



Neutral Citation Number: [2021] EWHC 747 (Ch)

Case No: PT-2021-000257  
(PT-2020-000907)

**IN THE HIGH COURT OF JUSTICE**  
**CHANCERY DIVISION**

The Rolls Building  
7 Rolls Buildings  
Fetter Lane  
London EC4A 1NL

Date: Tuesday, 23<sup>rd</sup> March 2021

**Before:**

**MR. JUSTICE MILES**

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**Between:**

**PETROSAUDI OIL SERVICES (VENEZEULA) LTD**  
**(incorporated in Barbados)**

**Claimant**

**- and -**

**CLYDE & CO. LLP**

**Respondent**

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**MR. DAVID ALLEN, QC and MR. JASON ROBINSON** (instructed by **Armstrong  
Teasdale**) for the **Claimant**  
**MR. CHARLES DOUGHERTY, QC and MR. LUKA KRSLJANIN** (instructed by **Clyde  
& Co. LLP**) for the **Respondent**

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**APPROVED JUDGMENT**  
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**MR. JUSTICE MILES:**

1. This is an application in proceedings issued on 23 March 2021. It is the second set of proceedings concerning the same subject matter, namely, a fund of US\$325m held by the defendant firm as escrow agent and trustee in connection with an international arbitration between the claimant and another party.
2. The background is set out in some detail in a judgment I gave in earlier proceedings of 26 February 2021 [2021] EWHC 444(Ch). In short, I concluded as follows: (1) the defendant held the funds on trust for the claimant and that the defendant did not wish to continue to hold the monies, other things being equal; (2) however, things were not equal because of a warrant issued by the District Court for the Central District of California on 14<sup>th</sup> October 2020 that operated *in rem* against the funds; (3) because of that warrant the defendant faced a real risk of prosecution or proceedings by DOJ if it paid funds into the English court under an order of the English court; (4) there would be serious prejudice to the claimant if it did not have access to the monies to pay its creditors and lawyers; (5) the court had a discretion under CPR 64 and/or the supervisory jurisdiction of the court over trustees to order payment into court and bring the trust arrangements to an end; and (6) on balance, having considered all the evidence, I declined to make an order for payment of the funds into court because of my conclusions about the risk to the defendant.
3. As explained in that judgment, in December 2020 the claimant applied to the US court to dismiss the arrest warrant. Since my judgment and order in the first set of proceedings there has been a crucial change in the factual landscape. On 9 March 2021, Judge Fisher of the US District Court for the Central District of California granted the claimant's motion and the warrant was recalled. The judge also dismissed an application by DOJ for a protective order against the claimant.
4. Following the order of Judge Fisher the claimant corresponded with the defendant, which agreed to make maintenance payments in sums of more than US\$3.2m. The claimant also invited the defendant to agree an order for the payment of the remaining funds into court. The defendant has taken a neutral stance in relation to the proposed order. The claimant has issued these proceedings and makes an application on short notice for an order for the conversion of the monies into sterling, payment of the proceeds into court, and for monthly payments out of court until further order of the court.
5. Counsel for the parties appeared before me and the defendant took a neutral stance. It does not object to the order being made and indeed wishes, other things being equal, to be discharged from its position as trustee and escrow agent. It does, though, rely on its rights of indemnity and retention and those are catered for in the draft order that was put before me today.
6. The parties have properly drawn my attention to the Malaysian court's order. This was described in my judgment. As counsel for the claimant points out, it has not been domesticated in this jurisdiction under the relevant legislation, nor has the NCA made any application in respect of the Malaysian court's order in this jurisdiction. Moreover, when the matter came before Snowden J last year, the NCA indicated that it would not object to maintenance payments and legal fees being paid from the funds. Moreover, the Malaysian order itself contained provisos allowing for such payments

and those were reflected in the order of the court made by Trower J in proceedings described in my judgment between the claimant and the other party to the arbitration.

7. I do not see the existence of the Malaysian order as constituting any reason for this court refusing to make an order either for the payment of the monies into the English court or for the payment of periodic sums out of court. It has not been domesticated and has no effect in this jurisdiction. Counsel for the claimant explained that the claimant is not seeking payment in full from the monies in court at this stage as a voluntary decision to respect the order of the Malaysian court without in any way accepting that that order is applicable or enforceable. That is a decision for the claimant.
8. I have been taken through the terms of the draft order by counsel and I am satisfied that it is appropriate to make an order in the terms of that draft (with some minor amendments). The order has the effect described in paragraph 4 above.

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**This Judgment has been approved by Mr. Justice Miles.**