

41A 5/14/14/147 P. 57. P.

IN THE SUPREME COURT OF JUDICATURE  
COURT OF APPEAL (CIVIL DIVISION)  
ON APPEAL FROM THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION (COMMERCIAL COURT)  
(MR. JUSTICE LLOYD)

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Royal Courts of Justice.

Monday, 19th March, 1984.

Before:

THE MASTER OF THE ROLLS  
(Sir John Donaldson)

LORD JUSTICE FOX and

LORD JUSTICE STEPHEN BROWN

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S.P.P. (MIDDLE EAST) LIMITED

Applicants  
(Plaintiffs)

- (1) THE ARAB REPUBLIC OF EGYPT
- (2) NATIONAL BANK OF EGYPT
- (3) BANK OF ENGLAND
- (4) MIDLAND BANK PLC
- (5) UBA BANK
- (6) LLOYDS BANK PLC
- (7) LLOYDS BANK (INTERNATIONAL)

Respondents  
(Defendants)

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(Transcript of the Shorthand Notes of the Association of Official Shorthandwriters Ltd., Room 392, Royal Courts of Justice, and 2 New Square, Lincoln's Inn, London, W.C.2).

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MR. B. EDER (instructed by Messrs. Lovell White & King) appeared on behalf of the Applicants.

MR. A. GRABINER, Q.C. and MR. P. LEAVER (instructed by Messrs. Coward Chance) appeared on behalf of the (Fourth-Seventh Defendants) Respondents.

MR. M. BARNES (instructed by Messrs. Slaughter & May) appeared on behalf of the (Second Defendant) Respondents.

MR. R. DOGGETT (instructed by Messrs. Henry Boustred & Sons) appeared on behalf of Egypt Air.

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REVISED JUDGMENT

A THE MASTER OF THE ROLLS: We have been concerned this afternoon with an application by Mr. Eder on behalf of S.P.P. (Middle East) Limited pending an appeal against the refusal of Mr. Justice Lloyd to continue certain orders which he made against the various defendants.

B The learned judge's order is in two parts. In the first part of the order he had originally ordered that:

C "(i) all debts due from the Second Defendants, Third Defendants, Fourth Defendants, Fifth Defendants and Sixth Defendants to the above-named First Defendants [the Arab Republic of Egypt] in the sum of US\$18,000,000 be attached by way of security for the Plaintiffs' claims under an Arbitration Award of the International Chamber of Commerce Court of Arbitration, Award 7 D/AS dated 16th February 1983 [in an arbitration between the plaintiffs and the Arab Republic of Egypt]."

D In the second part of the order, he had ordered that:

E "(ii) the Second Defendants, Third Defendants, Fourth Defendants, Fifth Defendants and Sixth Defendants be restrained from discharging or otherwise dealing in the said debts otherwise than by satisfaction of such claims until further order."

F The background to those two orders - which, as I have said, Mr. Justice Lloyd discharged earlier today - was an attempt by the plaintiffs to enforce an arbitration award under the Arbitration Act 1975. The learned judge was not prepared to deal with that matter summarily, and Mr. Eder submitted to him that under section 5(5) of the 1975 Act he had jurisdiction to give what Mr. Eder described as "security

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interest" to the plaintiffs and this was what the learned judge was doing when he made the original order.

Section 5 of the Arbitration Act 1975 provides in subsection (1):

"Enforcement of a Convention award shall not be refused except in the cases mentioned in this section."

Subsection (2) provides:

"Enforcement of a Convention 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."

Then subsection (5):

"Where an application for the setting aside or suspension of a Convention award has been made to such a competent authority as is mentioned in subsection (2)(f) of this section, the court before which enforcement of the award is sought may, if it thinks fit, adjourn the proceedings and may, on the application of the party seeking to enforce the award, order the other party to give security."

Let me come back to where I started. We are being asked to make a holding order. Whether we should do so and on what terms we should do so must take account of the view which we form as to the likelihood of the appeal succeeding or, indeed, being really arguable. With that in mind, I have looked at section 5(5) of the 1975 Act, and I am bound to say that I cannot understand the basis upon which Mr. Eder submits that this enables the court to give a security interest to the



A plaintiffs; still less do I think it provides any basis for  
an immediate enforcement of the award. Without prejudice of  
course to any division of this court deciding otherwise upon  
the hearing of the substantive appeal and purely for the  
B purposes of the current application, my own view is that  
section 5(5) means precisely what it says, namely that in a  
situation in which the enforcing court does not know whether  
the appropriate court is going to annul the award, the  
C enforcing court - that is to say, the British court in this  
case - can order the respondents to the arbitration to give  
security. There would be no great difficulty about that (apart  
from the fact that Mr. Eder has not asked the court to do so)  
D were it not for the fact that the respondent is a foreign  
sovereign state. So, if Mr. Eder were to go back to the judge  
and ask for an order on the lines that I have indicated, there  
would still be the problem of whether it is proper to make  
E such an order against a foreign sovereign state; and,  
certainly, if I were faced with that issue, I should want  
assistance from an amicus curiae.

F So it seems to me that Mr. Eder has asked for the wrong  
relief. It seems to me that if Mr. Eder asked for the right  
relief, there would be difficulty. In any event, before we  
could issue injunctive orders to the banks freezing this  
G money, we should, it seems to me, have to be satisfied not only  
that Mr. Eder was arguably right in the relief that he was  
seeking on appeal, but also that there was solid evidence that  
a major friendly foreign state with funds in this country was  
intending to remove them simply to avoid paying an arbitration  
H award, albeit it one for quite a large sum of money. For my

A part, I have seen no evidence which would justify my reaching any such conclusion.

B Accordingly, as I see it, it would be quite wrong for this court to make an order of the type which Mr. Eder seeks, namely one freezing the assets of a friendly foreign state pending the hearing of this appeal, and I would decline to make such an order.

LORD JUSTICE FOX: I agree.

LORD JUSTICE STEPHEN BROWN: I agree.

C MR. GRABINER: In those circumstances, would your Lordships dismiss the application, and I would also ask for the costs certainly of the last four named defendant banks on an indemnity basis. That is the order made by Mr. Justice Lloyd earlier this afternoon and would be the order if this were a Mareva application.

D MR. LEAVER: My Lord, I think I should ask for a certificate for two counsel.

MR. BARNES: I make the same application for costs on behalf of the second defendant, the National Bank of Egypt.

E MR. DOGGETT: My Lord, I am not robed, but I wonder if I could make the same application. Mr. Justice Lloyd gave me my costs on -----

THE MASTER OF THE ROLLS: He gave you your costs on that basis?

MR. DOGGETT: Yes, my Lord.

F THE MASTER OF THE ROLLS: Clearly everybody has their costs appropriate to their station in life! Two counsel.

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