Neutral Citation Number: [2009] EWCA Civ 632

Case No: A2/2009/1018(A)

IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT
Robert Englehart QC (sitting as a deputy judge of the Chancery Division, Companies Court)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26/06/2009

Before :

LORD JUSTICE WARD
LORD JUSTICE STANLEY BURNTON
and
SIR JOHN CHADWICK

- -

Between :

(1) Harms Offshore AHT "Taurus" GmbH & Co. KG
(2) Harms Offshore AHT "Magnus" GmbH & Co. KG **Appellants**

- and -

(1) Alan Robert Bloom
(2) Colin Peter Dempster
(3) Thomas Merchant Burton
(4) Roy Bailey
(as Joint Administrators of Oilexco North Sea Limited)
(5) Oilexco North Sea Limited (in Administration) **Respondents**

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(Transcript of the Handed Down Judgment of
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Official Shorthand Writers to the Court)

- -

Elspeth Talbot Rice QC and Edward Cumming (instructed by **Ince & Co**) for the **Appellants**
William Trower QC and Tom Smith (instructed by **Herbert Smith LLP**) for the **Respondents**

Hearing date: 20 May 2009

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Judgment

Lord Justice Stanley Burnton :

Introduction

1. On 7 January 2009, on the application of Oilexco North Sea Limited ("the Company") Patten J made an administration order in respect of the Company appointing the Respondents as Joint Administrators. On 15 May 2009, on the application of the Administrators, Mr Robert Englehart QC, sitting as a deputy judge of the Chancery Division in the Companies Court, granted a mandatory injunction requiring the Appellants to use their best endeavours to procure the release of two *ex parte* orders of maritime attachment and garnishment made by the United States District Court for the Southern District of New York ("the District Court") against the tangible and intangible assets of the Company and the release of attachments effected pursuant to those orders. The order also restrained the Appellants from taking any steps in substantive proceedings they had commenced in the District Court seeking judgment for sums due to them from the Company. The deputy judge granted permission to appeal but refused to stay his order.

2. On 20 May 2009 as a matter of urgency this Court heard an application on the part of the Appellants for a stay of the order made on 15 May 2009 and their appeal against that order. The application and appeal were urgent because the United States Bankruptcy Court in the Southern District of New York ("the Bankruptcy Court") was due to hear an application by the Administrators for the release of attachments secured by the Appellants later that day. In addition, the Administrators contended that the release of the attachments was necessary for them to be in a position to vacate office and thereby to enable completion of a sale of the shares of the Company. We dismissed the appeal, and Sir John Chadwick gave a brief summary of our reasons for doing so on the basis that it would be of assistance to the Bankruptcy Court to know why the Courts in this country had maintained the injunction, and on the basis that this Court would give its reasons more fully in writing subsequently. The dismissal of the appeal rendered the application for a stay pending appeal otiose.

3. This judgment sets out my reasons for dismissing the appeal.

The facts

4. The Company is incorporated in England. It carried on the business of offshore oil and gas exploration in the North Sea. It encountered financial difficulties, and as a result, as mentioned above, the administration order was made on 7 January 2009. On the same date, on the application of the Administrators, the Companies Court made an order authorising them to enter into and to procure the Company to enter into a loan agreement with specified lenders and to draw down funds under that agreement for the purpose of "making such payments in respect of the post-administration liabilities of the Company as the Joint Administrators consider likely to achieve the purpose of the administration". The Company was thus able to continue to trade, with a view to the sale of the Company or, failing that, of its business and assets.

5. The Appellants are companies incorporated in Germany. They are one-ship companies, and are pre-administration creditors of the Company under time charterparties of their vessels, the *Taurus* and the *Magnus*, dated 7 November 2008. The charterparties are in the standard Supplytime 89 form for offshore service vessels;

they are governed by English Law and include an arbitration agreement requiring any dispute to be referred to arbitration in London. The charter hire and other payments to be made under the charterparty were denominated in sterling. The amounts outstanding under the charterparties are, according to the Appellants, £583,987.70 in respect of the *Taurus* and £595,203.65 in respect of the *Magnus*.

6. By letters dated 7 January 2009 the Administrators informed the known creditors of the Company, including the Appellants, that it had entered administration and that they had been appointed administrators. The letter stated that the Company was continuing its business under their supervision whilst they investigated its financial affairs and endeavoured to realise a sale of the Company or of its business or assets.

7. On 16 January 2009, without notice to the Administrators, the Appellants commenced proceedings in the District Court under its admiralty and maritime jurisdiction seeking judgment for the sums due from the Company and an attachment and garnishment of its tangible and intangible property sufficient to answer their claims. Paragraph 7 of their verified complaints stated:

> "Under the laws of the United Kingdom, which governs the parties' Charter, the prevailing party is entitled to recover its interest and attorneys fees. Upon information and belief, it will take two years to bring this dispute to conclusion, resulting in a total of the following estimated interest and attorney's fees in addition to Plaintiff's principal claim: …"

In the case of the *Taurus*, interest of $85,641 and lawyers' fees of $100,000 were thus added to the sum attached; in the case of the *Magnus*, $87,286 interest and $100,000 were added to the sum attached.

8. The Appellants' verified complaints made no mention of the fact, known to the Appellants, that the Company was the subject of an administration order. Although paragraph 7 of the complaints stated that the sums claimed were disputed, no mention was made of the London arbitration agreements, of which, if their claims were disputed, the Appellants were in breach by commencing substantive proceedings otherwise than by arbitration. Of course, the United States of America is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which would require the District Court to refer the claims to arbitration at the request of the Company. In fact, I have seen nothing to show that the sums claimed by the Appellants were disputed; but even if they were, in my judgment the Appellants' complaints misled the District Court by omitting mention of the administration and the arbitration agreements.

9. On 21 and 26 January 2009 *ex parte* orders were made by the District Court attaching the property of the Company within the Southern District of New York. On the same date a summons was issued naming the Company as Defendant. Shortly thereafter writs of attachment and garnishment were issued against the property of the Company, including property held for its benefit or moving through or within the possession of 19 named banks.

10. The Appellants did not inform the Administrators that they had commenced the proceedings in the District Court or that they had obtained and were seeking to

enforce attachments against the Company's property. In ignorance of the attachments, on 19 March 2009 the Administrators sought to make a payment of $3,380,963 to a post-administration supplier of services to the Company. That sum went to the supplier's account with one of the banks in New York that had been served with the attachment orders. As a result, a total of approximately $2.2 million was attached.

11. The New York proceedings and attachment orders were not served on the Administrators until 24 March 2009.

12. The Administrators agreed a sale of the shares of the Company. It was conditional on a compromise of its liabilities to its creditors, which was to be effected by a company voluntary arrangement pursuant to Part I of the Insolvency Act 1986. The CVA was approved by the creditors of the Company. It was a condition precedent of the sale of the shares of the company that the appointment of the Administrators cease to have effect. There was an alternative agreement for the sale of the Company's assets but it would result in a significantly smaller sum being available for unsecured creditors. Both of the Appellants submitted forms of proxy and voting dated 9 April 2009 in favour of the CVA.

13. In addition to seeking relief in the Companies Court, on 7 May 2009 the Administrators brought proceedings in the Bankruptcy Court seeking an order vacating the attachments obtained by the Appellants. The basis of the Administrators' proceedings is that the Bankruptcy Court in New York should recognise the administration order under principles of comity embodied in Chapter 15 of the U.S. Bankruptcy Code. Chapter 15 is the U.S. domestic adoption of the Model Law on Cross-Border Insolvency promulgated by the United Nations Commission on International Trade Law (UNCITRAL) in 1997. Its purpose is to "provide effective mechanisms for dealing with cross-border insolvency".

The contentions of the parties

14. On behalf of the Appellants, Miss Talbot Rice QC submitted that the Appellants had not acted in breach of any statutory restriction on legal proceedings being commenced against a company in administration. Paragraph 43(6) of Schedule B1 to the Insolvency Act does not have extra-territorial effect. Furthermore, the assets of a company in administration, unlike those of a company that is being wound up, are not subject to the trust that justified anti-suit injunctions against creditors of companies in liquidation. The District Court in New York was properly seized of an attachment against property within its jurisdiction, and comity requires the courts of this country to abstain from interfering with proceedings before that Court. The need for judicial restraint and recognition of the requirements of comity are particularly great where, as here, the foreign jurisdiction has adopted statutory provisions such as those of Chapter 15 of the Bankruptcy Code and the Administrators have commenced proceedings in that jurisdiction.

15. On behalf of the Administrators, Mr Trower QC submitted that the deputy judge had been entitled to grant the injunction in the circumstances of this case, where the action taken by the Appellants interferes with the exercise by the Administrators of their functions pursuant to orders of the Companies Court, and the subject matter of the foreign proceedings has no connection with the foreign jurisdiction.

Discussion

16. It has long been established that the statutory prohibition against creditors bringing proceedings against a company being wound up by the court is not extra-territorial, i.e. it does not extend to proceedings brought in foreign courts. In *Re Oriental Inland Steam Company ex parte Scinde Railway Company* (1874) LR 9 Ch App 557, the liquidator obtained an order requiring a creditor who had attached assets in India to return them to the company in liquidation. Sir W M James LJ said, at 558:

> "The winding-up is necessarily confined to this country. It is not immaterial to observe, that there could now be no possibility, having regard to the decision of the Supreme Court of *Calcutta,* in *Bank of Hindustan v. Premchand,* which we must take to be quite right, of treating this case as if there were an auxiliary winding-up in *India.* If this is so with regard to a company domiciled in *England,* but having its business and assets in *India,* there would be no ground for the contention on the part of the Appellants that they would obtain an equitable and rateable distribution of the assets between the creditors. All the assets there would be liable to be torn to pieces by creditors there, notwithstanding the winding-up, and there would be an utter incapacity of the Courts there to proceed to effect an equitable distribution of them. The English Act of Parliament has enacted that in the case of a winding-up the assets of the company so wound up are to be collected and applied in discharge of its liabilities. That makes the property of the company clearly trust property. It is property affected by the Act of Parliament with an obligation to be dealt with by the proper officer in a particular way. Then it has ceased to be beneficially the property of the company; and, being so, it has ceased to be liable to be seized by the execution creditors of the company.
>
> There may, no doubt, be some difficulty in the way of dealing with assets and creditors abroad. The Court abroad may sometimes not be disposed to assist this Court, or take the same view of the law as the Courts of this country have taken as to the proper mode of dealing with such companies, and also with such assets. If so, we must submit to these difficulties when they occur.
>
> In this particular case there is no such difficulty. There were assets fixed by the Act of Parliament with a trust for equal distribution amongst the creditors. One creditor has, by means of an execution abroad, been able to obtain possession of part of those assets. The Vice-Chancellor was of opinion that this was the same as that of one *cestui que trust* getting possession of the trust property after the property had been affected with notice of the trust. If so, that *cestui que trust* must bring it in for distribution among the other *cestuis que trust.* So I, too, am of opinion, that these creditors cannot get any priority over their

fellow-creditors by reason of their having got possession of the assets in this way. The assets must be distributed in *England* upon the footing of equality."

17. Sir G Mellish LJ said:

> "I quite agree that the 87th section of the Act of 1862, providing that no action shall be brought without the leave of the Court, and the 163rd section, enacting that no execution shall issue, apply only to the Courts in this country. Of course, Parliament never legislates respecting strictly foreign Courts. Nor is it usually considered to be legislating respecting Colonial Courts or Indian Courts, unless they are expressly mentioned. Still, that appears to me not to prevent the general application to this case of the principles which have been established in cases of bankruptcy.
>
> No doubt winding-up differs from bankruptcy in this respect, that in bankruptcy the whole estate, both legal and beneficial, is taken out of the bankrupt, and is vested in his trustees or assignees, whereas in a winding-up the legal estate still remains in the company. But, in my opinion, the beneficial interest is clearly taken out of the company. What the statute says in the 95th section is, that from the time of the winding-up order all the powers of the directors of the company to carry on the trade or to deal with the assets of the company shall be wholly determined, and nobody shall have any power to deal with them except the official liquidator, and he is to deal with them for the purpose of collecting the assets and dividing them amongst the creditors. It appears to me that that does, in strictness, constitute a trust for the benefit of all the creditors, and, as far as this Court has jurisdiction, no one creditor can be allowed to have a larger share of the assets than any other creditor.
>
> Then it is said that the assets are subject to the law of the place where they are. I quite agree that if the law of the place where they are had given a charge of that nature on the assets prior to the time when the petition for winding-up was presented, or possibly prior to the time when the winding-up order was made, and a judgment, for instance, had been put on the register, that might, by the law of *Bombay*, have constituted a charge on the property of the company, and then the trust for the benefit of the creditors would have been subject to that charge. But here there is no allegation that the judgment in *Bombay*, any more than a judgment here, simply *quâ* judgment, operates as any charge at all. It is quite clear that it does not, and that until the execution and attachment have issued and been executed, there is no actual charge on the property. That charge is subsequent to the creation of the trust, and is made by the particular Appellants here with full notice of the trust.

> The consequence necessarily follows, that in this Court these creditors cannot be allowed by such means to obtain priority; and that they must give up, for the benefit of the creditors, what they have so obtained."

18. As can be seen, although the statutory prohibition was interpreted as confined to the jurisdiction of these courts, the finding of a trust resulted in an effective extra-territorial jurisdiction.

19. As mentioned above, before us the Appellants sought to distinguish the position of a company being compulsorily wound up with that of a company in administration. In the former case, the assets of the company are the subject of a trust, but not the latter. The Administrators took issue with this submission. In addition, the Administrators contended that the definition of "property" in section 436 of the Insolvency Act 1986 as including every description of property "wherever situated" means that the prohibition in paragraph 43 of Schedule B1 applies to property outside the jurisdiction.

20. Paragraph 43(6) of Schedule B1 is as follows:

> "(6) No legal process (including legal proceedings, execution, distress and diligence) may be instituted or continued against the company or property of the company except—
>
> (a) with the consent of the administrator, or
>
> (b) with the permission of the court."

21. I find it difficult, particularly in the light of the long line of authorities beginning with *Re Oriental Inland Steam Company*, to interpret this provision as applying to proceedings brought by a creditor who is not subject to the jurisdiction in a court outside the jurisdiction. The presumption against extra-territoriality would lead me to interpret the reference to legal process as confined to process within the jurisdiction, or (having regard to paragraph 43(5)) within the United Kingdom. My difficulty is reinforced by the facts that in *Mitchell v Carter* [1997] 1 BCLC 673 Blackburne J decided that section 183, which precludes a creditor who levies execution or attaches a debt after commencement of a winding up from retaining the benefit of his execution or attachment, does not apply to executions or attachments in foreign jurisdictions, and that in the Court of Appeal it was not disputed that the section has no extra-territorial effect. Moreover, Parliament has had but not used the opportunity to make express extra-territorial provision. I see no relevant distinction between the wording of paragraph 43 and that of the statutory prohibition in section 130 of the Insolvency Act 1986 in relation to companies in respect of which a winding up order has been made.

22. It is however unnecessary for me to arrive at a final conclusion on this issue. This is because cases such as *Re Oriental Inland Steam Company* and *Mitchell v Carter* show that the jurisdiction of the Court is not restricted by the territoriality of the statutory prohibition. I do not think that this jurisdiction is confined to the protection of the assets of a company that is being wound up, and is not available to protect the assets

of a company in administration. I do not accept that the protection of the assets of a company in administration is to be regarded by the Court as differing in substance from the protection of the assets of a company in compulsory liquidation. In both cases, the assets of the company are dealt with by an officer appointed by the Court in accordance with statutory duties. The administrators of a company are required by paragraph 3(1) of Schedule B1 to perform their functions with the objective of:

> "(a) rescuing the company as a going concern, or
>
> (b) achieving a better result for the company's creditors as a whole than would be likely if the company were wound up (without first being in administration), or
>
> (c) realising property in order to make a distribution to one or more secured or preferential creditors.

Subparagraph (2) requires the administrators to perform their functions in the interests of the company's creditors as a whole, subject to subparagraph (4):

> "The administrator may perform his functions with the objective specified in sub-paragraph (1)(c) only if—
>
> (a) he thinks that it is not reasonably practicable to achieve either of the objectives specified in sub-paragraph (1)(a) and (b), and
>
> (b) he does not unnecessarily harm the interests of the creditors of the company as a whole."

23. One of the duties of the Administrators, and therefore one of their functions for the purpose of paragraph 3, is to "take custody or control of all the property to which he thinks the company is entitled" (see paragraph 67 of Schedule B1 to the 1986 Act), and section 436 makes it clear that that means the property of the company both within and outside the jurisdiction.

24. It seems to me that the trust the existence of which was established in *Re Oriental Inland Steam Company* was a legal construct created to achieve the equitable distribution of the proceeds of the realisation of the assets of the company wherever situated. As Millett LJ pointed out in *Mitchell v Carter*, it is a trust which confers no beneficial interest on the creditors, who are the beneficiaries. Their only right is to have the assets of the company dealt with in accordance with the statutory scheme applicable to a company that is the subject of a winding up order. Similarly, the creditors of a company in administration are entitled to have the company and its assets dealt with in accordance with the statutory scheme applicable to such companies. The lack of any material distinction between compulsory winding up and administration is demonstrated by the judgment of Mummery LJ in *Re Polly Peck International plc (in administration) No. 4* [1998] 2 BCLC 185, 201. If the Court has a jurisdiction to protect the assets of a company that is being wound up by the Court from foreign attachments and executions, in my judgment it has a similar jurisdiction in the case of a company in administration.

25. But although the Court has jurisdiction to prevent a creditor from taking advantage of a foreign attachment, it does not follow that the jurisdiction should be exercised in any particular case. The exercise of the jurisdiction will depend on the facts of the case, and must be tempered by considerations of comity. The judgment of Maugham J in *Re Vocalion (Foreign) Ltd* [1932] 2 Ch 196 is helpfully summarised in the head note:

> "Sect. 177 of the Companies Act, 1929, only applies to proceedings pending in a Court of Great Britain and does not apply to proceedings pending in a foreign or colonial Court. The Court can, however, in the exercise of its equitable jurisdiction *in personam* restrain a respondent properly served in this country from proceeding with an action brought in a foreign or colonial Court to enforce a liability incurred abroad. But as against a respondent domiciled abroad, substantial justice is more likely to be attained by allowing the foreign proceedings to continue, and in such a case the Court will not as a rule exercise that jurisdiction."

26. The reluctance of the court to interfere with proceedings in a foreign court by the grant of anti-suit injunctions is demonstrated by the important judgment of the Privy Council in *Société Nationale Industrielle Aerospatiale v Lee Kui Jak* [1987] 1 AC 871. In that case, the question was where a civil claim should be tried. In such cases questions of *forum non conveniens* arise, although, as the judgment makes clear, the inconvenience of a forum is of itself not a sufficient justification for the grant of injunctive relief. The present case is different. The question is not where a dispute as to liability or damages should be determined, but whether the Appellants should be able to continue their proceedings before the District Court so as to secure the benefit of their attachments, and thus promote themselves from unsecured to secured creditors. In such cases, as the Privy Council pointed out in *Aerospatiale*, the purpose of the anti-suit injunction may be said to be to protect the jurisdiction of the English Court: [1987] 1 AC 871, 892H. In *Mitchell v Carter*, Millett LJ said, at 685:

> "The position today is that stated by Hoffmann J in *Barclays Bank plc v Homan* [1993] BCLC 680. There must be a good reason why the decision to stop foreign proceedings should be made here rather than there. The normal assumption is that the foreign judge is the person best qualified to decide if the proceedings in his court should be allowed to continue. Comity demands a policy of non-intervention."

27. The Court should exercise its powers so as to enable the administrators to exercise their statutory functions and to fulfil their statutory duties, so far as necessary in any particular case. The comity owed by the courts of different jurisdictions to each other will normally make it inappropriate for the Court to grant injunctive relief affecting procedures in a court of foreign jurisdiction. In this particular case, this Court recognises that the Bankruptcy and District Courts are experienced in commercial and insolvency matters. Nonetheless, the conduct of the creditor against whom an injunction is sought, and the circumstances of the attachment of the property of the company, may justify the grant of an injunction despite the strong presumption that this court will not interfere with the proceedings of a foreign court. In particular, if the

conduct of the creditor can be castigated as oppressive or vexatious (as to which see the judgment of Glidewell LJ, with whom the other members of the Court of Appeal agreed, in *Barclays Bank v Homan* [1993] BCLC 680) or otherwise unfair or improper, this Court can and should grant relief in order to protect the performance by administrators of their functions and duties, and thus the creditors of the company, pursuant to orders of the Court.

28. In the present case, the following factors are relevant:

(a) The Company is incorporated in England and its place of business was in this country. It had no place of business or assets in the United States when the attachment orders were made. Similarly, neither of the Appellants is incorporated or carries on business in the United States.

(b) The Company entered into administration and the Administrators were appointed and carried out their duties and functions pursuant to orders of the Companies Court in this jurisdiction. Thus the administration is subject to the jurisdiction of the Companies Court in this country.

(c) When applying for the attachments, the Appellants failed to inform the District Court of the fact that the Company was in administration or of the arbitration agreements by which they were bound. If under the law of New York they were under a duty to make full and frank disclosure, they were in breach of that duty, but in any event their verified complaints gave a misleading picture to the District Court. The District Court thus made the attachment orders in ignorance of highly material facts.

(d) The attachments did not fasten on any pre-administration property of the Company in New York. I can assume that there was none. Successful attachments therefore depended on property of the Company coming within the jurisdiction of the District Court during the course of the administration.

(e) This was not a case of a debtor seeking to evade payment of its liabilities to the Appellants, but of officers appointed by the Court seeking to secure the best outcome for the creditors of the Company. Nonetheless, the Appellants did not inform the Administrators of the attachment orders they had obtained until after they had succeeded in attaching funds sufficient to secure their claims. They had been informed that the Administrators proposed to carry on the business of the Company. That would involve making payments, often in US dollars, for post-administration supplies and services, as the Appellants, companies carrying on business in the oil and gas industries, must have been aware. Such payments would be made to suppliers' bank accounts, which might be in New York; in any event, the District Court's power to attach funds has been applied to dollar payments cleared through New York. International dollar payments are cleared through the USA, and generally New York. The Appellants thus established a trap for the Administrators. The Appellants' conduct was unconscionable.

(f) The funds subject to the attachment were the proceeds of a loan entered into pursuant to an order of the court and were transmitted to New York in order to pay for post-administration services contracted for pursuant to an order of the

court. The attachments thus interfered with the performance by the Administrators of their functions and duties as such pursuant to an order of the Companies Court.

29. In my judgment, the conduct of the Appellants and the circumstances of the attachments brought it into the exceptional category in which the grant of injunctive relief is justified, notwithstanding comity and notwithstanding the outstanding application of the Administrators in New York. It is unnecessary to consider whether any of the factors listed above alone would have justified the grant of injunctive relief. It was similarly unnecessary to determine any of the more wide-ranging submissions of the parties.

30. Lastly, it seemed to me that the Bankruptcy Court Judge in New York would be assisted to be made aware of the views of this Court in this matter, an English administration relating to an English company that did not carry on business in the United States and did not have any assets in that jurisdiction when the administration order was made; and indeed the transcript of the proceedings before Judge Drain indicated that he would be assisted by a ruling of this Court. The order dismissing the appeal and the short reasons given by Sir John Chadwick were an appropriate means of communicating the views of this Court to the District Court in New York.

31. More generally, I point out that administrators should be aware that the jurisdiction of the District Court to attach payments in dollars cleared through New York may mean that they will be unable safely to make dollar payments in respect of post-administration liabilities without first having obtained recognition of the administration as a "foreign proceeding" under Chapter 15 of the US Bankruptcy Code.

Sir John Chadwick:

32. As Stanley Burnton LJ has observed, we dismissed this appeal at the conclusion of oral argument. But we varied the order made by the judge so as to make it clear that the interference with the proceedings in New York pursuant to that order was limited to the release from attachment of monies paid by the administrators in respect of post-administration liabilities and where such payments were made through New York before 25 March 2009: that is to say, before the date on which the administrators were on notice of the orders made by the District Court.

33. That is, to my mind, an important limitation. It emphasises the special feature of this case: that the effect of the appellants' conduct, described by Stanley Burnton LJ, was to set a trap for the administrators which, when sprung, obstructed the proper discharge of the functions for which the High Court had appointed them. It is that feature which, to my mind, requires the United Kingdom court to intervene, notwithstanding the strong presumption against interference with proceedings in a foreign court to which Stanley Burnton LJ has referred. It is that feature which justifies the categorisation of the appellants' conduct as improper and oppressive in the context of the on-going administration of the company in the United Kingdom.

Lord Justice Ward:

34. I agree with both judgments.