



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

(in Chambers)

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

Date of Hearing: July 23, 2010

Date of Ruling: July 27, 2010

Mr. Jan Woloniecki and Mr. Peter Dunlop,

Attride-Stirling & Woloniecki, for the Intervenor

Mr. Jeffrey Elkinson, Conyers Dill & Pearman,

for the Judgment Creditor

Mr. David Kessaram, Cox Hallett & Wilkinson,

for Qatar Shell

Mrs. Fozeia Rana-Fahy, Mello Jones & Martin,

for the Receiver

Introductory

1. On March 22, 2010, I refused Teyseer's application to set aside the June 13, 2008 Order appointing Mark W.R. Smith of Deloitte Bermuda as Receiver against the Judgment Debtor. On July 22, 2010 I heard argument on the issue of costs and granted Teyseer leave to appeal against the March 22, 2010 Ruling.
2. I reserved judgment on the question of costs having regard to the complexity and contentiousness of the wider transnational litigation of which this otherwise straightforward application forms part. The Judgment Creditor, Receiver and Qatar Shell all sought their costs. Teyseer contended that the appropriate order would be to either make no order or to reserve costs.

Costs as between the Judgment Creditor and Teyseer

3. On any sensible view of the result, Teyseer's attempt to discharge the Receivership Order on jurisdictional and evidential grounds failed. It is appealing the Court's March 22, 2010 Ruling, having been granted leave at the beginning of last Friday's hearing. It is true that, assuming this Ruling is upheld, Teyseer may ultimately prevail in a "final trial" of the issue of whether or not it is possible for the Receiver to collect any of the Contract Revenues owing to the CCIC/Teyseer Joint Venture. Thus while Teyseer's intervention Summons may ultimately prevail, its attempt to resolve this issue in its favour at the February 2010 hearing was clearly (subject to its pending appeal) unsuccessful.
4. On this basis Mr. Elkinson submitted that costs should follow the event. Mr. Woloniecki, on the other hand, contended that there ought to be either no order as to costs or costs ought to be reserved to await the final outcome of the Judgment Creditor's attack on the Contract Revenues. These arguments were advanced in part on the basis that neither side had truly won and in part on the hypothesis that it would be unfair to prejudge the final result by dealing with costs now. In addition, it was contended that the judgment Creditor was guilty of abuse of process during the hearing and inconsistent actions after the hearing, and should for this reason be deprived of his costs.
5. The abuse of process complained of is the failure to disclose at the February hearing the Judgment Creditor's then pending application in Qatar to attach the same debt in respect of which the Receiver was appointed in Bermuda. This is supported by reference to the Third Saleh Affidavit and responded to by a July 22, 2010 letter from the Judgment Creditor's London Solicitors, Simmons & Simmons. The latter letter affords no satisfactory explanation for the non-disclosure; it is possible that upon further enquiry, a fuller "defence" could be proffered.

6. The Qatar filing ought to have been disclosed to this Court at the mid- February, 2010 hearing as an alternative remedy to the Bermuda Receivership which was being actively pursued. However had this matter been disclosed, it is difficult to see how this would have affected the result achieved through the March 22, 2010 Ruling, having regard to the findings upon which this decision was based. Accepting that it potentially has affected the result, this possibility is insufficiently obvious to displace the usual costs following the event rule.
7. Nor can the failure of the Receiver to take action since March 22, 2010 have any bearing on the costs incidental to the related hearing. My Ruling (paragraph 79) contemplated that the Receiver might or might not elect to take action. However, Teyseer's counsel does make a valid point in noting that a significant basis asserted for continuing the Receivership Order was to allow the issue of whether the Receiver could collect the Contract Revenues to be decided by the English Court. Mr. Elkinson submitted that one of the reasons for the Receiver's inaction since March 22, 2010 was Teyseer's own April 12, 2010 filing in Greece of an application for a declaration that it was solely interested in the Contract Revenues. Because Greece was an EU country, this filing pre-empted the ability of the Receiver to determine the same issue before the English Court.
8. I make no finding at this juncture as to why the Receiver has yet to apply to the English Court, having insufficient material upon which to reach a satisfactory conclusion on this issue. However, I do find that justice requires the Court to distinguish those costs attributable to Teyseer's attempt to set aside the Receivership Order pre-emptively from those costs attributable to its intervention generally and the final determination of whether or not CCIC has any sufficient interest in the Contract Revenues for the Receiver to collect. Accordingly, I rule as follows regarding costs as between the Judgment Creditor and Teyseer:
 - (a) prior to the May 8, 2009 hearing, the Court envisaged finally determining Teyseer's application. It was only after consideration of Fifth Morgan (sworn on May 1, 2009) that the Court determined to see whether (a) the application to set aside was sufficiently clear to be determined in Teyseer's favour at the interim stage, or (b) the issue should be more fully examined in the English Court, with the proceedings in this Court being formally or informally stayed;
 - (b) all costs up to and including May 8, 2009 (including, as between the Judgment Creditor and Teyseer, Qatar Shell's costs for the same period) are reserved until the Judgment Creditor's right to collect the Contract Revenues has been finally determined or abandoned;

- (c) all costs incurred after May 8, 2009 of and incidental to preparing for the hearing of the application to set aside the Receivership Order heard in February 2010, including finalizing the Ruling and the application for costs, are awarded to the Judgment Creditor to be taxed if not agreed on the standard basis and payable forthwith.

Costs as between Qatar Shell, the Judgment Creditor and Teyseer

- 9. Qatar Shell is unarguably an innocent third party entitled to its costs to date irrespective of the final result of the Bermuda enforcement proceedings. Mr. Kessaram referred to the costs undertaking given by the Judgment Creditor when obtaining the Receivership Order and the period before Teyseer intervened (June 13,2008-August 24, 2008) and the period thereafter, to the extent that Teyseer's liability in costs was taken into account. For present purposes, I do not treat the issue of costs incurred during the pre-intervention period as presently before the Court.
- 10. Having regard to the Order made as between the Judgment Creditor and Teyseer, I make the following Order as regards Qatar Shell's costs of and incidental to Teyseer's intervention application:
 - (a) the Judgment Creditor shall pay Qatar Shell's costs to be taxed if not agreed and payable forthwith for the period August 24, 2008 to May 8, 2009, without prejudice to the eventual position as between the Judgment Creditor and Teyseer pursuant to paragraph 9(b) above ;
 - (b) Teyseer shall pay Qatar Shell's costs after May 8, 2009 in relation to its unsuccessful attempt to set aside the Receivership Order *in limine*, up to and including the present costs application.

Costs as between the Receiver, the Judgment Creditor and Teyseer

- 11. Having regard to the Order made as between the Judgment Creditor and Teyseer, I make the following Order as regards Receiver's costs of and incidental to Teyseer's intervention application:
 - (a) the Judgment Creditor shall pay the Receiver's costs to be taxed if not agreed and payable forthwith for the period August 24, 2008 to May 8, 2009, without prejudice to the eventual position as between the Judgment Creditor and Teyseer pursuant to paragraph 9(b) above ;

- (b) Teyseer shall pay the Receiver's costs after May 8, 2009 in relation to its unsuccessful attempt to set aside the Receivership Order *in limine*, up to and including the present costs application. Again, these costs shall be taxed if not agreed and payable forthwith.

Summary

12. It was only on May 8, 2009 that the Court decided that Teyseer's application to set aside the Receivership Order should be determined on what amounted to a strike-out basis. The February 2010 hearing was conducted on the basis that if Teyseer failed to show a clear case for setting aside the Order, the issue of whether or not the Contract Revenues could be collected by the Receiver would remain alive for future determination. Teyseer did fail and it is only the costs attributable to this aspect of the application which it should bear on the normal basis that costs should follow the event.
13. Teyseer should pay the relevant costs of the Judgment Creditor, Qatar Shell and the Receiver as well. The other costs of Qatar Shell and the Receiver must, in the first instance at least, be borne by the Judgment Creditor. In reserving the pre-May 8, 2009 costs (as between the Judgment Creditor and Teyseer) to be determined at a date uncertain when the collection attempts either succeed (this must seemingly occur before year-end 2011) or abandoned, I take the following considerations into account.
14. If the collection efforts are successful, it may be possible for any costs to be recovered out of the relevant recoveries without the need for further assistance from this Court. If the collection efforts are unsuccessful as regards the Contract Revenues, my strong provisional view is that the appropriate costs order would be to make no order as to costs. The effect of Teyseer's intervention is to lend valuable assistance to the Judgment Debtor to an extent which is difficult to reconcile with Teyseer's legitimate commercial interests alone.
15. In these circumstances this Court would be most reluctant to countenance an order which required the much aggrieved Judgment Creditor to pay Teyseer's costs if his present *bona fide* judgment enforcement efforts turned out to have been misconceived.

Dated this 27th day of July, 2010

 KAWALEY J