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From Evasion to Enforcement: How the English Commercial Court Recaptured NIOC's Undervalued Property Transfer to Enforce an Arbitral Award

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On 14 April 2024, the [English Commercial Court](#) granted Crescent Gas Corporation Limited (“CGC”) ownership of a London property to assist it (partially) to recover a USD 2.6 billion judgment debt owed by the National Iranian Oil Company (“NIOC”). This post explores the court’s decision and key takeaways for practitioners particularly regarding enforcement strategies.

The Multibillion-Dollar Award

The dispute arose out of a 25-year Gas Sales and Purchase Contract (the “GSPC”), entered into by Crescent Petroleum Company International Ltd (“CPCIL”) and NIOC. CPCIL is a privately owned exploration and production company headquartered in the United Arab Emirates. NIOC is responsible for Iran’s crude oil and gas exploration, development and marketing operations. In 2003, CPCIL assigned its rights under the GSPC to its wholly owned subsidiary, CGC. NIOC failed to supply any gas pursuant to the GSPC. Therefore, CGC commenced arbitral proceedings pursuant to the GSPC.

Following an award on jurisdiction and liability in 2014, in CGC’s favour, and several unsuccessful challenges by NIOC under s.67 and s.68 of the Arbitration Act 1996, CGC eventually secured an award of damages in 2021. The value of the award was USD 2.4 billion for the total principal amount, plus post award interest. NIOC has failed to make any repayments. As of the date of the judgment, the total sum owed is approximately USD 2.6 billion.

The Enforcement Battle

As part of its enforcement strategy, CGC targeted NIOC House, commercial real estate in central London with an estimated value of circa GBP 100 million. However, CGC discovered that the ownership of NIOC House had been transferred to a closely related entity, a retirement fund (the “Fund”), shortly after the arbitral award was permitted to be enforced as a judgment. CGC primarily sought an order requiring the transfer of NIOC House to CGC.

CGC claimed this transfer was to evade enforcement, violating 423 of the [Insolvency Act 1986](#) (the “Act”). The Fund and NIOC countered that the Fund was the beneficial owner, citing Iranian legal concepts of “*amin*” and “*amanat*”, pursuant to which NIOC would be entrusted with NIOC House, but the Fund would retain ownership. Alternatively, NIOC and the Fund argued that the latter retained beneficial ownership because NIOC held NIOC House as trustee for the Fund under Iranian or English law, and the purpose of putting the assets beyond CGC’s reach was to reflect the property’s true beneficial ownership.

The English Commercial Court Unwinds the Transfer at An Undervalue

The court found that the transfer was not protected under a trust or equivalent foreign law instrument. Rather, it was a transaction at an undervalue as defined by s.423 of the Act. The court inferred that the purpose of the transaction was to put the property beyond CGC’s reach as the judgment creditor, before CGC could enforce its judgment against the property. Therefore, the court ordered the Fund to transfer the property to CGC pursuant to s.425 of the 1986 Act, restoring the position to what it would have been had the transfer not been entered into.

Who Was the Owner of NIOC House at the Time of the Transfer from NIOC to the Fund?

The court found that NIOC was the absolute owner of NIOC House. Although NIOC was indeed acting as “*amin*” under an “*amanat*” arrangement under Iranian law, managing assets for the Fund, the court found that NIOC House did not fall within this arrangement. NIOC had purchased the property in 1975 using funds borrowed from the Fund. Notably, the Fund’s 1976 accounts recorded the loan to NIOC and did not include NIOC House as an asset of the Fund. Although the Fund did not have legal personality at the time, and so could not have entered into a loan contract, the court highlighted contemporaneous evidence showing that NIOC, as “*amin*”, took a management decision to enter into this agreement to generate returns for the Fund by way of interest. Therefore, it was held that NIOC had purchased the property via a loan and that NIOC was the absolute owner of NIOC House.

Could NIOC and the Fund Argue that There was a Legal Relationship Akin to a Trust under Iranian Law?

Having found that NIOC was the absolute owner of NIOC House, the court held that there was no Iranian law relationship concerning the property which fell to be recognised as a trust under the [Hague Convention on the Law Applicable to Trusts and their Recognition](#) (the “Hague Trusts Convention”), which is part of English law pursuant to the [Recognition of Trusts Act 1987](#).

Could NIOC and the Fund Argue that There was a Trust under English Law?

The court accepted that NIOC and the Fund could argue an alternative English law trust case, founded upon Article 14 of the Hague Trusts Convention. The effect of this provision is that English courts can find that a trust was established regardless of whether the entity that purportedly declared the trust was incorporated and operating in a jurisdiction unfamiliar with the concept of a trust, or whether the asset in question was situated outside of such a jurisdiction.

Despite this concession, the court ultimately concluded that NIOC and the Fund failed to demonstrate the existence of an express trust in accordance with English law. The alleged trust

declarations were either issued before the Fund had acquired legal personality in 2019, rendering them ineffective, or they did not adhere to the stringent legal requirements for establishing a trust in land as mandated by 53(1)(b) of the Law of Property Act 1925. In particular, s.53(1)(b) provides that a trust declaration concerning land must be signed by a person able to declare the trust, which for a corporate body is an officer or board of directors. Thus, evidence showing that there was a manifest intention to declare a trust in a mortgage document after 2019, signed by NIOC's attorney, was found to be ineffective to give rise to an express trust. Notably, the statutory formalities in s.53(1)(b) can be contrasted with those in ss.53(1)(a) and s.53(1)(c), which expressly permit dealings with property by authorised agents but do not extend to making declarations of trust in respect of property. Further, there was no subsequent document proving the trust. As the purported declarations of trust made after the Fund had acquired legal personality were not signed by NIOC, but rather by its agents, a trust over NIOC House could not be established and so the court was reaffirmed in its view that NIOC held absolute ownership of the property.

Application of s.423 of the Act in Enforcement of Arbitral Awards

S.423 of the Act provides the definition of a transaction at an undervalue and the consequential order that the court can make in those circumstances. Applying the provisions of the Act, the court found that NIOC had received no consideration for the transfer, and so there was a transfer at an undervalue pursuant to s.423(1) of the Act. Further, the court noted that it was sufficient that *a* purpose of the transaction was the putting of assets beyond the reach of a person who is making a claim. In other words, it is not necessary to show that this is the main, dominant or substantial purpose. The court noted that there was a “*cogent case*” for inferring that the only credible explanation for NIOC's urgency in transferring the property (just six days after the court recognised the arbitral award as a judgment) was to shield NIOC House from CGC enforcing the judgment against it. Moreover, NIOC did not present any countervailing evidence, so the court found that the transaction breached s.423(3) of the Act. Therefore, the court ordered that NIOC House be transferred from the Fund to CGC in partial satisfaction of the award, pursuant to ss. 423(2) and 425.

Key Takeaways

The Commercial Court demonstrated its commitment to enforcing arbitral awards by actively intervening in the transfer of assets intended to evade enforcement of an arbitral award. One of the tools enabling courts to take a robust approach in enforcing arbitral awards is found in s.423 of the Act, which can be useful for reversing transactions made to defraud creditors. Further, the court's broad interpretation of the scope of s.423 of the Act, which emphasises that putting assets beyond the reach of creditors need only be *a* purpose of the transaction, as opposed to the main, dominant or substantial purpose, bolsters the court's willingness and ability to reverse such transactions. Practitioners should consider this provision as a potential tool in enforcement strategies, particularly when dealing with parties that might engage in asset transfers to avoid enforcement. This is because it is vital in ensuring that arbitral awards are not only theoretical victories but are also practically enforceable.

The case also illustrates the complexities of dealing with trusts and property law across different jurisdictions. The court's refusal to recognise a trust under either Iranian or English law due to formal deficiencies provides a valuable lesson in the importance of understanding and advising on

the formal requirements for trust declarations, particularly in international contexts. Whilst this takeaway is likely to be especially relevant to trust law practitioners, it may also be of special interest to parties who clearly intend for the beneficial ownership of certain assets such as property to be owned by another entity. Failure to comply with all formal requirements may render the asset vulnerable at the enforcement stage of an arbitral award. Ultimately, however, parties cannot create a trust over assets with the purpose of defrauding creditors.

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