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Case No. 2008 Folio 1280

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

Royal Courts of Justice
Strand
London WC2A 2LL
30th March 2010

B e f o r e :

MR JUSTICE HAMBLEN

CONTINENTAL TRANSFERT TECHNIQUE LIMITED
Claimant
- v -

(1) THE FEDERAL GOVERNMENT OF NIGERIA
(2) ATTORNEY GENERAL OF THE FEDERATION (of Nigeria)
(3) MINISTRY OF THE INTERIOR (of Nigeria)
(4) FEDERAL REPUBLIC OF NIGERIA
(5) NIGERIAN NATIONAL PETROLEUM CORPORATION

Defendants

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(Official Shorthand Writers to the Court)

MR P KEY (instructed by Eversheds LLP) appeared on behalf of the Claimant.
MS J OKOYE (instructed by Gromyko Amedu) appeared on behalf of the First to Fourth Defendants.
The Fifth Defendant was not represented.

HTML VERSION OF JUDGMENT

MR JUSTICE HAMBLEN:

Introduction

1. The claimant, CTTL, entered into a supply agreement dated 25th May 1999 with the Federal Ministry of Internal Affairs of Nigeria (now known as the Ministry of the Interior) for a combined expatriate residence permit and aliens card scheme, pursuant to which CTTL was to produce and supply electronic residence cards for the Federal Ministry of Internal Affairs for use by the Nigeria Immigration Service. The agreement was subject to arbitration in Nigeria governed by Nigerian law. The arbitration clause provided as follows:

"In the event of any dispute, claim or difference which may arise out of or in relation to this contract and touching on the performance or breach thereof, the same shall first be settled amicably between the parties hereto and failure to reach settlement the matter shall be referred to arbitration in accordance with the provisions of the Arbitration and Conciliation Act Cap 19 Vol 1 Laws of the Federation of Nigeria 1990. The party wishing to refer the matter to arbitration shall serve on the other party a 7 days notice to refer the matter to arbitration. On receipt of such notice both parties shall appoint an arbitrator who shall preside over the matter. The Law governing the proceedings shall be Nigeria Law and the award of the arbitrators shall be final and binding on all the parties hereto."

It also provides that the governing law of the contract shall be the laws of the Federal Republic of Nigeria.

2. Following disputes under the agreement an arbitration duly took place between CTTL and the first to third defendants, and the award was made on 14th August 2008. The sums due from the first to third defendants under that award amounting to NGN29,660,166,207.48 plus interest and costs remain unpaid. The sterling equivalent to that sum as at the date of due payment was approximately £140 million.

The UK proceedings.

3. The New York Convention applied to the award as the seat of the arbitration was Nigeria, and Nigeria is a party to the Convention. CTTL applied under section 101 of the Arbitration Act 1996 to enforce the award in this jurisdiction and for judgment to be entered in terms of the award by an application dated 9th December 2008. An interim order granting permission to enforce the award and enter judgment was made on 10th December 2008 by Walker J, and it provided the defendants with a period of 2 months and 22 days from service to apply to set it aside. The order of Walker J provided that judgment be entered in the terms of the award against the first to fourth defendants ("the defendants") for the full Nigerian naira amount. It then provided that, pursuant to CPR 62.18(9), CPR 62.14 and section 12(2) of the State Immunity Act 1978, the defendants had the right to make an application to the court within 2 months and 22 days after service of the order to set aside the order and that the award may not be enforced until after the end of that period or any application had been made and disposed of.

4. Service of the interim order and application by way of service on a foreign state was made through the Foreign and Commercial Commonwealth Office pursuant to CPR 6.44 and section 12(1) of the State Immunity Act 1978 on 13th March 2009. The period of 2 months and 22 days expired, therefore, on 4th June 2009.

5. The defendants made no application to set aside the interim order. CTTL then applied for the order granting permission to enforce the award and enter the judgment to be incorporated in a single final order from the court. Such an order was made by Andrew Smith J dated 24th June 2009 and judgment was entered on that date for the sums due. That order provided that judgment be entered against the defendants in terms of the award for the full Nigerian naira amount. It also provided:

> "This order is absolute and the claimant is entitled to apply for enforcement of this judgment."

6. CTTL proceeded to enforce the judgment of the court by way of charging orders over property owned by the Nigerian National Petroleum Corporation (NNPC). By an order of Christopher Clarke J dated 28th September 2009 NNPC was joined as a fifth defendant to these proceedings and the charging order was granted in favour of CTTL over real property of NNPC. A further order of 28th September 2009 granted a charge in favour of CTTL over securities held by NNPC in a company called Duke Oil Services Limited incorporated in the jurisdiction. An interim third party debt order dated 28th October 2009 was granted in favour of CTTL over accounts held by NNPC's banks in the jurisdiction. On the application of NNPC this order was discharged on 16th November 2009, [2009] EWHC 2898 (Comm), although an appeal to the Court of Appeal against that discharge has been permitted and will be pursued by CTTL. Meanwhile it has been ordered that the interim charging orders of 28th October 2009 are to remain in place and that a hearing to determine the charging orders is to be scheduled. By an application notice dated 23rd November 2009 the defendants now, somewhat belatedly, apply to the court for an order seeking that the judgments be set aside or stayed.

The US proceedings.

7. In addition to seeking to enforce the award in this jurisdiction CTTL also took steps to seek to enforce it in the United States. Their original application was for entry of the judgment in terms of the award. There was no response to that application by the defendants and a default judgment motion was issued. The defendants were then stirred into action and were granted a temporary stay to respond to the application. The original application by CTTL was then superseded when they put forward an amended claim. They claimed that judgment should be entered on two bases: (1) due to an entitlement to enforce the award under the New York Convention , and (2) in recognition of the UK judgment. The defendants applied for an adjournment of that application - in effect for a stay. That application was dismissed and judgment was handed down on 23rd March 2010 by the United States District Court for the District of Columbia. As regards CTTL's application, that has yet to be ruled on.

The Nigerian proceedings.

8. The award was made on 14th August 2008. On 15th November 2008 time expired for challenge of the award in the Nigerian courts. On 20th April 2009 an originating summons was filed out of time by the defendants in the Nigerian courts seeking to challenge the award. The application was made for an injunction to prevent enforcement by CTTL and for an extension of time to apply to challenge the award. On 23rd April 2009 an ex parte order was granted by the Nigerian courts for the requested injunction and for the requested extension of time. On 19th May 2009 CTTL applied for an extension of time to contest the ex parte order. On 1st June 2009 there was a hearing of that application. On 14th June 2009 CTTL contends that, pursuant to the relevant Nigerian legislation, the ex parte order lapsed. On 16th June 2009 the court gave a judgment rejecting CTTL's application for an extension of time to challenge the ex parte order. I am told that that order is itself the subject of an appeal, but there is no evidence before the court as to when either that appeal or when the defendants' originating summons will be heard.

The application to set aside the judgments.

9. The first ground relied upon by the defendants is section 103(2)(f) of the Arbitration Act 1996, which provides as follows:

"Recognition or enforcement of the award may be refused if the person against whom it is invoked proves…

(f) that the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, it was made."

Although we are here concerned with a judgment rather than an award, the defendants submitted that, since the award is one which should not be recognised or enforced, it follows that the judgment based on that award should be set aside. I reject the defendants' argument. It is clear that section 103(2)(f) is inapplicable in this case. It only applies where the award "has been set aside or suspended". The fact that there is an application to set aside an award does not mean that the award has been set aside. The position where there is an application to set aside is dealt with under section 103(5). If authority is needed to support that conclusion based on the clear wording

of section 103, it is to be found in the judgment of Gross J in IPCO v NNPC [2005] 2 Lloyd's Rep 326. In the course of his judgment in that case he said as follows at paragraph 12:

"Secondly, s.103(2)(f) is only applicable when there has been an order or decision suspending the award by the court in the country of origin of the award ('the country of origin'). S.103(2)(f) is not triggered automatically by a challenge brought before the court in the country of origin. This conclusion flows from the wording of s.103(2)(f) itself, it is supported by leading commentators (Van den Berg, The New York Convention of 1958 (1981), at p.352, Fouchard, Gaillard, Goldman on International Commercial Arbitration (1999), at pp. 980-1) and it is consistent with the provisions of s.103(5) of the Act – which would be otiose, or at least curious, if an application to the court in the country of origin automatically resulted in the award being suspended."

Then again at paragraph 21:

"…NNPC contended that by virtue of its application to the Federal High Court in Lagos to set aside the award, the award had been 'suspended'; accordingly, s.103(2)(f) of the Act was applicable and NNPC was entitled on this ground to have the order set aside. For the reasons already set out, this ground is misconceived; s.103(2)(f) is not triggered merely by an application before the court in the country of origin."

I respectfully agree with those observations.

10. The second ground relied upon by the defendants was alleged material non-disclosure of the Nigerian proceedings and the US proceedings at the time of the application before Andrew Smith J that led to the order of 23rd June 2009. In order to put that submission in its context, it is necessary to deal with the procedural background to Andrew Smith J's order.

11. In December 2008 CTTL had applied for and obtained leave to enter judgment in the amount of the award. (I have already set out the terms of Walker J's order.) The effect of that order was that there was, as from 10th December 2008, a judgment for CTTL in the amount of the award, but that judgment could not be enforced for at least 2 months and 22 days from the date of service. No challenge was made within that prescribed period, which meant that, in accordance with the terms of the December order, there was a judgment which was fully enforceable as from 5th June 2009. However, because of the conditional nature of the December order, for enforcement purposes CTTL wanted an order that confirmed the position as it now was. Hence, they made an application to the court for a further order formalising the procedural position. That application was made under CPR 3.1 on paper and without notice. The reason for this is that it was essentially seeking an administrative act. It was seeking that the existing position be formalised. It was not making a new substantive application. The application was supported by a witness statement of Mr Dutson, who said nothing about the Nigerian or the US proceedings, and that is the gravamen of the defendants' complaint. Given that this was essentially an administrative application, CTTL submits, and I accept, that any duty of disclosure would be a limited one and would ordinarily relate to the status of the English proceedings which were being sought to be formalised. If, for example, there had been some issue in relation to

service, that would have been a matter which should have been brought to the court's attention. In my judgment, the duty did not extend to the Nigerian proceedings, still less the US proceedings. The Nigerian proceedings are relevant to the issue of enforcement of the judgment, but not to the claimant's entitlement to enter judgment. CTTL have that right as long as there is a valid and subsisting award, which there is unless and until it is set aside, which it has not been. I therefore reject the argument that there was any material non-disclosure, or, if there has been, that it should lead to the judgment being set aside.

The application for a stay.

12. The first ground relied upon by the defendants was section 13(2) of the State Immunity Act 1978, which provides that:

"Subject to subsections (3) and (4) below…

(b)the property of a State shall not be subject to any process for the enforcement of a judgment or arbitration award or, in an action in rem, for its arrest, detention or sale."

The defendants submitted that, since the property of the defendants cannot be made subject to any process of enforcement in the United Kingdom pursuant to section 13(2)(b), they should therefore be granted a stay of the judgment in the United Kingdom. That submission is, however, wrong in law. Section 13(2) is expressly made subject to section 13(4), and it does not apply, pursuant to section 13(4), to property "which is for the time being in use or intended for use for commercial purposes". There is, therefore, no blanket state immunity. Whether or not there is such immunity will depend on the particular property against which enforcement is sought. In those circumstances there can be no justification for a general or blanket stay.

13. I turn then to the general discretionary grounds in relation to the application for a stay.

14. Given that a judgment has already been entered in terms of the award pursuant to section 103(3) of the 1996 Act and CTTL is now seeking to enforce that judgment, the relevant discretion is that which can be invoked to stay enforcement of any judgment of the court, namely that provided by RSC Order 47 Rule 1(1), which is not yet replaced by an equivalent provision in the CPR. This is confirmed by the decision in Far Eastern Shipping Company v Sokenflot [1995] 1 Lloyd's Law Rep 520. RSC Order 47 Rule 1 requires that "the court is satisfied…that there are special circumstances which render it inexpedient to enforce the judgment or order". In the Far Eastern Shipping case Potter J observed that "inexpedient" in this context means unjust.

15. In support of their application the defendants rely on section 103(5) of the 1996 Act which provides as follows:

"Where an application for the setting aside or suspension of the award has been made to such a competent authority as is mentioned in subsection (2)(f), the court before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the recognition or enforcement of the award.

It may also on the application of the party claiming recognition or enforcement of the award order the other party to give suitable security."

This section is not directly applicable, since judgment has already been entered, and CTTL now seeks to enforce that judgment as opposed to recognition of the award or direct enforcement of the award. Nevertheless, for present purposes CTTL accepts that, given that the context is a judgment to enforce an arbitration award, the approach set out in the case law in relation to and section 103(5) is relevant to the exercise of the court's discretion under RSC 47.

16. The relevant principles under section 103(5) are helpfully set out in the judgment of Gross J in the IPCO case. In that case NNPC was seeking a stay of enforcement in England of a Nigerian award on the basis that challenge to the award had been submitted to the Nigerian courts. A stay was granted by Gross J on terms requiring NNPC to pay the sum that was indisputably due to IPCO, around US$30million, and to provide appropriate security in London for the sum of US450 million. Gross J summarised the relevant principles at paragraphs 11 to 16 of his judgment. So far as relevant to the present application, they are as follows:

1. Section 103 embodies a pre-disposition to favour enforcement of New York Convention Awards – see paragraph 11.

2. Section 103(5) is a compromise between (1) the concern that enforcement should not be frustrated merely by the making of an application in the country of origin; and (2) the concern that, pending proceedings in the country of origin, it should not necessarily be pre-empted by rapid enforcement of the award in another jurisdiction – see paragraph 14.

3. The court is unfettered when considering the exercise of its discretion. Ordinarily relevant considerations will include the following: (a) whether the application before the court in the country of origin is brought bona fide and not simply by way of delaying tactics; (b) whether the application before the court in the country of origin has at least a real (i.e., realistic) prospect of success; and (c) the extent of the delay occasioned by an adjournment and any resulting prejudice – see paragraph 15.

17. In his judgment at paragraph 16 Gross J also observed as follows:

"…the fact that the arbitration was domestic in the country of origin must generally be likely to enhance the deference due to the court exercising supervisory jurisdiction in that country. Comity and common sense are likely to require no less; pre-empting the decision on a challenge to an award before the court exercising supervisory jurisdiction in the country of origin would be a strong thing in a case where all parties were domiciled or incorporated in that country."

Those observations apply in the present case, where the parties are Nigerian to a Nigerian law contract with a Nigerian seat of arbitration, and are relied upon by the defendants.

18. Gross J also quoted and referred to the judgment of the Court of Appeal in the case of Soleh

Boneh International Limited v The Government and the Republic of Uganda [1993] 2 Lloyd's Rep 208. He said as follows:

"As it seems to me, the right approach is that of a sliding scale, in any event embodied in the decision of the Court of Appeal in Soleh Boneh v Uganda Govt. [1993] 2 Lloyd's Rep. 208 in the context of the question of security:"

There is then set out a quote from the judgment of Staughton LJ as follows:

"….two important factors must be considered on such an application, although I do not mean to say that there may not be others. The first is the strength of the argument that the award is invalid, as perceived on a brief consideration by the Court which is asked to enforce the award while proceedings to set it aside are pending elsewhere. If the award is manifestly invalid, there should be an adjournment and no order for security; if it is manifestly valid, there should either be an order for immediate enforcement, or else an order for substantial security. In between there will be various degrees of plausibility in the argument for invalidity; and the Judge must be guided by his preliminary conclusion on the point.

The second point is that the Court must consider the ease or difficulty of enforcement of the award, and whether it will be rendered more difficult if enforcement is delayed. If that is likely to occur, the case for security is stronger; if, on the other hand, there are and always will be insufficient assets within the jurisdiction, the case for security must necessarily be weakened."

So stress was there placed by the Court of Appeal on the importance of considering on the material before the court the strength of the case for invalidity of the award.

19. I turn then to consider how the discretionary factors apply in the present case, and I consider, first, whether the application has a real prospect of success.

20. The court has to consider this issue on the basis of the material before the court. It is up to the applicants, in this case the defendants, to put forward such evidence as it wishes to support its case on the application which involves, in accordance with established principles, putting forward evidence relating to its case as to the invalidity of the award. However, the defendants had not done so. The only evidence relating to the basis of the application is the originating summons itself. That provides that "The following relief is being sought" and there are various grounds set out, and the only ground that sets out a basis for challenging the validity of the award, aside from points relating to the New York Convention (which have not been pressed before me), is under 4:

"A declaration that the arbitral tribunal misconducted itself in rendering the Final Award particularly when the tribunal awarded damages for loss of profits to the defendants contrary to the agreement of the parties."

21. So the only identified ground to challenge the validity of the award is that the tribunal had no jurisdiction to deal with the claim for lost profits, but no evidence from the defendants has

been advanced to support this contention. There is, however, Nigerian law evidence before the court to rebut it. This is set out in the statement of Mr Falkof for CTTL, who relates what he has been told by CTTL's Nigerian counsel, Mr Adebayo. In summary, the effect of the advice of Mr Adebayo set out in Mr Falkof's statement is:

1. That the award has not been suspended and remains binding on the parties. 2. The gravamen of the application in Nigeria is that the tribunal allegedly wrongly awarded compensation for loss of profits. In particular, it is contended that the tribunal allegedly did not have the power to award loss of profits.

3. The challenge is misconceived because the tribunal did have the power to award loss of profits in accordance with the general terms of the arbitration clause. Further, the defendants raised no objection in the arbitration that the tribunal did not have power to award loss of profits, and any challenge on this basis therefore be waived – see section 33 of the Arbitration and Conciliation Act.

4. There is no other basis for a valid challenge to the award in Nigeria.

5. The only parts of the award which are subject to challenge in Nigeria are those parts awarding loss of profit.

22. On the evidence before the court, I am not satisfied that the defendants have shown that there is a real prospect of success in their application to challenge the validity of the award. It would be a surprising arbitration clause that excluded jurisdiction in respect of particular types of damages claims, and the arbitration clause in this case is expressed in general terms. In any event, one would expect an objection of this kind to have to be taken at the arbitration itself, and on the evidence before the court it was not.

23. I am therefore not satisfied that there has been shown to be a real prospect of the application succeeding. In so ruling, I am not pre-empting the decision of the Federal Court of Nigeria. I am merely making a ruling, as I have to in respect of this application, on the basis of the evidence before the court.

24. Secondly, as to whether the application involves delaying tactics, there is evidence to suggest that there is an element of delaying tactics to the application. The award was made on 14th August 2008. There is a three months' period of time for the commencement of proceedings to challenge an arbitration award in Nigeria. The time limit for the commencement of proceedings to challenge the award, therefore, expired in mid-November 2008, but it was not until 20th April 2009, over five months after the time had expired, that an ex parte application was made to bring proceedings to challenge the award out of time. That application was made only after the defendants knew in March 2009 that proceedings had been commenced in England and indeed in the United States for recognition and enforcement of the award. That delaying tactics may be involved also accords with the conclusion reached by the United States Court in respect of the proceedings before them. In the judgment of the United States District Court for the District of Columbia it was said as follows:

"The procedural history of this case strongly indicates that the defendants moved to set aside the award in Nigeria only in order to manufacture a defense to Continental's claims before this Court. Under Nigerian law, once an arbitration award has been issued, the party against whom it was issued has three months in which to apply in court for the vacatur of the award. Since the award at issue in this case was rendered on August 14, 2008, any motion for vacatur should have been made by November 14, 2008, three months later. Nigeria took no action. When the defendants were served with notice of this lawsuit on December 11, 2008, they still took no action. Only after Contenital had moved for the entry of a default judgment in this matter did the defendants make an appearance before this Court, requesting a 45-day stay of proceedings. During those 45 days, the defendants finally decided that they wanted to challenge the arbitral award. They filed the necessary papers in the Nigerian court on April 20, 2009 — more than eight months after the issuance of the arbitral award, and just three weeks before the defendants were required to move to vacate the Clerk's entry of default in this Court. The timing of that sequence of events clearly indicates "an intent to hinder or delay resolution of the dispute" before this Court."

Although those observations were made in relation to the US proceedings, a number of them seem equally apt to describe the UK proceedings. Further, if, as I have concluded to be the case on the evidence before the court, the application has not been shown to have any real prospect of success, that provides further support for the conclusion that there is an element of delaying tactics about the application.

25. Thirdly, the delay caused by any stay and resulting prejudice. There is no evidence before the court as to when the application in Nigeria will be heard. CTTL contend that it may not be for some considerable period of time. They say that, as far as they are aware, there is no immediate prospect of a hearing, and that the hearing of the challenge may be a considerable time away. They point out that, as in many jurisdictions, matters can take some time to come on for hearing in Nigeria. By way of example, they note that by the time the matter came in front of the English court for the second time in the IPCO case (IPCO v NNPC [2008] 2 Lloyd's Reports 59), the challenge had been before the Nigerian court for three years and the substantive hearing in Nigeria was still many years away.

26. It appears that there was more evidence before the US court in relation to this matter, and I note the observations made by the US judge in his judgment, where he said this:

"The current status of the proceedings in Nigeria — to the extent that the Court has been able to ascertain it based on the representations of the parties — also weighs against adjournment. As both the plaintiff and defendants have acknowledged, the judge assigned to this case in the Nigerian Federal High Court has retired, and no judge currently presides over Nigeria's attempt to set aside the arbitration award.

The case in Nigeria thus seems to have stalled, a state of affairs that suggests a resolution of the Nigerian proceedings may be long in coming. Adjournment of these proceedings pending the outcome of those in Nigeria would therefore would contravene the strong federal policy in favor of arbitration and 'the expeditious resolution of disputes.'"

27. Before this court there is no evidence as to when the defendants' application is likely to come on. I was told on instructions by the defendants' counsel that there is to be a hearing in May to consider directions for their application, but that was disputed by CTTL on instructions from their Nigerian lawyer. I have to consider this issue on the material before the court, and on that material when this case is to be heard by the Nigerian court appears to be completely open-ended, and it is apparent that there is likely to be, potentially at least, substantial delay in the determination of the application.

28. As to prejudice, given the very large amounts at stake, it is apparent that any delay in being able to obtain the fruits of the judgment is likely to cause significant prejudice. A similar point was made in the IPCO judgment at paragraph 52, where Gross J said as follows:

"Given the size of the award, it may be inferred that any delay in enforcement is likely to prejudice IPCO. Very few commercial entities would not be prejudiced by delay in the availability of US$152 million. It must be right to seek to minimise any such prejudice, so far as it is practicable and appropriate to do so."

29. In this case the amounts at stake are comparable if not greater, and the evidence before the court in Mr Falkof's statement at paragraph 56 is this:

"Given the size of the Award, any further delay of enforcement would cause a considerable prejudice on CTTL. The Award became due on 28 August 2008, and over 15 months later the Defendants have not yet paid any amounts owing to CTTL. Only a very few commercial organisations can withstand the continual non-payment of a debt of such a large amount. CTTL is not one of these."

There is, therefore, the prospect of real prejudice to CTTL if there is delay to their ability to enforce the judgment.

30. It follows that all three of the particular considerations identified in the IPCO case point strongly against the grant of the stay. As to other factors, CTTL also relied on the fact that this is a case where not only was there delay in seeking to challenge the award, but there has also been delay in seeking to challenge the English judgment. The time period for challenging the judgment of 10th December expired on 4th June 2009, but the present application was only made on 23rd November 2009, a delay of some 5½ months. Against that, the defendants rely on the Nigerian focus of the parties and of the case and the observations made by Gross J at paragraph 16 of his judgment in IPCO. Some, but no great reliance was also placed on the fact that the order made by the Nigerian court involved an injunction against CTTL. As to that, CTTL point out, on the basis of their Nigerian law evidence , (1) that although an ex parte injunction was granted against CTTL on 23rd April 2009, it is their case that the injunction lapsed on 14th June 2009, and that since that time there has been no extant injunction against them; (2) while it existed, the ex parte injunction only had domestic effect and could not operate to restrain proceedings or processes outside Nigeria, including proceedings taken before the English court; and (3) even if a binding worldwide injunction was still in place, that would not per se require the court to give effect to the injunction. Even taking comity into account, it would be open to the court to permit the

enforcement proceedings to advance.

31. Weighing up all the various discretionary factors which I have set out, I have come to the clear conclusion that they come down heavily on the side of CTTL. It seems to me that the alternatives in this case are really either to refuse any stay, or to make a stay subject to conditions, and indeed CTTL do not oppose the imposition of conditions. As to what the conditions might be, CTTL contends that one condition should be payment of the sum which they allege to be indisputably due. However, it is not clear that there is an undisputed part of the award. The defendants certainly dispute that there is and the application they have made is to set aside the award as a whole and not merely part of the award. Although in that application they have identified only one specific ground, which is a ground which would appear to go to only part of the award, they have identified that as being a particular rather than the only ground relied upon.

32. I therefore do not consider that this is a case where the court can simply split out an undisputed part of the award. That being so, the choice is between refusing the stay or granting a stay but requiring substantial security to be provided. Since CTTL do not oppose a stay on terms of security being provided, and since it will provide the defendants with an opportunity to show that they are serious about their challenge to the award and an incentive to progress that application as expeditiously as possible, in the exercise of my discretion I have concluded that it would be appropriate to grant a stay but only on terms of substantial security being provided in this jurisdiction and it being provided within a limited period of time. I do not consider it would be appropriate to require security for the full amount of the award to be provided, but I do consider that substantial security should be provided, and I consider the appropriate sum to be £100 million to be provided by way of security within 28 days.
