Neutral Citation Number: [2020] EWHC 1432 (QB)

Case No: QB-2019-000183
Appeal Ref: QA-2020-000051

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ON APPEAL FROM THE ORDER OF MASTER DAVISON
DATED 23 JANUARY 2020

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 4 June 2020

Before :

THE HONOURABLE MR JUSTICE MURRAY

- -

Between :

LENKOR ENERGY TRADING DMCC	**Claimant/ Respondent**
- and -	
IRFAN IQBAL PURI	**Defendant/ Appellant**

- -
- -

Mr Nigel Cooper QC (instructed by **Hill Dickinson LLP**) for the **Appellant**
Mr James Collins QC and **Mr Philip Jones** (instructed by **Mackrell Solicitors**) for the **Respondent**

Hearing date: 18 May 2020

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Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email and release to BAILII. The date and time for hand-down are deemed to be 10:00 am on 4 June 2020.

Mr Justice Murray :

1. This is an appeal from an order of Master Davison made on 23 January 2020 ("the Order") in which he granted summary judgment to the respondent, Lenkor Energy Trading DMCC ("Lenkor Dubai"), in respect of its common law action for debt owed to it by the appellant, Mr Irfan Iqbal Puri, under a judgment of the Dubai First Instance Court ("the Dubai FIC") of 30 May 2017 against the appellant, Mr Irfan Iqbal Puri, in favour of Lenkor Dubai.

2. Mr Puri appeals against the Order with the permission of Julian Knowles J, granted in his order dated 5 March 2020, which also stayed execution of the Order pending determination of the appeal. The appellant relies on the defence that the recognition of the Dubai FIC judgment in England and enforcement in England of a debt claim arising under that judgment would be contrary to public policy.

3. In this case, there are no significant disputes of fact. The only issue for decision on this appeal is whether as a matter of law Mr Puri has a valid public policy defence to enforcement of Lenkor Dubai's debt claim arising under the Dubai FIC judgment.

4. Mr Nigel Cooper QC appears for the appellant, as he did before the Master. Mr James Collins QC and Mr Philip Jones appear for the respondent, as they did before the Master.

Law on the recognition of a foreign judgment at common law

5. It is common ground that the Dubai FIC judgment of 30 May 2017 is a final and conclusive judgment of a foreign court of competent jurisdiction given *in personam* in relation to Mr Puri. No objection has been raised to the judgment on the basis that the Dubai FIC lacked jurisdiction to make it against him. Therefore, being a judgment for a definite sum of money (and not a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or penalty), it is *prima facie* entitled to be recognised at common law and may be relied on in proceedings in England to enforce a claim for the amount due under the judgment, provided that it is not impeachable on one of a limited number of grounds, including that the recognition or enforcement of the judgment would be contrary to public policy.

6. The basic rule of recognition of a foreign judgment at common law is set out in *Dicey, Morris & Collins on the Conflict of Laws* (15th edition) at Rule 42. The public policy ground of impeachment is set out in *Dicey, Morris & Collins* at Rule 51.

Background

7. The appellant is a businessman active in the energy sector. At the relevant times, he was the sole owner, principal, and controller of IP Commodities Dubai ("IPC Dubai"), a company incorporated in Dubai. He is a British citizen.

8. The respondent is a company incorporated in Dubai, with a sister company named Lenkor Energy Trading Ltd ("Lenkor Hong Kong"), a company incorporated in Hong Kong. Both companies operate in the oil supply and energy trading industry.

9. IPC Dubai, Lenkor Hong Kong and a third company, incorporated in Pakistan, to whom I shall refer simply as "the Buyer", entered into a tripartite agreement on 4 June 2014 ("the Tripartite Agreement"), governed by English law and including an arbitration clause providing for disputes to be resolved by arbitration in London.

10. In January 2015 Lenkor Hong Kong commenced arbitration proceedings against both IPC Dubai and the Buyer in respect of their obligations under the Tripartite Agreement. Mr Steven Berry QC, sitting as a sole arbitrator, issued a partial final award on 21 December 2017 and a corrected and clarified version on 26 February 2018 ("the Award"). The Award dealt with all issues other than interest and costs, for which the arbitrator reserved jurisdiction.

11. The Master summarised the factual background at [3]-[13] of his judgment handed down on 23 January 2020, setting out his reasons for making the Order. In relation to the factual background of the underlying dispute under the Tripartite Agreement, I have had regard also to the factual findings of the arbitrator set out in the Award as well as the witness statement dated 26 July 2019 of Mr Thomas Spencer of Mackrell Turner Garrett, solicitors for the respondent, and the witness statement dated 27 September 2019 of Mr Toby Miller of Hill Dickinson LLP, solicitors for the appellant, as well as documents exhibited to those witness statements.

Privacy application

12. The Buyer is neither a party to nor a witness in these proceedings. The Tripartite Agreement includes a confidentiality clause. In addition, there is a duty of confidentiality associated with arbitration proceedings. The Buyer gave its consent to the parties to these proceedings to make reference to the Award, subject to certain conditions, one of which was that the parties make an application for the hearing to be in private.

13. Accordingly, at the beginning of this hearing, I considered the respondent's application dated 13 May 2020, made with the support of the appellant, for:

    i) the hearing to be held in private under CPR rule 39.2(3)(c) on the basis that it was necessary to do so in order to protect confidential information of the Buyer; and

    ii) for this judgment to be redacted to the extent necessary to protect the confidentiality of the Buyer.

14. The Award was provided by the parties for this hearing in a separate bundle in a redacted form, with the Tripartite Agreement, also redacted to conceal the identity of the Buyer, as an attachment to the Award.

15. Any derogation from the principle of open justice may be made only if strictly necessary. On the respondent's application, I ruled that it was not necessary for the hearing to be in private in order to protect the Buyer's confidential information. It would be sufficient and proportionate for (i) the Buyer not to be identified by name or other relevant detail during the hearing or in my judgment and (ii) reference to be made during the hearing and in my judgment only to the redacted version of the

Award. I also indicated that I would order that a copy of the separate bundle containing the redacted Award not be retained on the court file.

16. On the comparable application, which had been made to the Master by the appellant with the support of the respondent, for the hearing before him to be held in private, the Master took, in essence, the same approach, although formally he made no ruling on the application, save that the copy of the Award submitted for the purpose of that hearing not be retained on the court file.

Entry into the Tripartite Agreement and subsequent events

17. Under the Tripartite Agreement, Lenkor Hong Kong agreed to supply gasoil to the Buyer. The "Seller" under the Tripartite Agreement is defined as "Lenkor Energy Trading Limited / through IP Commodities DMCC". The Tripartite Agreement provided for there to be six cargoes of gasoil for delivery ex-ship at the FOTCO Jetty, Port Qasim, Karachi, the deliveries to be made at monthly intervals, with the first delivery to occur during the period 5-7 July 2014 and the last during the period 1-5 December 2014, for a total quantity of 200,000 metric tonnes, plus or minus 10 per cent.

18. Clause 15 of the Tripartite Agreement dealt with payment. In relation to each cargo the Buyer would arrange to effect payment in US Dollars (USD), with half of the cargo value to be paid under a letter of credit and the other half by telegraphic transfer. Before the first delivery, the parties agreed to vary the payment terms to dispense with the requirement for a letter of credit and to provide that payment would be made by the Buyer to IPC Dubai as nominee of Lenkor Hong Kong.

19. Clause 15(C) of the Tripartite Agreement provided that IPC Dubai would, in respect of each cargo to be delivered:

> "issue a payment guarantee for hundred percent of the cargo value by cheque in favour of Lenkor Energy Trading DMCC, that is acceptable to the Seller, 3 days before the vessel commences loading."

20. The Buyer understood, and was intended by Lenkor Hong Kong and by IPC Dubai to understand, that it would be supplied under the Tripartite Agreement with a type of gasoil known as "High Speed Diesel" ("HSD"), sourced from the United Arab Emirates, although the Tripartite Agreement did not stipulate that the gasoil to be supplied was HSD, other than in the heading of the document, and did not stipulate the origin of the gasoil to be supplied. Instead, it stipulated a specification, which was a specification for HSD in Pakistan.

21. In fact, Lenkor Hong Kong intended to supply, and did supply, a different but similar type of petroleum product known as "Heavy End Product" ("HEP"), sourced from Iran, with the intention of deceiving the Buyer and the Pakistani authorities into accepting each cargo as a delivery of HSD from the UAE. The arbitrator found that IPC Dubai, and Mr Puri personally, were privy to the deception at the time of entry into the Tripartite Agreement. As the arbitrator noted in the Award, it is not necessarily misleading to a trader or a chemist to describe HEP as "gasoil" or "diesel" and it is sometimes sold under the description "slight sulphur gasoil". HEP can be

used as a gasoil blendstock, to be blended or mixed with other product to produce gasoil or diesel compliant with a particular specification.

22. For entry into Pakistan, it was necessary for the HEP delivered by Lenkor Hong Kong to meet the Pakistan government-approved specification for imported HSD, which was known as the "PSO import specification", PSO being an acronym for the Pakistan State Oil Co Ltd. Apparently, despite being a different product, it was technically possible for HEP to meet the PSO import specification for HSD, which in July and August 2014 was more stringent than the specification for locally manufactured HSD.

23. The arbitrator also found that, at the time of entry into the Tripartite Agreement, Lenkor Hong Kong and its principal, Mr Atiyeh, as well as IPC Dubai and Mr Puri, believed that it was lawful, both under international sanctions law and under Pakistan law, to supply gasoil from Iran into Pakistan and to make and receive payment for it in US Dollars. They believed, however, that disclosure of the nature and origin of the gasoil would, or could, lead to the Buyer's requiring a discount to the price and to practical problems with the Pakistani authorities in relation to the import of the HEP. They were also concerned that there might be difficulties with the HEP meeting the PSO import specification.

24. The arbitrator found that Mr Atiyeh took various steps to conceal the origin and nature of the product he was intending to supply under the Tripartite Agreement, including, in relation to the first cargo, altering and falsifying shipping documents, falsifying loadport test results and forging a certificate of origin, stating that the cargo origin was Hamriyah in the UAE. Mr Atiyeh hoped and expected that he would be lucky, and that each cargo would pass the PSO import specification or, if not, that IPC Dubai and Mr Puri would arrange for the cargo to be accepted into Pakistan, even if not in compliance with the PSO import specification.

25. Mr Atiyeh also asked the master of the vessel that had been chartered to bring the HEP from the Assaluyeh Port in Iran, via the Hamriyah Port in the UAE, to Port Qasim in Pakistan, to turn off the vessel's Automatic Identification System (AIS) while in Iranian waters. As the vessel was under time charter to the National Iranian Oil Company (NIOC), Mr Atiyeh had no contractual or other right to give instructions to the vessel's master. On the NIOC's instructions, the master complied with Mr Atiyeh's request for some, but not all, of the time the vessel was in Iranian waters.

26. The vessel arrived at Port Qasim on 3 July 2014 with the first cargo. The falsified shipping documents and falsified loadport test results were provided to the Buyer and the Pakistan customs authorities. The goods declaration for the cargo given to the Pakistan authorities described the cargo as HSD.

27. Although there were some difficulties with the initial test results for the first delivery and re-testing was ordered and carried out, ultimately the Pakistan authorities accepted the cargo for import and gave customs clearance on 19 July 2014.

28. On or about 22 July 2014 Lenkor Hong Kong issued commercial invoices for the first cargo, one in US Dollars addressed to the Buyer in the amount of US$23,158,159.50 and one in UAE Dirhams (AED) addressed to IPC Dubai. The commercial invoices were issued for the actual quantity delivered and falsely described the product origin as the UAE.

29. On 5 August 2014 at Assaluyeh the vessel that had carried the first cargo loaded the second cargo to be delivered under the Tripartite Agreement. Once again, the vessel travelled via Hamriyah, arriving at Port Qasim on 12 August 2014. As with the first cargo, Mr Atiyeh had falsified shipping documents and loadport test results with the intention of deceiving the Buyer and the Pakistan authorities. On this occasion he also travelled to Karachi and procured the falsification of the ullage reports. The goods declaration for the cargo given to the Pakistan customs authorities described the cargo as HSD.

30. Following testing, the second cargo was accepted for import by the Pakistan authorities and customs clearance was given, shortly after 14 August 2014.

31. On or about 19 August 2014 Lenkor Hong Kong issued commercial invoices for the second cargo, one in US Dollars addressed to the Buyer in the amount of US$31,988,620.00 and one in UAE Dirhams addressed to IPC Dubai in the amount of AED 117,398,235.40, which according to the Award was the equivalent of the US Dollar amount in UAE Dirhams at an exchange rate of 3.6700 AED per US$1.00.

32. As I have already noted, before the delivery of the first cargo, the parties had varied the payment provision set out in Clause 15 of the Tripartite Agreement to dispense with the use of a letter of credit and to provide for payment to be made by the Buyer in US Dollars to IPC Dubai as nominee for Lenkor Hong Kong.

33. At some point prior to 18 August 2014, shortly after the second cargo had been given customs clearance and accepted for delivery by the Buyer, the Buyer's Bank, Summit Bank, learned that the vessel that had delivered the first and second cargo had called at Iran. Summit Bank called for a meeting with the Buyer, which took place on 18 August 2014 with representatives of the Buyer as well as Mr Puri and Mr Atiyeh in attendance. At the meeting Summit Bank said that the vessel had called at Iran and that it would not make any further payments in US Dollars for either cargo without a Certificate of Origin certified by the Chamber of Commerce in the UAE.

34. As Lenkor Hong Kong was, not surprisingly, not able to obtain the necessary Certificates of Origin and therefore Summit Bank would not make US Dollar payments on behalf of the Buyer to IPC Dubai, Lenkor Hong Kong reached an oral agreement, at or about the end of August 2014, with the Buyer and IPC Dubai that the Buyer would pay IPC Dubai in Pakistan Rupees (PKR). As noted by the arbitrator in the Award, Mr Atiyeh felt that he had no realistic choice. This, therefore, was a further variation to the payment provisions of Clause 15 of the Tripartite Agreement.

35. At about this time, the parties agreed that any further shipments should be "put on hold", and, in fact, no further shipments were made. In due course, the parties agreed, in effect, to cancel the remaining shipments.

36. Initially without informing Lenkor Hong Kong, the Buyer and Mr Puri agreed that the Buyer would make payments in Pakistan Rupees to a sister company of IPC Dubai in Pakistan, namely, IP Commodities Pakistan Ltd ("IPC Pakistan"), a company controlled by Mr Puri's son, Mohammed. IPC Pakistan would receive the PKR payments into an account in Pakistan. In so doing, it would be acting as nominee for IPC Dubai, which would in turn be acting as nominee for Lenkor Hong Kong. Lenkor Hong Kong was unaware of this arrangement until 4 December 2014. The arbitrator

found that Mr Puri's reason for arranging with the Buyer for the PKR payments to be made to a local account of IPC Pakistan was to give him the opportunity to deny (as he subsequently did) that IPC Dubai was liable to account for those sums to Lenkor Hong Kong.

37. The arbitrator found that after the Buyer had received delivery of the first cargo, it decided to delay payment and pay only in instalments when or after it had on-sold equivalent quantities of HSD and been paid for them, even though it had no contractual right to do so.

38. Under the payment provisions of the Tripartite Agreement, as varied, the Buyer made part-payment amounting to approximately US$35 million, consisting of:

    i) payments in US Dollars to IPC Dubai, as nominee for Lenkor Hong Kong, in three tranches on 7, 8 and 13 August 2014, amounting, in aggregate, to US$4,008,900; and

    ii) payments in Pakistan Rupees to an account in Pakistan of IPC Pakistan, as nominee for IPC Dubai, on various dates between 22 September 2014 and 9 January 2015, amounting, in aggregate, to PKR 3,196,855,717.

39. The Buyer made no further payments in respect of either of the cargoes. IPC Dubai has never accounted to Lenkor Hong for any of the monies received by it as nominee for Lenkor Hong Kong, either directly from the Buyer in US Dollars or by payment to its own nominee, IPC Pakistan, in Pakistan Rupees. The arbitrator noted that IPC Dubai sought to justify its retention of the USD payments as commission due to it. He found, however, that no commission was due to IPC Dubai. The arbitrator was unable to make any finding as to the disposition of the PKR payments received by IPC Pakistan as nominee for IPC Dubai.

40. Under Clause 15(C) of the Tripartite Agreement, IPC Dubai issued two cheques to Lenkor Dubai as follows:

    i) in respect of the first cargo, cheque number 156861, dated 20 July 2014, in the amount of AED 91,400,200; and

    ii) in respect of the second cargo, cheque number 156862, dated 7 August 2014 in the amount of AED 117,100,000.

    The total face amount of the two cheques was therefore AED 208,500,200, which was the equivalent of about US$55 million, according to the Particulars of Claim. Each cheque was payable to Lenkor Dubai, was signed by Mr Puri and was drawn on a Dubai branch of Habib Bank Ltd.

41. Although Lenkor Dubai had received cheques by way of payment guarantee from IPC Dubai in relation the first and second cargoes, by the second half of September 2014 Mr Atiyeh was agitated that Lenkor Hong Kong had delivered two cargoes and had not received payment for them. Correspondence ensued between Lenkor Hong Kong and the Buyer during which Lenkor Hong Kong attempted to persuade the Buyer to stop making payments to IPC Dubai (being unaware of the role of IPC Pakistan until 4 December 2014, as previously noted) and to make payments directly to Lenkor

Hong Kong. The Buyer, having consulted with Mr Puri, refused. Lawyers became involved during the course of December 2014.

42. Matters came to a head on 9 January 2015 when Lenkor Hong Kong's solicitors applied for and obtained from the Commercial Court a worldwide freezing order (WFO) against IPC Dubai. In his first affidavit in support of the application for a WFO, Mr Atiyeh disclosed the true origin and nature of the cargoes and of his deceptions, including the falsification of documents. Shortly after this, the Buyer learned of the contents of Mr Atiyeh's affidavit, stopped all payments in relation to the two cargoes delivered by Lenkor Hong Kong and refused to make any further payments.

43. In early 2015 in breach of the arbitration clause in the Tripartite Agreement, Lenkor Hong Kong commenced proceedings in Pakistan against, among others, IPC Dubai, and the Buyer.

44. Lenkor Hong Kong then commenced the arbitral proceedings that resulted in the Award.

The Award

45. The arbitrator was required to deal in the Award, which ran to 86 pages and 320 numbered paragraphs, with a wide range of issues. There were various claims and counterclaims made, as well as defences raised, as between the three parties, Lenkor Hong Kong, the Buyer, and IPC Dubai. I have already made a number of references to the Award in setting out the factual background to this dispute.

46. The arbitrator said the following at paragraph 297 of the Award about the cheques to be provided by IPC Dubai to Lenkor Dubai under Clause 15(C) of the Tripartite Agreement:

> "IPC Dubai submitted that Lenkor [Hong Kong] was not entitled to an account [of the funds it received from the Buyer as nominee for Lenkor Hong Kong] unless or until it returned the guarantee cheques, but this was not agreed, is not a necessary implication, and is inconsistent with the actual agreement. The cheques were security for payment in full and, as matter of necessary implication, did not have to be returned by Lenkor until payment in full was received for the particular cargo for which each cheque was security. In the event of partial payment the cheques would then amount to more security than was needed, but that does not mean they had to be returned at all or in exchange for smaller cheques. Lenkor could not, of course, by itself or its agent Lenkor Dubai, recover or keep more in the aggregate than is due to it. Any sums actually received by Lenkor Dubai by way of enforcement of the security cheques for Lenkor's claims would be held by it as agent for the benefit of Lenkor and would, as between Lenkor and IPC Dubai, be receipt by or for the account of Lenkor. Therefore any sums actually paid by or on behalf of IPC Dubai to, or collected by, or on behalf of Lenkor

> or Lenkor Dubai by reason of any liability on the cheques or any judgment on the cheques are to be credited against liability of IPC Dubai as claimed and awarded in this arbitration. But the failure to return or cancel the cheques following part payment affords no defence to those claims."

47. Ultimately, the arbitrator made the following findings and awards:

    i) IPC Dubai's defences to the claims of Lenkor Hong Kong failed, including its defence of illegality under English law on the grounds of Lenkor Hong Kong's deceptive and fraudulent conduct. Accordingly, Lenkor Hong Kong succeeded against IPC Dubai both as to its contractual claim against IPC Dubai and its claim in restitution for payment over of what IPC Dubai had received as its nominee. IPC Dubai, as nominee for Lenkor Hong Kong, was liable to account to Lenkor Hong Kong for the amounts in USD it received directly from the Buyer as well as the amounts in PKR that were paid, at its direction, to IPC Pakistan. Accordingly, IPC Dubai was required to pay Lenkor Hong Kong the amounts of US$4,008,900 and PKR 3,196,855,717.

    ii) The Buyer had a valid defence on the basis of illegality to payment of the contract price under the Tripartite Agreement for the two cargoes the Buyer received, but Lenkor Hong Kong had a valid claim for restitution to reverse unjust enrichment for the balance of the value of the two cargoes delivered, after deduction of the amounts that the Buyer had paid in respect of the two cargoes to IPC Dubai in US Dollars and to IPC Pakistan in Pakistan Rupees. The balance due from the Buyer to Lenkor Hong Kong was therefore US$19,101,284.44.

    iii) Lenkor Hong Kong was liable to pay the Buyer damages in the amount of US$19,888.53 for breach of the arbitration clause of the Tripartite Agreement.

48. The arbitrator dismissed all other claims and counterclaims between the parties, and reserved jurisdiction in relation to interest and costs.

49. The Master recorded in his judgment at [7] that the Award as at that date (23 January 2020) remained unsatisfied.

Civil and criminal proceedings in Dubai against Mr Puri in relation to the cheques

50. With Lenkor Hong Kong still having received no payment for either of its cargoes, Lenkor Dubai attempted to cash the two cheques that it had received from IPC Dubai under Clause 15(C) of the Tripartite Agreement. The Master noted in his judgment at [8] that there was a dispute between the parties as to whether and, if so, how and when the cheques were presented, but that, in any event, IPC Dubai did not have sufficient funds in its account to honour them and they were not honoured.

51. Mr Puri was subject to criminal proceedings in Dubai in relation to the cheques, resulting in his being convicted and sentenced on 7 June 2015 to three years in prison. He appealed without success, first to the Dubai Court of Appeal and then the highest court, the Dubai Court of Cassation.

52. Lenkor Dubai commenced civil proceedings against Mr Puri under Article 599/2 of the Dubai Commercial Transactions Law, a statutory provision that imposes personal liability on the drawer of a cheque in circumstances where the account on which the cheque is intended to draw has insufficient funds to cover the amount due under the cheque.

53. On 30 May 2017 the Dubai FIC issued its judgment in favour of Lenkor Dubai for the amount of AED 123,727,048 plus interest at 9 per cent per annum. That judgment was subject to various appeals, reaching the highest court, the Dubai Court of Cassation, on two occasions, where it was ultimately upheld on 5 August 2018. It is common ground that Mr Puri's appeal rights in Dubai are now exhausted.

54. As the Master noted in his judgment at [11], the Dubai FIC did not order Mr Puri to pay the full face amount of the two cheques, which was AED 208,500,200. The Dubai FIC ordered that Mr Puri pay AED 123,272,048, which was the total amount found by the court to have been received by Mr Puri and IPC Dubai, as noted in the Dubai Court of Appeal's judgment following a hearing before that court on 28 March 2018. As the Master noted in his judgment at [11]:

> "In other words, Mr Puri was found liable for the sums which the Buyer had paid over to IPC Dubai but which had not been remitted onwards to the Seller."

This claim, the Order and the Master's judgment

55. The respondent brought this claim on 17 January 2019 as a common law action for debt in England and applied for summary judgment on 26 July 2019, seeking AED 123,727,048, plus interest of AED 49,615,132. Those amounts were stated in the Claim Form to be equivalent to £26,384,300 and £10,580,200, respectively, using a rate of exchange from AED to GBP as of 11 January 2019.

56. The appellant defended on the basis that, although as a matter of the law of the UAE no further appeal of the judgment of the Dubai FIC was possible and that there was no stay of execution in place in favour of Mr Puri, nonetheless the Dubai FIC judgment could not be enforced as a debt at common law because it would be wrong and contrary to the principles of natural justice and/or public policy for the English courts to enforce the judgment, for a number of reasons.

57. In his judgment at [18], the Master summarised the appellant's public policy defences as falling under three headings, namely, (1) illegality, (2) impermissible piercing of the corporate veil and (3) penalty. The Master rejected the appellant's arguments under all three headings.

58. By his Appellant's Notice and Grounds of Appeal, the appellant sought, and was granted by Julian Knowles J, permission to appeal against the Order on the sole ground that the Master was wrong to conclude that the judgment of the Dubai FIC was not tainted by illegality so as to make it unenforceable as a matter of public policy under English law.

59. I therefore limit my summary of the submissions made to the Master and the Master's conclusions to Mr Puri's public policy defence under the heading of illegality.

60. The Master summarised the submissions under the heading of illegality made by Mr Cooper on behalf of Mr Puri in his judgment at [19]-[23] as follows:

    i) The cheques were given under Clause 15(C) of the Tripartite Agreement as a payment guarantee for the contract price of the cargoes of gasoil. The arbitrator had found that Lenkor Hong Kong's claim for the contract price was tainted by illegality and had further found, applying the principles set out in *Patel v Mirza* [2016] UKSC 42, that it was proportionate to deny that claim, although the arbitrator upheld Lenkor Hong Kong's claim for restitution.

    ii) Under English law, the finding that the principal obligation was tainted by illegality would have prevented enforcement of a guarantee of that obligation, citing, by way of example, *Heald v O'Connor* [1971] 1 WLR 497 (QBD).

    iii) Although Mr Cooper acknowledged that the cheques and the judgment of the Dubai FIC gave rise to autonomous rights and obligations, the Master should "look at the reality", which was that illegality tainted the underlying transaction and therefore both the cheques and the claim to recognise the judgment. Lenkor Hong Kong was seeking to enforce "by the back door" a claim that the arbitrator had found it was not entitled to enforce.

61. At [15] of his judgment, the Master stated, in relation to the public policy ground of impeachment set out in Rule 51 of Dicey & Morris that:

> "… it is the judgment and not the underlying transaction upon which the judgment is based which must offend against English public policy. That point has been illustrated in a number of cases, but perhaps most economically in the case of *Omnium de Traitement et de Valorisation v Hilmarton* [1999] 2 Lloyd's Rep 222, a decision of Timothy Walker J."

62. Mr Cooper sought to distinguish *OTV v Hilmarton* from this case and relied on the cases of *Westacre Investments Inc v Jugoimport-SPDR Holding Co Ltd* [2000] QB 288 (CA) and *Azimut-Benetti SpA v Healey* [2010] EWHC 2234 (Comm) as providing support for his propositions. I will return to those cases when considering Mr Cooper's submissions in relation to this appeal.

63. The Master rejected the appellant's arguments in relation to illegality for the following reasons, set out at [27]-[28] of his judgment:

    i) Although there is no equivalent provision in English law to Article 599/2 of the Dubai Commercial Transactions Law, which imposes personal liability on the drawer of a cheque where the drawer cannot prove that the account was sufficiently in funds, there is a rationale behind the policy (namely, to encourage probity in cheque transactions), which cannot be said to offend any principle of English public policy. The relevant provision, although providing for more onerous liabilities on the drawer of a cheque than is the case under English law, is "neither surprising nor repugnant".

    ii) While the Master accepted that there are circumstances where an English court might enquire into the underlying transactions giving rise to the judgment,

referring to the example given by Timothy Walker J in the *OTV v Hilmarton* case of an arbitral award or judgment containing a finding of fact of corrupt practices and to the example given to the Master by Mr Collins of a money judgment in respect of a "contract killing", which the Master considered "very extreme" (although Mr Collins noted, during his submissions to me, that this example is given by Lord Neuberger in *Patel v Mirza* at [159]). The Master found that there were no such circumstances here.

iii) The most that could be said is that the Dubai FIC judgment did not confront the issue of illegality affecting the Tripartite Agreement, but there are "two decisive answers to this issue":

a) The Dubai FIC judgment did not need to confront the illegality issue as it was based squarely on the legal consequences of signing a cheque in Dubai in circumstances where there were insufficient funds to meet them. Those legal consequences were:

> "… self-contained and independent. That an English court might have approached matters differently is irrelevant. It was a Dubai court applying the law of Dubai."

b) Even if it were permissible to look at the underlying transactions in this case, the question that would arise would be whether enforcing the judgment of the Dubai FIC would amount to enforcing indirectly the Buyer's obligation to pay the contract price. However, the answer to that question would be negative. The Dubai FIC judgment was for a sum equal to the amount which the Buyer had paid to IPC Dubai and not remitted by IPC Dubai to Lenkor Hong Kong, which was considerably less than the contract price. If the Dubai FIC judgment enforced any obligation, it was the obligation of IPC Dubai to account to Lenkor Hong Kong for the sums that it had received, which was found by the arbitrator to be an enforceable obligation both in contract and in restitution.

64. The Master also noted at [29] of his judgment that there was no unfairness to Mr Puri in this outcome, given that:

i) Mr Puri operated in Dubai and knew or should have known the legal consequences of a signing a cheque there; and

ii) Mr Puri was the managing director and sole shareholder of IPC Dubai, in other words, its "controlling mind" and a key actor in the relevant events; IPC Dubai and Mr Puri had been involved in the deception of the Buyer; and IPC Dubai had been found liable by the arbitrator to pay to Lenkor Hong Kong all the monies it had received from the Buyer in respect of the two cargoes of HEP delivered to the Buyer, which did not amount to the payment of any profit to Lenkor Hong Kong but in substance restitution to it for the value of the two cargoes.

65. The Master concluded that the judgment of the Dubai FIC was not impeached by any public policy objection and should therefore be recognised in England. Summary judgment in favour of Lenkor Dubai necessarily followed that conclusion.

Ground of appeal

66. The sole ground of appeal is that the Master was wrong in law to conclude that to enforce the Dubai FIC judgment in England would not be contrary to public policy by reason of the judgment having been tainted by illegality.

Submissions

67. In the Grounds of Appeal at paragraph 8, the appellant formulated the question raised by this appeal as follows:

> "Does public policy render a foreign judgment unenforceable as a matter of English law if the effect of that judgment is to enable enforcement of rights of guarantee relating to a contractual claim which has been found to be unenforceable on grounds of illegality?"

68. Mr Cooper submitted that the Master was wrong to conclude that he was not required to look at the underlying illegality of the Buyer's claim for the contract price simply because the statutory liability of Mr Puri in Dubai arose independently of that claim. Mr Cooper relied on *Westacre Investments Inc v Jugoimport-SPDR Holding Co Ltd* [2000] QB 288 (CA) at 311 for the proposition that an English court retains a discretion to consider whether a foreign judgment or arbitration award offends against public policy even if the issue of illegality has already been considered by the foreign court or tribunal.

69. Mr Cooper sought to distinguish *OTV v Hilmarton*, to which the Master had made reference in concluding that it is the judgment, and not the underlying transaction upon which the judgment is based, that must offend English public policy. Mr Cooper noted that in *OTV v Hilmarton*, Timothy Walker J was considering recognition of a Swiss arbitral award in a case where the contract at issue was governed by Swiss law and subject to Swiss arbitration. The arbitral tribunal had considered whether the transaction was unlawful in its place of performance, namely, Algeria, but had nonetheless made an award in favour of the claimant. Mr Cooper submitted that the present case raises a different question, namely, whether public policy under English law requires the court to refuse recognition of a judgment because to do otherwise would be to enforce indirectly a transaction that has already been found by an arbitrator to be unenforceable on grounds of illegality as a matter of English law.

70. Mr Cooper submitted that the fact that Lenkor Dubai had a separate cause of action under Dubai law does not detract from the point that Lenkor Dubai was, in fact, enforcing for its sister company, Lenkor Hong Kong, the guarantee obligation imposed on IPC Dubai under the Tripartite Agreement. That guarantee obligation only related to Lenkor Hong Kong's contractual claim for the price under the Tripartite Agreement. It did not arise, according to Mr Cooper, in relation to any other claim made by Lenkor Hong Kong against the Buyer, including it claim in restitution.

71. Mr Cooper submitted that the Dubai FIC was not required to consider whether illegality as a matter of English law was a bar to the claim brought against Mr Puri. The issue of whether it would be contrary to English law to enforce the Dubai FIC judgment was properly a matter for the English courts, and the Master was wrong to hold that he did not have to inquire into the underlying transactions giving rising to the Dubai FIC judgment.

72. Mr Cooper submitted that the Master was also wrong to hold at [28] of his judgment that, if he were to look at the underlying transactions, he would conclude that enforcing the Dubai FIC judgment did not amount to enforcing indirectly the Buyer's obligation to pay the contract price under the Tripartite Agreement. The Master reached that view relying on the fact that the IPC Dubai judgment had been limited to an amount equivalent to the sum that IPC Dubai had been found liable to pay to Lenkor HK. But, Mr Cooper submitted, the claim of Lenkor Hong Kong against IPC Dubai for restitution of monies paid to it as nominee for Lenkor Hong Kong was a claim "unconnected in any way" with (i) the Buyer's obligation to pay the purchase price under the Tripartite Agreement or (ii) Lenkor Dubai's civil claim against Mr Puri on the cheques under Article 599/2 of the Dubai Commercial Transactions Law.

73. Accordingly, Mr Cooper submitted, the Master should have looked only at the question of whether the cheques were given by IPC Dubai to guarantee the payment of the contract price by the Buyer, should have concluded that they were and should have concluded that the claim brought by Lenkor Dubai before the Dubai FIC was brought in order to enforce the guarantee obligations of IPC Dubai. Having reached those conclusions, the Master should then have refused to recognise the Dubai FIC judgment on the grounds that as a matter of public policy under English law (i) an obligation to enforce a transaction that is itself unenforceable on the grounds of illegality is also unenforceable and (ii) a foreign judgment that purports to give effect to an unenforceable guarantee obligation should not be recognised: *Heald v O'Connor* [1971] 1 WLR 497 (QBD) at 503-506G and *Azimut-Benetti SpA v Healey* [2010] EWHC 2234 (Comm) at [23]-]24]. Mr Cooper submitted that these cases establish that as a matter of English law a guarantee will be unenforceable if the underlying transaction is tainted with illegality so as to be unenforceable.

74. Finally, Mr Cooper submitted that the propositions relied on by Mr Puri were consistent with the principle of proportionality as defined in authorities such as *Patel v Mirza*. Had the Master reached the right conclusions and refused to recognise the Dubai FIC judgment, then of course he would have dismissed the application of Lenkor Dubai for summary judgment and granted Mr Puri unconditional permission to defend the action.

75. Mr Collins formulated the key question in this case rather differently from the formulation proposed by Mr Puri. Mr Collins submitted that the key question faced by the Master was whether it is contrary to English public policy to enforce a judgment of the Dubai FIC, which establishes and determines Mr Puri's liability under Dubai law for signing cheques drawn on an account that had insufficient funds.

76. Mr Collins's principal submission was that the Master's conclusion at [28(i)] of his judgment was impeccable, namely, that on the face of the Dubai FIC judgment, the legal consequences of signing cheques in Dubai in circumstances where there were

insufficient funds to meet them were self-contained and independent. The Dubai FIC judgment simply represented a Dubai court applying the law of Dubai. As there was no English public policy objection to the Dubai statutory provision under which Lenkor Dubai's cause of action arose, there was no public policy ground for refusing to recognise and give effect to the Dubai FIC judgment on that cause of action. The Master made no error of law, and therefore the appeal must be dismissed.

77. Mr Collins also submitted that the Master was right to conclude that it was not necessary to look at the underlying transaction, namely, the Tripartite Agreement. The Master was also correct, he submitted, to conclude, as he did at [28(ii)] of his judgment, that, even if one took into account the Tripartite Agreement, enforcing the Dubai FIC judgment would not amount to enforcing indirectly the Buyer's obligation to pay the contract price under the Tripartite Agreement. The Dubai FIC judgment was for a sum equal to the aggregate amount that the Buyer had paid to IPC Dubai as nominee for Lenkor Hong Kong and that IPC Dubai had failed to remit to Lenkor Hong Kong, which was considerably less than the contract price. The Master correctly concluded at [28(ii)] of his judgment as follows:

> "If the judgment [of the Dubai FIC] indirectly enforced any obligation, it was IPC Dubai's obligation to account to Lenkor [Hong Kong] for the sums which it had received. This was found by the arbitrator to be an enforceable obligation both in contract and restitution. Thus, if I were required to form my own view, it would be that the underlying illegality was confined to the Buyer's obligation to pay the contract price and that that obligation was not indirectly enforced by the civil claim and judgment in Dubai."

78. Mr Collins made submissions on the cases that had been cited by Mr Cooper in support of the appeal. I deal with those cases, to the extent necessary, in my analysis below.

Analysis

79. In my judgment, Mr Collins is correct to have characterised the Master's reasoning and conclusion at [28(i)] of his judgment as "impeccable". I will therefore dismiss the appeal on the basis that:

    i) there was no error of law in the Master's reasoning or conclusion at [28(i)] of his judgment; and

    ii) the Master's conclusion was a sufficient basis on which to recognise the Dubai FIC judgment and to grant summary judgment to the respondent on its claim against Mr Puri.

80. Mr Puri does not appear to dispute the Master's conclusion at [27] of his judgment as follows:

> "… It is agreed between the parties that the basis of the judgment was Article 599/2 of Dubai's Commercial Transactions Law, which imposes a personal liability on the

> drawer of a cheque where the drawer cannot prove (the burden being on him) that the account was sufficiently in funds. As already observed, there is a powerful rationale behind this statutory liability. It is not the law of this country. But it cannot be said to offend any principle of English public policy. English law certainly recognises that a cheque gives rise to rights and liabilities that are unconditional and autonomous such that a cheque is treated as akin to cash. That the law of Dubai provides for more onerous liabilities is neither surprising nor repugnant."

81. Nonetheless, according to Mr Puri, the Master should have had regard to the "reality" of the situation, namely that Lenkor Dubai sought, by bringing its action in Dubai under Article 599/2 of the Dubai Commercial Transactions Law, to enforce on behalf of its sister company, Lenkor Hong Kong, the obligation of IPC Dubai, as payment guarantor under Clause 15(C) of the Tripartite Agreement, pay the contract price for the cargoes delivered.

82. My first point in relation to this is that there was a dispute between the parties as to whether Clause 15(C) of the Tripartite Agreement was a guarantee of payment only of the contract price or was a broader guarantee "of the cargo value", therefore including within the scope of the guarantee the Buyer's obligation to make restitution to Lenkor Hong Kong for the balance of the value of the two cargoes delivered. Clause 15(C) requires IPC Dubai "to issue a payment guarantee for hundred percent *of the cargo value*" (emphasis added), which appears to favour the broader interpretation. Mr Cooper noted, however, that the contract price was determined by reference to the cargo value in Clause 14 and Clause 15 refers to "payment … for the full cargo value". He submitted that it was therefore clear that Clause 15(C) is limited to a guarantee of payment of the Buyer's contractual obligation. In my view, it is not necessary to resolve this question of construction.

83. I note that the parties to the Tripartite Agreement are Lenkor Hong Kong, the Buyer and IPC Dubai. The parties to the civil proceedings in Dubai and to this claim are Lenkor Dubai and Mr Puri. There is, of course, an association and even a causal connection between the Tripartite Agreement and the civil claim in Dubai leading to the judgment of the Dubai FIC. Mr Cooper was not, however, able to provide any authority to show that the existence of any association or causal connection between a transaction tainted with illegality and an otherwise unimpeachable cause of action underlying a foreign judgment is sufficient to require the English court to inquire into that association or causal connection and to refuse to enforce the foreign judgment if it finds any relevant illegality there.

84. While it is true that Lenkor Dubai would not have received the cheques but for Clause 15(C) of the Tripartite Agreement, its cause of action against Mr Puri under Dubai law did not, as a matter of form or substance, arise under Clause 15(C) of the Tripartite Agreement (to which he was not personally a party) but arose instead under Article 599/2 of the Dubai Commercial Transactions Law, a provision that the Master found, correctly in my view, to be "neither surprising nor repugnant", even if it is much more onerous on the drawer of a cheque than would be the case under English law. The Master also found, again in my view correctly, that the legal consequences

for Mr Puri of signing the cheques were self-contained as a matter of Dubai law and independent of the underlying transaction.

85. As I have already noted, the Master in his judgment at [28] accepted that there are circumstances where an English court might enquire into the underlying transactions that gave rise to a judgment, but he considered that none of those circumstances arise in this case.

86. In his submissions, Mr Collins sought to expand the Master's analysis, in my view helpfully, by distinguishing what he called, for the sake of convenience, "universal" rules of public policy (in other words, rules which, if infringed, might lead to non-enforcement irrespective of the applicable law and place of performance) and rules that are more domestic. The examples that had been given by the Master in his judgment at [28], and which I have summarised at [63(ii)] above, fell into the universal category.

87. In a case involving a claim for commission under a contract governed by English law, which was characterised as involving the purchase of personal influence to obtain the renewal of an oil supply contract governed by Qatar law under which the supplier was the national oil corporation of Qatar, *Lemenda Trading Co Ltd v Africa Middle East Petroleum Co Ltd* [1988] QB 448 (QBD) at 461D, Phillips J said:

> "In my judgment, the English courts should not enforce an English law contract which falls to be performed abroad where: (i) it relates to an adventure which is contrary to a head of English public policy which is founded on general principles of morality, and (ii) the same public policy applies to the country of performance so that the agreement would not be enforceable under the law of that country."

88. Finding that the English law contract fell to be performed in Qatar where such a contract is void as contrary to public policy and that the contract was also contrary to English public policy founded on general principles of morality, Phillips J dismissed the plaintiff's claim for commission under the contract. It is clear in *Lemenda Trading* at 461B that Phillips J might have reached a different result had the commission contract not been contrary to public policy in Qatar.

89. The Court of Appeal considered the *Lemenda Trading* case in the *Westacre Investments* case, which concerned a contract governed by Swiss law under which the plaintiff, Westacre Investments Inc, a Panamanian company was appointed a consultant to an agency of the government of Yugoslavia with respect to the sale of military equipment to Kuwait. The contract provided for arbitration in Geneva under the Arbitration Rules of the International Chamber of Commerce. The plaintiffs claimed for payment under the contract, and the matter went to arbitration. The defendants argued that the contract was contrary to public policy because it involved procuring sales by fraud through bribery or alternatively by illicit personal influence of another kind, but the arbitrators found in favour of the plaintiffs. The appeal of the defendants to the Swiss Federal Tribunal was also dismissed. The plaintiff obtained leave *ex parte* to enforce the Swiss arbitral award in England and subsequently brought an action on it. The defendants applied to set aside the leave. There was a trial of the preliminary issue whether the defendants' pleaded case disclosed any defence

to enforcement of the award, following which Tuckey J held that the defendants had no defence to enforcement. The defendants appealed.

90. Although Waller LJ wrote a dissenting judgment in the *Westacre Investments* case, the majority agreed with him on the following points at 304F-305D:

> "What in my view the *Lemenda* case decided was that: (1) there are some rules of public policy which if infringed will lead to non-enforcement by the English court whatever their proper law and wherever their place of performance but others are based on considerations which are purely domestic …. There is also an implied recognition as it seems to me that if all that can be said of a contract is that performance in a foreign country will be contrary to the domestic public policy of that state, enforcement will only be refused if performance would be contrary to the domestic public policy in England. If that were not so, consideration of English public policy would not in fact have been necessary or relevant.
>
> It must also follow, as it seems to me, that an English court would take notice of the fact that different courts and different tribunals might have different views as to the enforceability of contracts for the purchase of personal influence depending on the proper law of the contracts and where they were to be performed. It would be for example legitimate for a foreign tribunal to take the view (indeed consistent with the English court's own view if I am right on the above implication), that albeit performance was contrary to domestic public policy in its place of performance, since it was not contrary to the domestic public policy either of the country of the proper law and/or the curial law, enforcement should be allowed.
>
> It is in this context, in my view, that albeit the award is not isolated from the underlying contract, it is relevant that the English court is considering the enforcement of an award, and not the underlying contract. The English court takes cognisance of the fact that the underlying contract, on the facts as they appear from the award and its reasons, does not infringe *one of those rules of public policy where the English court would not enforce it whatever its proper law or place of performance*. It is entitled to take the view that such domestic public policy considerations as there may be, have been considered by the arbitral tribunal. It is legitimate to conclude that there is nothing which offends English public policy if an arbitral tribunal enforces a contract which does not offend the domestic public policy under either the proper law of the contract or its curial law, even if English domestic public policy might have taken a different view." (emphasis added)

91. In this case, we are dealing with the enforcement of a foreign judgment in relation to a foreign statutory cause of action, rather than the enforcement of an English law

contract to be performed abroad, as in *Lemenda Trading*, or the enforcement of a Swiss arbitral award in relation to a Swiss law contract, as in the *Westacre Investments* case. But the principles summarised by Waller LJ nonetheless apply.

92. Mr Puri has failed to identify any rule of English public policy such that an English court should not enforce the judgment of the Dubai FIC regardless of the fact that no issue of public policy arises under Dubai law regarding the enforceability of Lenkor Dubai's statutory cause of action. The factual association of that Dubai cause of action with the Tripartite Agreement, in relation to which the Buyer was found (after the Dubai FIC judgment was handed down) to have an illegality defence to payment of the contract price, is not enough to "taint" the Dubai cause of action. Had that illegality been relevant to Dubai cause of action, it should have been raised in the Dubai proceedings. I can assume that it was either not raised in the Dubai proceedings or raised and found not to prevent enforcement of Lenkor Dubai's cause of action under Article 599/2 of the Dubai Commercial Transactions Law. There is, in any event, no basis for suggesting, and Mr Puri does not suggest, that the Dubai FIC judgment was somehow deficient as a matter of Dubai law. Instead, he urges me, in effect, to "look through" the Dubai cause of action and have regard to the Buyer's English law illegality defence to payment of the contract price.

93. Mr Cooper's reliance on the guarantee cases, *Heald v O'Connor* and *Azimut-Benetti SpA v Healey*, is premised on characterising the Dubai cause of action as, in legal substance, the enforcement of IPC Dubai's guarantee of the obligation of the Buyer to pay the contract price under the Tripartite Agreement in relation to the two cargoes delivered. That premise is clearly false. Those cases, therefore, do not support the appellant's case.

94. Putting Mr Puri's case at its highest, it can be said that the enforcement by Lenkor Dubai of its statutory cause of action in Dubai has an economic effect equivalent to Lenkor Hong Kong's recovery of part of the contract price for the two cargoes delivered, assuming that Lenkor Dubai hands over to Lenkor Hong Kong the monies recovered. It can be said with equal, if not greater, force that enforcement by Lenkor Dubai of its statutory cause of action in Dubai has an economic effect equivalent to Lenkor Hong Kong's recovery of its restitutionary claim against the Buyer and/or IPC Dubai, neither of which was found by the arbitrator to be subject to an illegality defence under English law, assuming, again, that Lenkor Dubai hands over its recovery to its sister company.

95. Given that, as already mentioned, the amount of the Dubai FIC judgment was determined by reference to the Dubai FIC's assessment of the amount received by IPC Dubai as nominee and not paid over to Lenkor Hong Kong, the economic effect of enforcement of the Dubai FIC judgment most closely matches the enforcement of Lenkor Hong Kong's restitutionary claim against IPC Dubai.

96. There are, however, several reasons for saying that enforcement of the Dubai FIC judgment does not amount, in legal substance, to enforcement of any of Lenkor Hong Kong's claims for (i) part of the contract price under the Tripartite Agreement, (ii) restitution from the Buyer or (iii) restitution from IPC Dubai. First, it is trite law that the mere fact that two transactions have an equivalent economic effect is not sufficient to establish that they are, in legal substance, the same transaction or that one can, without more, be recharacterized as the latter. Secondly, the parties are different.

IPC Dubai is the payment guarantor under the Tripartite Agreement, and Lenkor Hong Kong the beneficiary of that payment guarantee. Mr Puri is liable as judgment debtor under the Dubai FIC judgment, and Lenkor Dubai is the judgment creditor. Thirdly, IPC Dubai's liability under the payment guarantee in Clause 15(C) is contractual, whereas Mr Puri's liability under Article 599/2 of the Dubai Commercial Transactions Law is statutory. Other distinctions could be drawn, but these are sufficient to illustrate the point.

97. We therefore return to the point that there is no authority for the broad proposition that, as a matter of public policy, an English court will not enforce a foreign judgment or arbitral award that has an economic effect equivalent to enforcing a claim that is unenforceable on the ground of illegality, where the illegality either was not considered by the foreign court or tribunal in reaching its judgment or making its award or was considered but not found to be dispositive.

98. Moreover, Mr Puri has failed to identify any rule of public policy relevant to this case of a type that Mr Collins referred to as "universal", such that it would require an English court to inquire into the underlying transactions and consider whether the rule has been infringed regardless of there being no infringement of public policy under the proper law of the relevant cause of action (in this case Dubai law) or place of performance (Dubai in relation to the enforcement of the cheques).

Conclusion

99. Accordingly, the appeal must be dismissed.