



Neutral Citation Number: [2021] EWCA Civ 770

Case No: A2/2020/1869

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Mr Justice Murray
QB-2019-000183

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21st May 2021

Before :

LORD JUSTICE LEWISON
LORD JUSTICE ARNOLD
and
LORD JUSTICE EDIS

Between :

LENKOR ENERGY TRADING DMCC
- and -
MR IRFAN IQBAL PURI

Respondent
Appellant

Mr James Collins QC & Mr Philip Jones (instructed by **Mackrell Solicitors**) for the
Respondent

Mr Nigel Cooper QC (instructed by **Hill Dickinson LLP**) for the **Appellant**

Hearing dates : 13th May 2021

Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 10am on Friday 21st May 2021.

Lord Justice Lewison:

Introduction

1. On 20 July 2014 and 7 August 2014 Mr Puri signed two cheques, each drawn on the account of IPC Dubai at a Dubai branch of Habib Bank, in favour of Lenkor Dubai. The face value of the cheques was AED 208,500,200 (about US\$ 55 million). When Lenkor Dubai attempted to present the cheques, there were insufficient funds in the accounts to meet them. They were not, therefore, honoured. By virtue of Article 599/2 of the Dubai Commercial Transactions Law a cheque may not be issued unless the drawer has, at the time of drawing the cheque, sufficient funds to meet it. Further, by the same law, a person who draws the cheque is deemed to be personally liable for the amount of the cheque. Following dishonour of the cheques, Lenkor Dubai brought proceedings against Mr Puri in Dubai. Those proceedings resulted in a judgment against him personally in Dubai in the sum of AED 123,272,048 plus interest at 9 per cent. Lenkor now seeks to enforce that judgment against him in England.
2. Mr Puri resists the application on the ground that to enforce the Dubai judgment would be contrary to public policy. His reason for saying so is that the underlying transaction, which was the context in which he signed the cheque, was tainted by illegality. That argument failed both before Master Davidson and before Murray J. The judge's judgment is at [2020] EWHC 1432 (QB), [2021] 1 Lloyd's Rep 47.
3. It is, I think, common ground that the legal framework is encapsulated in Rules 42 and 51 as set out in Dicey, Morris & Collins on The Conflict of Laws (15th ed). Rule 42 is the basic rule, namely that a final and conclusive foreign judgment for a debt or definite sum of money given by a court of competent jurisdiction may be enforced by a claim in England, unless it is impeachable on grounds set out in later Rules. Rule 51 is:

“A foreign judgment is impeachable on the ground that the enforcement or, as the case may be, recognition, would be contrary to public policy.”
4. It is that rule on which Mr Puri relies. In order to explain his reliance, it is necessary to explain the factual background. I do so adopting the very clear narrative of the judgment below.

Factual background

5. Mr Puri 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.
6. Lenkor Energy Trading DMCC (“Lenkor Dubai”) 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. The moving spirit behind each is Mr Atiyeh.
7. On 4 June 2014 IPC Dubai, Lenkor Hong Kong and a third company, incorporated in Pakistan (“the Buyer”), entered into a tripartite agreement (“the Tripartite Agreement”),

governed by English law. 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. 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.

8. 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 Dubai], that is acceptable to the Seller, 3 days before the vessel commences loading.”
9. It was pursuant to this obligation imposed on IPC Dubai that Mr Puri signed the two cheques.
10. 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.
11. 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. IPC Dubai, and Mr Puri personally, were privy to the deception at the time of entry into the Tripartite Agreement.
12. 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.
13. 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 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.

14. 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.
15. The vessel with the first cargo arrived at Port Qasim on 3 July 2014. 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.
16. 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.
17. 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.
18. The vessel with the second cargo to be delivered under the Tripartite Agreement arrived 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.
19. Following testing, the second cargo was accepted for import by the Pakistan authorities and customs clearance was given, shortly after 14 August 2014.
20. 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 was the equivalent of the US Dollar amount in UAE Dirhams at an exchange rate of 3.6700 AED per US\$1.00.
21. At some point before 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. That led to a change in the

payment arrangements. 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).

22. Initially without informing Lenkor Hong Kong, the Buyer and Mr Puri agreed that the Buyer would make payments in PKR 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. 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.
23. 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.
24. 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 PKR 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 (approximately equivalent to US\$31 million).
25. The Buyer made no further payments in respect of either of the cargoes. IPC Dubai has never accounted to Lenkor Hong Kong 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 PKR. The upshot is that IPC Dubai has received (either by itself or by its nominee) substantial payments in respect of the oil.
26. 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.
27. 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 IPC Dubai's account at a Dubai branch of Habib Bank Ltd.

28. Although Lenkor Dubai had received cheques from IPC Dubai in relation to 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) 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.
29. On 9 January 2015 Lenkor Hong Kong's solicitors applied for and obtained from the Commercial Court a worldwide freezing order against IPC Dubai. In his first affidavit in support of the application for the order, 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.

The arbitration

30. The dispute between Lenkor and the Buyer went to arbitration. We have been provided with a redacted copy of the award which preserves the confidentiality of the Buyer's identity. The arbitrator (Mr Steven Berry QC) considered the buyer's defence to Lenkor's claim for the contract price, applying the principles laid down by the Supreme Court in *Patel v Mirza* [2016] UKSC 42, [2017] AC 467. He was satisfied that Lenkor had entered into the Tripartite Agreement with the intention of committing illegal acts; and committed them in the course of performing the contract. He then discussed the various policy considerations both for and against enforcement of the contract. He came to the conclusion that it would be proportionate to deny a claim against the Buyer in contract which contained a profit element; but that it would be disproportionate to deny a claim to reverse unjust enrichment. Accordingly, he held that Lenkor Hong Kong had a valid claim 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.
31. The arbitrator went on to consider Lenkor's claims against IPC Dubai for the amounts that the latter had received on account of the cargoes. In essence he held that IPC Dubai was liable to account to Lenkor for the amounts that had been paid to it or on its behalf. He further held that IPC Dubai had forfeited any right to commission because of its knowledge of Lenkor's illegal conduct. IPC Dubai was therefore liable to repay to Lenkor the entirety of the sums it had received. The basis of liability was either a contractual liability under the agency agreement; or was itself based on unjust enrichment. He did not find that the agency agreement between IPC Dubai and Lenkor Hong Kong was unenforceable for illegality.
32. In the course of his consideration of those claims, he also discussed the status of the guarantee cheques. He held that Lenkor was not obliged to return those cheques, but that any amount recovered on the cheques by Lenkor Dubai would be held for the benefit of Lenkor "and would, as between Lenkor and IPC Dubai, be receipt by it for the account of Lenkor". Accordingly, any sums recovered by reason of any liability on

the cheques or any judgment on the cheques were to be credited against the liability of IPC Dubai as awarded in the arbitration.

The Dubai proceedings

33. Lenkor Dubai then attempted to cash the two cheques that it had received from IPC Dubai under Clause 15(C) of the Tripartite Agreement. IPC Dubai did not have sufficient funds in its account to honour them and they were not honoured.
34. Consequently, 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. On 30 May 2017 the Dubai court issued its judgment in favour of Lenkor Dubai for the amount of AED 123,727,048 (approximately UD\$33.5 million) 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. Mr Puri's appeal rights in Dubai are now exhausted.
35. Although the reasoning of the Dubai court on this point is obscure, it is important to note that the Dubai court did not order Mr Puri to pay the full face amount of the two cheques, which was AED 208,500,200. The Dubai court 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. In other words, Mr Puri was found liable for the sums which the Buyer had actually paid over to IPC Dubai; but which had not been remitted onwards to Lenkor Hong Kong.

The English proceedings

36. Lenkor Dubai then began proceedings in this jurisdiction, seeking to enforce the Dubai judgment at common law. Mr Puri advanced a number of defences to that application of which only one remains live. The live defence is that the judgment of the Dubai court was tainted by the illegality of the Tripartite Agreement, so as to make it unenforceable as a matter of public policy under English law.
37. Both the Master and the judge rejected that defence.
38. The essential argument which Mr Cooper QC advances on Mr Puri's behalf is that it is contrary to public policy to permit the indirect enforcement (via a guarantee) of a contractual obligation that is illegal. As a matter of English law, a guarantee is unenforceable if the underlying transaction is tainted with illegality so as to be unenforceable. In support of that proposition, he relies on *Garrard v James* [1925] Ch 616, *Heald v O'Connor* [1971] 1 WLR 497 and *Azimut-Benetti SpA v Healey* [2010] EWHC 2234 (Comm). In this case the cheques signed by Mr Puri were signed in order to guarantee performance of the Buyer's payment obligation; and that obligation has been held to be unenforceable because of illegality. The English court retains a discretion to inquire into the illegality of the underlying transaction: *Westacre Investments Inc v Jugoimport SPDR Holding Co Ltd* [2000] QB 311. The judge was wrong not to have undertaken that inquiry. If he had, he would (or ought to have) concluded that public policy precluded enforcement of the Dubai judgment. The only

evidence relied upon by Mr Puri in support of this defence is the arbitrator's award. Thus the case of illegality advanced by Mr Puri rests solely on the arbitrator's findings.

Conclusions

39. I agree with both the Master and the judge (for the reasons that they gave) that the defence fails. Accordingly, I can state my view shortly. As Mummery LJ said in *Re Portsmouth City Football Club Ltd, Neumans LLP (a firm) v Andronikou* [2013] EWCA Civ 916, [2013] Bus LR 1152, at [38]:

“If the judgment in the court below is correct, this court can legitimately adopt and affirm it without any obligation to say the same things over again in different words. The losing party will be told exactly why the appeal was dismissed: there was nothing wrong with the decision appealed or the reasons for it.”

40. First, this is not a question of enforcing a contract. It is a question of enforcing a judgment given by a foreign court of competent jurisdiction. The two are not the same: *Omnium de Traitement et de Valorisation SA v Hilmarton Ltd* [1999] 2 Lloyd's Rep 222, 224. There are sound justifications for taking a different approach to substantive claims and enforcement claims, reflecting the different role performed by the court in each circumstance: *RBRG Trading (UK) Ltd v Sinocore International Co Ltd* [2018] EWCA Civ 838, [2018] 2 Lloyd's Rep 133 [26] (3). The judgment of a foreign court of competent jurisdiction creates an obligation to pay the judgment sum enforceable in this jurisdiction as a debt, irrespective of the underlying cause of action: *Williams v Jones* (1845) 13 M & W 628, 633; *Adams v Cape Industries plc* [1990] 1 Ch 433, 513. It is common ground that the Dubai court was such a court. Second, Mr Puri's underlying liability is not a contractual liability (nor could it be since he was not a party to the Tripartite Agreement). Nor is it a claim on the guarantee. Mr Puri gave no guarantee; and IPC Dubai is not sued on the guarantee. The only relevant contract in place between Lenkor Hong Kong and IPC Dubai was the separate agency contract. That contract was not found by the arbitrator to be illegal or unenforceable. Nor is it even a claim on the cheque as a negotiable instrument. Such a claim could only have been brought against IPC Dubai. What Mr Puri did was to draw a cheque on a Dubai account held at a Dubai bank, which has particular legal consequences in Dubai for him personally. As both the Master and the judge put it, that liability is independent of the underlying transaction. There is no suggestion that the public policy which arises under the law of Dubai precludes the enforcement of the statutory cause of action. As the judge said, if that point was to be taken, it should have been taken in Dubai. Third, Lenkor Hong Kong's underlying claim against IPC Dubai is not a contractual claim under the Tripartite Agreement either. It is a claim either in unjust enrichment, or under a separate agency agreement. IPC Dubai collected money as Lenkor Hong Kong's nominee. It agreed to and ought to have paid that money over to Lenkor Hong Kong, and has failed to do so. Lenkor Hong Kong makes no claim against Mr Puri. Lenkor Dubai's claim against Mr Puri is a claim based on a particular statutory liability under the law of Dubai, in support of Lenkor Hong Kong's underlying claim against IPC Dubai in restitution for unjust enrichment or under the agency agreement. Fourth, the quantum of the judgment was neither the same as the contract price, nor the same as the face value of the cheque. It is directly reflective of the amount that was actually paid to IPC Dubai or its sister companies “for the account” of Lenkor Hong Kong. Put another way, whereas a guarantee (properly so-called) would have required IPC Dubai

to pay what the Buyer was obliged to pay but had *failed* to pay, the judgment sum corresponded to what the Buyer *had in fact* paid. Thus, even if one “looks through” the form of claim against Mr Puri, the underlying claim is still a long way from an attempt to enforce an illegal contract, let alone the Buyer’s payment obligation. There is therefore only a slight degree of connection between the claim sought to be enforced and the relevant illegality. The degree of connection between the claim and the illegality must also be balanced against the strong public policy in favour of finality, and in favour of enforceability: *RBRG Trading (UK) Ltd v Sinocore International Co Ltd* [25] (4), 26 (4). Fifth, applying the principles in *Patel v Mirza*, the arbitrator decided that it would be unjust for IPC Dubai (and those acting on its behalf) to retain the funds that it had actually received on account of cargo actually delivered. It would be equally unjust for Mr Puri to retain the economic benefit of those funds. In *Patel v Mirza* itself the ultimate conclusion of the Supreme Court is encapsulated in the following statement by Lord Toulson at [121]:

“A claimant, such as Mr Patel, who satisfies the ordinary requirements of a claim for unjust enrichment, should not be debarred from enforcing his claim by reason only of the fact that the money which he seeks to recover was paid for an unlawful purpose. There may be rare cases where for some particular reason the enforcement of such a claim might be regarded as undermining the integrity of the justice system, but there are no such circumstances in this case.”

41. Even those of their Lordships who were in a minority as regards the correct approach to the question of illegality agreed with that proposition: Lord Neuberger at [146], Lord Mance at [203], Lord Clarke at [210] and Lord Sumption at [250]. I do not consider that Mr Puri has identified any circumstances which would make this case one of those “rare cases”. All that he relies on is the illegality of the Tripartite Agreement. Sixth, if the terms of IPC Dubai’s guarantee obligation are relevant (and I do not think that they are), the guarantee required cheques to secure the “value” of the cargo: not the price. The value of the cargo is precisely what the arbitrator awarded Lenkor Hong Kong; and the judgment of the Dubai court is limited to the amount that IPC Dubai (or its sister company) actually received for the account of Lenkor Hong Kong.

42. As the judge correctly said at [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.”

Result

43. I would dismiss the appeal.

Lord Justice Arnold:

44. I agree.

Lord Justice Edis:

45. I also agree.