

68. Mr. Woloniecki was able to cite some authorities which, narrowly read, potentially supported the proposition that a receiver cannot collect a joint debt. *J Walls, Limited-v-Legge* [1923] 2 K.B. 240 was a case where the main question before the Court was whether a receiver should be permitted to collect monies receivable from a wife in respect of income generated by her interest in property jointly owned with her husband. The primary finding was that most of the income the wife received had the character of alimony, which was not capable of assignment, and the holding that the creditors and the receiver could only look to the wife's separate property was coloured by this distinctive context. The joint debt issue did not arise.
69. In *R-v- The Judge of the County Court of Lincolnshire and Dixon* (1887) 20 QBD 167, it was held that a receiver had no right to collect monies held by trustees of a will which they might in their discretion pay to the judgment debtor. Hawkins J held (at page 171):

"No doubt the county court judge had jurisdiction to make an order appointing a receiver of funds which the defendant himself had the right to ...control, or which he had the right to receive; but that is not the order

[10] At paragraphs 3-51, 3-53.

which has been made in the present case, for this order authorizes the receiver to take that which the trustees alone have the power to receive and deal with in their discretion. There is no jurisdiction to do this."

70. In the present case, while it is contended that the Contract Revenues upon receipt cannot be used by CCIC by reason of its contract with Teyseer, there is no basis for finding that the Contract Revenues themselves are not payable to CCIC and Teyseer as of right. The Contract does contain in Article 35.1 an "Assignment of Contract" clause, which provides that the Joint Venture "*shall assign neither the CONTRACT nor any part of it nor any benefit nor interest in or under it without the previous agreement of*" Qatar Shell. I find the proposition that this clause is intended to restrict the ability of CCIC and Teyseer to deal with the Contract Revenues as they see fit wholly implausible and reject it summarily. Gloster J adopted a like approach to a comparable clause in her December 4, 2007 Judgment in the English Receivership Proceedings: [2007] EWHC 3010(Comm) at paragraphs 45, 119-129.

71. Accordingly, Teyseer's argument that the Receiver cannot as a matter of law collect a debt jointly owed to CCIC and a third party such as Teyseer is rejected.

Findings: should the Court finally determine that CCIC has no beneficial interest in the Contract Revenues and on these grounds set the Receivership Order aside?

72. In my judgment all the Judgment Creditor need show at this stage is that there is a good arguable case that CCIC owns a portion of the Contract Revenues payable by Qatar Shell to both CCIC and Teyseer under the Contract. Teyseer have failed to reach the high threshold of making out, in effect, a strike-out case. However, if I were required to determine this issue finally on the basis of the evidence presently before the Court on the narrow basis contended for by Mr. Woloniecki, I would, on balance, have concluded that Teyseer had established that it was solely entitled to the balance of the Contract Revenues. But I am not satisfied that

provisions of the JVA governing how the joint venture parties are to share the Contract Revenues after they are received is determinative of whether or not CCIC should be regarded as legally and beneficially interested in the joint debt before and/or at the time when it is paid. In my judgment the most likely legal position is that CCIC owns 50% of the Contract Revenues and merely has a contractual obligation under the JVA to allow Teyseer to apply the outstanding sums due as working capital for the Pearl GTL Project.

73. Mr. Masri and his legal advisers could be forgiven for adopting an old adage towards every transaction CCIC has entered into since the English Judgments were imminent or obtained: "*just because I'm paranoid doesn't mean they're not out to get me.*" Suspicions of debt-avoidance apart, however, there is no concrete basis for rejecting the cogent submissions of Mr. Woloniecki as to how the Joint Venture Agreement rationally works as a bona fide commercial arrangement. Teyseer as a smaller local Qatari company may very well have agreed to take the profit and loss risk of the Contract in return for the secondment of CCIC staff, CCIC serving as Sponsor, CCC providing a guarantee and CCIC receiving a guaranteed 5% up-front fee together with the possibility of 30% of any profits earned by Teyseer being up-streamed to CCC in dividends. Expert evidence would be required to support a finding that the Joint Venture Agreement is so un-commercial as to warrant a finding that despite its terms the Contract Revenues still due should be regarded as partially owned by CCIC notwithstanding Teyseer's evidence to contrary effect as Teyseer's counsel rightly pointed out.

74. Having regard to the Receiver's undertaking to take no action to actually collect the Contract Revenues until further Order of this Court and the fact that the mere existence of the Receivership Order causes no tangible prejudice to Teyseer, I see no good cause to deprive the Receiver of the opportunity to investigate further, however. After all, CCIC is in breach of this Court's discovery order and is coyly avoiding challenging the Order head-on, making it difficult to avoid viewing Teyseer as the Judgment Debtor's stalking horse. This is not to ignore the fact that some prejudice undoubtedly flows from having the Receivership Order hanging

over Teyseer's head and that collection of the Contract Revenues by the Receiver would potentially cause Teyseer substantial commercial harm.

75. However, this is a situation where Teyseer has other potential remedies (both formal and informal) which it may be able to avail itself of, should the need arise. Bearing in mind that CCIC has the resources to pay the Judgment Debt, this threat is ultimately of Teyseer's own joint venture partner's making. It is difficult to see on what commercial basis Teyseer ought to be obliged at its own expense to demonstrate that it is solely entitled to the Contract Revenues in proceedings brought against its business partner for debts wholly unconnected with the JVA. Bearing in mind that CCIC is an international company with goodwill to protect and potentially interested in conducting other business in Qatar, it is improbable that CCIC would stand idly by (having the resources to pay the Judgment Debt) if the Receiver did in fact establish a right to receive its share of the Contract Revenues, and allow the project to be materially damaged. Such conduct would in any event likely be in breach of its ongoing duties to Teyseer as Sponsor under the JVA, not to mention (a) whatever implied duties may be owed to Teyseer on a partnership basis and (b) whatever express and/or implied duties CCIC may owe Qatar Shell under the Contract. If Teyseer did not in such circumstances insist that CCIC discharge the Judgement Debt to avoid collateral damage to the Pearl GTL Project, this could only be due to the fact that Teyseer is not an independent company but is in reality subject to CCIC's control.

76. For these reasons, I found the submission that the Receivership Order could have the deleterious effect of depriving oppressed migrant workers of their wages to enrich the already wealthy Munib Masri[11] to consist more of "smoke and mirrors" rather than being based on solid evidential ground. Even if it is technically correct, as it probably is, that the Contract Revenues are the exclusive source of funding the operational costs of the GTL Pearl project, the Receiver's

[11] The Judgment Creditor's wealth is perhaps a notorious fact of which judicial notice can be taken. While preparing for the present trial on the afternoon of Saturday February 13, 2010, I coincidentally heard a BBC profile on the Judgment Creditor which stated that Mr. Masri is known as the "King of the West Bank".

appointment has only been made because CCIC is not simply a delinquent judgment debtor, but is engaged in a multi-jurisdictional campaign to avoid paying this particular judgment debt. CCIC is not an insolvent debtor and it is entirely within its power to obviate any need for the Receiver to interrupt the flow of Contract Revenues into the Pearl GTL Project.

77. Putting to one side what CCIC and Teyseer have agreed as a matter of simple contract should happen to the Contract Revenues after CCIC received its 5% up-front fee, it is admitted that as between Qatar Shell and the joint venture partners, a joint debt is owed to both CCIC and Teyseer. This is not a case where CCIC's interest in the Contract Revenues has, on any credible view which may fairly be taken at this interim stage, been transferred to Teyseer, by way of security or otherwise. All that seems to have happened is that CCIC has a contractual obligation to allow Teyseer, upon receipt of payments from Qatar Shell, to apply the monies received towards the project and bear the profit and loss risk at the end of the day. It would be a matter for the Receiver to decide whether and to what extent he would seek to collect CCIC's share of the Contract Revenues in breach of CCIC's related contractual obligations. The Receiver would not be, it is strongly arguable, taking Teyseer's property at all. Intercepting CCIC's likely 50% share of the Contract Revenues and applying it to settle the Judgment Debt would on what seems to me to be the best analysis entail a breach of CCIC's obligations under the JVA. Having regard to the fact that the JVA is governed by Swiss law according to which, by Teyseer's own account, the trust concept appears to be alien, it seems implausible that any fuller enquiry would result in the conclusion that CCIC has under this contractual agreement transferred its beneficial interest in the joint debt owed by Qatar to Teyseer.

78. That these complex questions need not be resolved at the earliest possible opportunity merely because they may, at some juncture, have to be confronted by the Receiver is illustrated by the following extract from the Judgment of Tomlinson J in the English receivership proceedings ([2008]EWHC 2492 (Comm) dealing with the same judgment debt:

"32. *In these circumstances I am not satisfied that the grant of the receivership order sought will necessarily require CCIC to commit breaches of its existing contractual obligations or that it will involve unwarranted interference with the rights of third parties. On the contrary, the receiver is bound in my view to ensure that the work on the projects continues in a seamless and uninterrupted manner, since unless it does the projects will not generate revenue which will be available to be collected in. It would be self-defeating for the receiver to deprive the projects of working capital. The court will not assume that the collection of receivables by the receiver will involve CCIC in a breach of its existing contractual obligations because that has not been demonstrated. The Claimant has, in the draft receivership order placed before the court, done his best to anticipate the possibility that the contracts may on examination exhibit one or more of the characteristics suggested by Mr Marina, but there is a limit to the extent to which the Claimant, and I might add the Court, should be expected to operate in a darkness created by the Defendants. The scheme of the receivership order sought is in fact simple and straightforward.* ***The receiver will need to be made aware of the contractual arrangements and will deal with them on a case by case basis. He will have no interest in riding roughshod over the contractual rights of others, although I would emphasise that it is plain to me that CCIC in any event has available to it free resources to ensure that no project is jeopardised****."*[emphasis added]

79. So at best Teyseer has shown that it is clear that it possesses a contractual right under the JVA to apply the Contract Revenues, after they are received by both it and CCIC from Qatar Shell, towards the completion of the project. That is a different thing from demonstrating that it is clear that CCIC has no legal or beneficial interest in the joint debt. It does not follow from this that the pursuit of the Contract revenues would be "fruitless" unless the Receiver takes the position that under no circumstances is it conceivable that he would be willing to "ride

roughshod" over Teyseer's rights under the JVA. It is not presently possible to anticipate how robust the Receiver may decide to be. Attempting to identify hidden benefits to CCIC under the Contract with a view to discrediting the JVA could itself prove to be a fruitless and unnecessary line of enquiry. But this is no more than an educated guess, not a formal judicial determination, at this stage. It is unclear to me at this juncture why what happens to the Contract Revenues after they are received by the Joint Venture is crucially relevant to an apportionment of CCIC's share in the joint debt payable by Qatar Shell. However, it does seem self-evident that the Receiver ideally would seek to be able collect only such portions of the Contract Revenues that he can cleanly receive without breaching any of Teyseer's contractual rights under the JVA.

80. Teyseer is entitled to any profit at the end of the project, subject to payments to CCIC under Article 3 and 9. Article 3 contemplates payments to CCIC for sub-contracting work over and above its 5% fee for serving as Sponsor. It is true that Article 9.1 of the JVA provides that the working capital shall be provided by Teyseer out of, inter alia, "*all the sums paid by the Owner to the Joint Venture under the Contract*". However, Article 9.2 provides as follows:

> "*In the event that CCIC advances any sums to the Joint Venture or secures the financing of any Working Capital, such sums or capital shall be repaid to CCIC or to the relevant financing institution under the terms of the financing agreements secured by CCIC, as relevant respectively, prior to any distribution of profits to TEYSEER pursuant to Article 15.*"

81. It is no more than theoretically arguable that the effect of the JVA is such as to transfer to Teyseer all of CCIC's interest in the joint debt and this highly improbable and tenuous legal analysis does not support a final determination at this juncture that it is not just and convenient that the Receivership Order should be continued. It is doubtless clear that the Receiver's position in relation to the Contract Revenues and CCIC's apparent joint interest in them is far from straightforward, but the scales of justice weigh heavily in favour of affording the Judgment Creditor liberal support in this difficult enforcement context in which

the Judgment Debtor is committed to trying the patience of this Court and the English Court by conduct which undermines respect for the private rule of law. On the present application, CCIC itself has not had the temerity to seek to have the Receivership Order set aside. And the Receiver is not yet seeking Court approval for actually (as opposed to prospectively) interfering with Teyseer's rights.

82. Accordingly, I decline to set aside the Receivership Order on just and equitable grounds at the instance of Teyseer on the basis of an interlocutory finding that it is clear that CCIC is not to any extent a joint owner of the Contract Revenues. Even if this Court is required to find, as Mr. Woloniecki rightly submitted, that there is "good reason to suppose" that CCIC is interested in the Contract Revenues, I would still exercise my discretion in favour of continuing the Receivership Order. I do not think Teyseer can insist that a good arguable case be made out at this juncture that the Receiver will be able in addition to make an actual recovery when the Receiver is still in the process of investigating this practical issue.

Findings: should the Receivership Order be set aside because it represents an exorbitant extra-territorial exercise of the jurisdiction of the Court?

83. Mr. Beltrami for the Judgment Creditor conceded that if the existence of the EJC had been known from the outset, the Receivership Order might never have been sought. Because requiring the Judgment Creditor to commence fresh receivership proceedings in England could result in prejudicial delay, counsel submitted that some useful purpose would still be served by continuing the Bermuda Receivership Order and directing the Bermuda Receiver to obtain an order from the English Court permitting the collection of CCIC's share of the Contract Revenues. This was because (a) the effect of registration was to convert the English Judgments into a Bermudian judgment, and (b) valuable time would be lost if the Judgment Creditor were to be required to make a fresh application to appoint a new receiver to collect the Contract Revenues which are only presently payable until year end 2011. These submissions cut cleanly through the legal morass of arguments surrounding extra-territoriality and the *situs* of the debt.

While legal theory has its place, the law generally only is, as Jonathan Sumption QC opined recently[12], "*common sense with knobs on*".

84. Section 3 of the Judgments (Reciprocal Enforcement) Act 1958 provides as follows:

> "*(3) Subject to the provisions of this Act with respect to the setting aside of registration,*
>
> *(a) a registered judgment shall, for the purposes of execution, be of the same force and effect; and*
>
> *(b) proceedings may be taken on a registered judgment; and*
>
> *(c) the sum for which a judgment is registered shall carry interest; and*
>
> *(d) the Supreme Court shall have the same control over the execution of a registered judgment;*
>
> *as if the judgment had been a judgment originally given in the Supreme Court and entered therein on the date of registration:*
>
> *Provided that execution shall not issue on such judgment so long as, under this Act and rules made under section 10, it is competent for any party to make an application to have registration set aside, or, where such application is made, until after such application has been finally determined."*

85. So in terms of looking at whether this Court is exercising an exorbitant jurisdiction by appointing the Receiver to collect an asset which is now admitted to be located outside of Bermuda, the analysis necessarily begins with the assumption that the Judgment Creditor obtained his judgment originally in this Court. Whether a receiver appointed by this Court should be able to pursue overseas assets may accordingly be viewed, for most purposes, through the same lens used by the English Court in the context of the English Receivership

[12] www.timesonline.co.uk: February 21, 2010.

Proceedings. Although it is true that the EJC in the Contract is actually in favour of the English Court, section 3 (3) of the 1958 Act effectively requires the Court for enforcement jurisdictional purposes to ignore that fact. An application to appoint a receiver by way of enforcement of a registered judgment proceeds on the assumed basis that this Court has both personal and subject-matter jurisdiction over CCIC in relation to the claims upon which the Judgment is founded.

86. In *Consolidated Contractors International SAL et al-v- Munib Masri* [2008] EWCA 303, where the English Receivership Order granted by Gloster J was challenged on jurisdictional grounds (applying principles which properly applied to garnishee proceedings but not freezing or receivership orders), Lawrence Collins LJ (as he then was) opined as follows:

> *"59. As I have said, the fact that it acts in personam against someone who is subject to the jurisdiction of the court is not determinative. In deciding whether an order exceeds the permissible territorial limits it is important to consider (a) the connection of the person who is the subject of the order with the English jurisdiction; (b) whether what they are ordered to do is exorbitant in terms of jurisdiction; and (c) whether the order has impermissible effects on foreign parties.*
>
> *60. CCOG's connection with the English jurisdiction is that it submitted to the jurisdiction of the English court, defended the case on the merits, and has a substantial English judgment outstanding against it. I do 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 co-operate with the receiver and to give notice of his appointment to its customers. CCOG will have to inform customers of the position and they will have to take advice. I suggested in the course of argument that the reality of the matter is that CCOG will be concerned that customers may think that a receiver has been appointed because it is bankrupt. CCOG*

has only itself to blame for that, and if it wishes to avoid that impression it has only to pay the judgment debt, which the group can well afford to do.

61. 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. The next point is that at least since 1900 English courts have appointed receivers in respect of foreign property."

87. This analysis in relation to the English Judgments which have now been Bermudianized through registration is highly persuasive and I adopt it. The only material distinction between the Bermudian Receivership Proceedings and their English counterpart is the fact that the EJC creates a problem of double jeopardy for Qatar Shell which requires any final determination of the Receiver's right to actually intercept payments under the Contract to be made by the English Court. It would arguably be an improper exercise of this Court's subject-matter jurisdiction to ignore the EJC, which is why both the Judgment Creditor and Qatar Shell seek a direction that this issue be determined by the English Court. The Receivership Order by its present terms avoids the possibility of a conflict between this Court and the jurisdiction where the debt is located because it contains what is known as a Babanaft clause:

"*17. Nothing in this order shall, in respect of assets located outside of Bermuda, prevent any third party from complying with-*

> *(A) what it reasonably believes to be its obligations, contractual or otherwise, under the laws and obligations of the country or state in which those assets are situated or under the proper law of any contract between itself and CCIC, and*
>
> *(B) any orders of the courts of that country or state, provided that reasonable notice of any application for such an order is given to the Applicant's attorneys.*"

88. So the Receivership Order explicitly contemplates that third parties, such as both Teyseer and Qatar Shell, are entitled to insist on compliance with (a) the *lex situs* of any foreign assets, and (b) "*the proper law of any contract between itself and CCIC*". At the directions hearing in May, 2009, I was quite befuddled by the notion that the EJC should apply to what I perceived to be a question of the Receiver's status rather than a dispute between CCIC and Qatar Shell under the Contract. The proper analysis is that, as between Qatar Shell on the one hand and CCIC and Teyseer on the other, the question of whether or not payment to the Receiver would validly discharge Qatar Shell's payment obligations under the Contract is quite clearly a matter falling within the parameters of the Contract's dispute resolution clause. The proper analysis must be that, as between Qatar Shell on the one hand and CCIC and Teyseer on the other, the question of whether or not payment to the Receiver would validly discharge Qatar Shell's payment obligations under the Contract is quite clearly a matter within the parameters of the EJC.
89. Teyseer objects to the Judgment's Creditor's suggested way forward on two jurisdictional grounds. Firstly, it is suggested that the question of whether CCIC has an interest in the joint debt falls to be determined under the JVA, which is governed by Swiss law, and does not arise under the Contract at all. This argument must be rejected as it is based on a mischaracterisation of the issue which is sought to be determined by the English Court. The issue to be determined is not what the status of the Contract Revenues is post-receipt and

how they should be divided by the parties to the JVA. The question is: what are the payment obligations of Qatar Shell under the Contract and would they be discharged as between Qatar Shell and CCIC to the extent of any amounts paid to the Receiver instead? Placing this question before the English Court would not represent the Receiver invoking the EJC in any formal sense, which Teyseer further contends is legally impermissible. Mr. Beltrami submitted that the Receiver was entitled to stand in the shoes of CCIC and was not a third party to the EJC. Even if this contention is wrong, the Receiver ought, in any event, to be able to seek an order from the English Court which would be binding between the parties to the Contract by virtue of the EJC.

90. It is not for this Court to be satisfied of any more than that it is arguable, and in my judgment it is very strongly arguable, that the English Court would determine that it is jurisdictionally competent to decide an issue which the Judgment Creditor and Qatar Shell both consider properly arises under the EJC.

91. Teyseer secondly submits that the *lex situs* of the debt is Qatar so that English law does not govern this issue in any event. It is quite correct that any suggestion that English domestic law governs all questions relating to the payment obligations in relation to the joint debt may well be overly simplistic, however. Moreover, it cannot be right that a debt is situated, for conflict of laws purposes, in the dispute resolution forum. Mr. Woloniecki's submissions on this issue merit reproduction in full:

"***Situs of debt***

1) In Dicey, Morris & Collins (14th edition), the learned authors state (at 22-026):

*'**22-026** (1) Debts. Subject to the exceptions set out below, a debt is situate in the country where the debtor resides. The reason usually given is that the country of the debtor's residence if normally the place where the creditor can enforce payment. It may not, however, be the only place: English courts may take jurisdiction against non-residents on the basis of temporary presence, or under*

CPR rr 6.19 and 6.20, and Arts 5-24 of the Judgments Regulation; foreign courts have similar rules for extended jurisdiction. Nevertheless, the possibility that an English court may take jurisdiction against a non-resident defendant under CPR 6.19 or 6.20 does not make a debt situate in England if the debtor is not resident here; the same is no doubt true with regard to a foreign court. The result is that enforceability and situs do not fully coincide: a debt will not normally be situate in a country if it is not enforceable there, but the fact that it is enforceable in a particular country does not mean that it is situate there.

22-027 *... A stipulation that payment should be made in a country where the debtor has no residence does not affect the general rule, although the debtor's failure to pay in that country may give his creditor a right to damages for breach of contract.'*

A. Residence

2) The basic rule is thus that a debt is situate at the place where the debtor resides (see Société Eram Shipping Company Ltd v. Hong Kong and Shanghai Banking Corporation Ltd [2003] UKHL 30, at para. 72-73, per Lord Hobhouse of Woodborough, citing Dicey and Morris 13th edition). In the case of a corporation, the place of residence is the place where the corporation carries on business. Thus Qatar Shell is resident in Qatar. It may also be resident in Bermuda (by virtue only of its incorporation there). It is certainly <u>not</u> resident in England.

3) Where a corporation has more than one place of residence, the debt cannot be situate at each place where the debtor resides, because a debt cannot (in common with any other type of property, whether tangible or intangible) be situate in two places at once. In this situation, the debt is situate at the place of payment, provided that it is also one of the places where the debtor resides. Thus, in New York Life Insurance Co. v. Public Trustee [1924] 2 Ch. 101, Atkin LJ said (at 120):

'Now, when you are dealing with a corporation, you are dealing again with a legal notion, and you have to examine the question where the debt can be said to be situate. It appears to me plain that a corporation according to our law is deemed to reside for the purposes of suit in the place where it carries on business in its own name, and in the case of corporations, you have many activities in many countries, such as the big insurance companies - for example, the plaintiffs in this case. It appears to me that the true view is that the corporation resides for the purposes of suit in as many places as it carries on business, and it is to be noticed that in ordinary cases where an obligation is entered into by the corporation without any particular limits of the place where it is payable, inasmuch as that obligation is an ordinary personal obligation which follows the person, you have in each Jurisdiction a right to sue the corporation there; the corporation is resident there, and the obligation is enforceable there. ***Under ordinary circumstances the debt would be situate in each place where the corporation can be found*** *... It is, therefore, in their Lordships' view, at least open to doubt whether service of process on the company could properly be effected in Hong Kong at all. Their Lordships are, however, prepared to assume for present purposes that it could. What is beyond doubt is that the company is incorporated in Liberia, where presumably it has a registered office and where certainly it has a registered address for service of process. At least, therefore, it is resident in Liberia and accordingly, making the above assumption, has* ***two places of residence****. In that situation it is clearly established that* ***the locality of the chose in action falls to be determined by reference to the place - assuming it to be also a place where the company is resident - where, under the contract creating the chose in action, the primary obligation is expressed to be performed****' (emphasis supplied)*

4) Where the debtor has more than one residence and the debt is not expressed to be paid at any one of them, the situs of the debt is where the

debt would be paid according to the ordinary course of business. Thus, the Privy Council in Kwok approved F. & K. Jabbour v. Custodian of Israeli Absentee Property in which it was held:

> *'Where a corporation has residence in two or more countries, the debt or chose in action is properly recoverable, and therefore situated, in that one of those countries where the sum payable is primarily payable, and that is where it is required to be paid by an express or implied provision of the contract or, if there is no such provision, where it would be paid according to the ordinary course of business.'*

5) In the present case, there is no express or implied provision for the Qatar Shell debts to be paid at one of those places in which Qatar Shell is resident. The question is therefore: 'in which of Qatar Shell's two places of residence (Qatar or Bermuda) would the debt be paid in the ordinary course of business?':

i) In the ordinary course of business, the place of payment would be Qatar rather than Bermuda. In any event, the place for payment in the ordinary course of business could not be in Bermuda, because Qatar Shell has no bank account here, and does not carry any business here.

ii) Since Qatar Shell does most of or all of its business in Qatar, and the joint venture to whom the debts are payable carries on the business of building the GTL project in Qatar (in respect of which the debts are payable), such debts would, in the ordinary course of business, be paid in Qatar.

iii) This is the case, notwithstanding the fact that payment is made to the Joint Venture bank account in Abu Dhabi, as illustrated by the partially redacted documents disclosed with ASW's letter to Cox Hallett Wilkinson of 12 February 2010, which was copied to Mr. Masri and the Receiver, and which is annexed to this Note at ***Appendix 1****.*

B. Enforcement

6) It follows from the foregoing that a debt cannot be situate in a place where the debtor does not reside, even if it is enforceable there: "enforceability and situs do not fully coincide" (Dicey, Morris & Collins, above). Thus, notwithstanding the jurisdiction clause in the construction contracts which provides that disputes under those contracts must be brought in England, this does not make the debts situate there: see Re Banque des Marchands de Moscou (No. 2) [1954] 1 WLR 1108 at 1115-1116.

7) If an order for specific performance is made against Qatar Shell requiring it to pay its debts pursuant to the construction contracts, such order only has "teeth" in Qatar. This is because the ultimate sanction for non-compliance will be a fine or sequestration of assets, and Qatar Shell has (again) confirmed that it has no bank account in Bermuda. Thus, any English order for specific performance could in theory be ignored by Qatar Shell unless and until it is ultimately enforced in Qatar.

Conclusion

8) Thus, by dint of both its residence (the superseding connecting factor which is determinative for the situs of a debt owed by a corporation) and the place in which its debts can be effectively enforced, the debts due by Qatar Shell are situate in Qatar."

92. For the purposes of the present application, I find that the relevant debt is situated in Qatar as Mr Woloniecki contended. This may result in the English Court having regard to Qatari law under English conflict of law rules. However, this does not undermine my primary jurisdictional finding that the English Court is the appropriate forum to make a binding determination as to whether any payment by Qatar Shell to the Receiver would discharge its obligations to CCIC and Teyseer under the Contract. And having regard to the Receiver's intention of seeking such

relief from the English Court before seeking to make any actual collection from Qatar Shell, I reject the broad submission that the Receivership Order represents an impermissibly broad exercise of territorial jurisdiction by this Court.

93. As Qatar Shell has made it clear that it accepts that the English Court is competent to finally determine whether or not payment to the Receiver will discharge its joint liability to CCIC and Teyseer, no question of the need for further legal action in Qatar presently seems to arise. But the mere location of the debt in Qatar is not on the present facts sufficient to constitute a ground for rejecting the Judgment Debtor's proposal that the final determination of whether the Receiver can collect CCIC's portion of the joint debt should take place in England where all parties to the Contract should be bound.

Findings: the Joint Debt and the Swiss law position

94. Teyseer submits that having regard to Swiss law, one partner's interest in joint property can only be attached by liquidating the entire partnership. This assertion may well be correct. However, as I have analysed the legal position, the Receiver has been appointed to collect a joint debt from Qatar Shell before it is received by the Swiss partnership. The Swiss law position has no bearing on the issues in controversy on Teyseer's application.

Conclusion

95. The Judgment Creditor has made out a good arguable case for the proposition that the Receiver is entitled to pursue the collection of CCIC's interest in the joint debt owed to CCIC and Teyseer under the Contract. Teyseer's application to set aside the Receivership Order on this legal ground at the interlocutory stage is refused.
96. Under the JVA, CCIC appears to be contractually obliged to permit Teyseer to use the remaining Contract Revenues as working capital and to solely assume the benefit of any ultimate profit and the risk of any ultimate loss. Although Teyseer has demonstrated that the Receiver's collection prospects are strewn with practical complexities which cast some doubt on their ultimate likelihood of

success, it is not yet clear that the collection exercise will be fruitless. Having regard to (a) the undertakings given by the Receiver, (b) the fact that the Judgment Debtor itself is not challenging the Receivership Order at this point, and (c) the fact that the mere existence of the Order does not materially harm Teyseer, I find that it is not just and convenient to set the Order aside either in whole or in part. In addition, it is of considerable importance to take into account that CCIC has the means to discharge the Judgment Debt from independent sources and is thus primarily responsible for any inconvenience caused to its joint venture partner by CCIC's own dishonourable conduct in relation to business dealings wholly unconnected to the JVA.

97. Although I accept Teyseer's submissions that the *situs* of the debt is Qatar, rather than England, this conclusion does not support a finding that continuance of the Receivership Order is an exorbitant exercise of this Court's territorial jurisdiction. The effect of registration of the English Judgments under the Judgments (Reciprocal Enforcement) Act 1958 is that this Court is required to enforce the Bermudianized judgment as if it were originally made before this Court.

98. Although it appears to be arguable that under Swiss law partnership assets may only be seized by creditors after liquidating the entire partnership, I find that the relevant question is whether CCIC's interest in the joint debt can be collected from Qatar Shell before it is received by the joint venture partners. The question of whether payment to the Receiver would discharge the joint debt owed by Qatar Shell to CCIC and Teyseer under the Contract falls within the EJC, and can only be finally determined (avoiding any risk of double jeopardy for Qatar Shell) by the English Courts.

99. I will hear counsel as to costs.

Dated this 22nd day of March, 2010

KAWALEY J