Neutral Citation Number: [2024] EWHC 2880 (Comm)

CLAIM NO: CL-2024-000274

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (KBD)

IN THE MATTER OF THE ARBITRATION ACT 1996

AND

IN THE MATTER OF AN APPEAL UNDER
S.69 AND AN APPLICATION UNDER S.66 THEREOF

Royal Courts of Justice,
Rolls Building
Fetter Lane,
London, EC4A 1NL

18 October 2024

Before:

THE HON. MR JUSTICE BRYAN

- -

Between:

FRIEDHELM ERONAT

Claimant

- and -

(1) CPNC INTERNATIONAL (CHAD) LTD
(2) CLIVEDEN PETROLEUM CO. LTD

Defendants

- -
- -

Mr Simon Davenport KC and **Mr C Sorensen**
(instructed by **Leverets**) for the **Claimant**
Mr Richard Morgan KC and **Mr E Meuli**
(instructed by **Morgan Lewis**) for the **Defendants**

Hearing Date: 18 October 2024

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Approved Judgment

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MR JUSTICE BRYAN:

A. INTRODUCTION

1. There are before me today two applications brought by the Defendants against the Claimant.

   (1) The first is the Defendants' application dated 27 June 2024 for reverse summary judgment (the "Summary Judgment Application") in relation to the claims in the Claimant's Arbitration Claim Form dated 16 May 2024 (the "Section 69 Appeal") in which the claimant appeals the partial arbitration award dated 11 April 2024 (the "Award") in LCIA Arbitration No 215370 (the "Arbitration") under sections 69(1) and 69(2)(a) of the Arbitration Act 1996, on the basis that the Section 69 Appeal was not brought within 30 days after the decision of the Tribunal being rendered, and so the Section 69 Appeal stands to be dismissed.

   (2) The second is an application by the Second Defendant, dated 13 June 2024, under section 66 of the Arbitration Act 1996 (the "Enforcement Application"), seeking permission to enforce the Award and enter judgment therein.

2. The Arbitration arose out of a deed of indemnity dated 19 December 2003 (the "2003 Indemnity"). The Summary Judgment Application is made because the Defendants claim that the Claimant is out of time to make any appeal having regard to the terms of the contractually agreed provision as to appeal in the 2003 Indemnity, and there is no basis, either legal or evidential, upon which he can rely to remedy his failure to bring an appeal in time, the parties having contractually waived all rights to make an application to the Court under the Arbitration Act 1996, except as provided by the arbitration agreement.

3. The Enforcement Application is made as of right under section 66 of the Arbitration Act 1996, and irrespective of the outcome of the Summary Judgment Application. The Claimant accepts that the Defendants have a prima facie entitlement to pursue the fruits of the Award and obtain the relief sought under section 66 of the Arbitration Act 1996, but submits that if the Summary Judgment Application is unsuccessful, the Court should exercise its discretion to stay enforcement of the Award pending the outcome of the Section 69 Appeal which is listed for one day on 12 February 2025.

B. APPLICABLE LEGAL PRINCIPLES

B.1 Summary Judgment

4. CPR 24.3 states that:

> "[A] court may give summary judgment against a claimant or defendant on the whole of a claim or on an issue if—
>
> (a) it considers that the party has no real prospect of succeeding on the claim, defence or issue; and
>
> (b) there is no other compelling reason why the case or issue should be disposed of at a trial."

5. The applicable principles as to what is meant by "no real prospects of success" are well known, and were common ground. They were summarised in detail in *Easyair Limited v Opal Telecom Limited* [2009] EWHC 339 (Ch) at [15]:

> "(i) The court must consider whether the claimant has a "realistic" as opposed to a "fanciful" prospect of success: *Swain v Hillman* [2001] 2 All ER 91;
>
> ii) A "realistic" claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: *ED & F Man Liquid Products v Patel* [2003] EWCA Civ 472 at [8]
>
> iii) In reaching its conclusion the court must not conduct a 'mini-trial': *Swain v Hillman*
>
> iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: *ED & F Man Liquid Products v Patel* at [10]
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> v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: *Royal Brompton Hospital NHS Trust v Hammond (No 5)* [2001] EWCA Civ 550;
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> vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: *Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd* [2007] FSR 63;
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> vii) On the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that

> is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction: *ICI Chemicals & Polymers Ltd v TTE Training Ltd* [2007] EWCA Civ 725."

6. It is possible to make a summary judgment application based on a defence of limitation to a claim, see *Churchil Limited v The Open College Network South Eastern Region Limited (Trading as Laser Learning Awards)* [2018] EWHC 457 (QB) at [53] per Nicklin J:

> "The existence of a limitation defence may lead to the conclusion that the claim has no real prospect of success but disposing of a claim on such a basis would require an application for summary judgment. […] Equally, it is not abusive to bring a claim that is prima facie time-barred. First, limitation is a matter to be raised as a defence to the claim."

7. See also the *Libyan Investment Authority v Credit Suisse International & Ors* [2021] EWHC 2684 (Comm) at [18]:

> "Where a limitation argument is advanced in support of an application to set aside service for want of jurisdiction the test that should be applied is the summary judgment test – see *Altimo Holdings v Kyrgyz Mobil Tel Limited and others* [2012] 1 WLR 1804 (PC) *per* Lord Collins at paragraph 71. It follows that the principles that must be applied in resolving the limitation issue in relation to all the applications before me are those identified by Lewison J, as he then was, in *Easy Air Ltd v Opal Telecom Ltd*[2009] EWHC 339 (Ch)..."

B.2 Contractual Construction

8. The applicable principles in relation to the construction of contracts are equally well known and again were common ground. Amongst the many canons of construction are that words in a contract are to be given their natural and ordinary meaning (see *Wood v Capita* [2017] UKSC 24 at [9] to [14] and *Arnold v Britton* [2015] UKSC 36 at [15] to [23]).

C. FACTUAL BACKGROUND

9. On 19 December 2003, a Deed of Indemnity (the "2003 Deed") was entered into between the Claimant, both Defendants and a third party, CITIC Energy Inc ("CITIC"). This 2003 Deed is governed by the laws of Hong Kong. The Indemnity Deed is the cause for the Arbitration between the Claimant and the Defendants which resulted in

the Award which the Claimant now seeks to appeal, and in relation to which Section 69 Appeal the Defendants apply for summary judgment (on the basis that the Section 69 Appeal stands no reasonable prospect of success and as such stands to be dismissed).

10. The Indemnity was part of a transaction pursuant to which the First Defendant acquired a 25% share in the Second Defendant from the Claimant, who had previously been a 100% shareholder of the Second Defendant.

11. On 3 March 2000, an agreement was entered into between the Second Defendant – which was negotiated by the Claimant on behalf of the Second Defendant – Carlton Energy Group LLC ("Carlton"), the "Carlton Assignment Agreement". Carlton had obtained a working interest in certain oil and gas exploration rights in Chad. Under the Carlton Assignment Agreement the Second Defendant assigned a 10% distributable net profits ("DNP") interest in the Second Defendant to Carlton in exchange for the working interest.

12. In 2006, the First Defendant acquired the Claimant's remaining 50% stake in the Second Defendant. Later, the First Defendant also acquired CITIC's 25% stake in the Second Defendant, with the result that the First Defendant became the 100% owner.

13. On 3 April 2006, the Claimant and the Defendants signed a Deed of Release, governed by English law, releasing the Claimant from all claims, liabilities or causes of action arising directly or indirectly from the ownership of shares in the Second Defendant.

14. In 2018 Carlton brought arbitral proceedings against, amongst others, the Second and First Defendants in respect of unpaid sums Carlton claimed were due under the Carlton Assignment Agreement and a dispute over how to calculate Carlton's DNP interest.

15. On 29 December 2020 the Arbitral Tribunal entered a Partial Final Award resolving key issues on how the DNP should be calculated. At paragraphs 165 to 175 of the Partial Award the Tribunal determined the deed of release did not operate to release the Claimant from the liability claim by the Second Defendant in the Arbitration.

16. On 12 July 2021 Carlton, the Second Defendant, entered into a stipulated settlement agreement and consent award, under which the Second Defendant was ordered to pay certain sums to Carlton pursuant to the Carlton Assignment Agreement. To date the Second Defendant has paid US$324,650,000.75 to Carlton pursuant to the Carlton Assignment Agreement.

17. On 30 November 2021, a request for arbitration for London-seated Arbitration before the LCIA under the LCIA Rules 2020 was made (the "Arbitration"). In the Arbitration the Second Defendant and the First Defendant sought to recover from the Claimant such sums that had been paid to Carlton under the terms of the 2003 Indemnity. The Claimant did not file any Statement of Defence and did not submit any witness evidence, although he did appear through counsel.

18. By the Award, the Tribunal published findings on all substantive issues in the Arbitration except for costs and expenses and found that the Second Defendant was entitled to be indemnified in respect of the US$324.65 million that it had paid to Carlton.

D. THE MAKING OF THE AWARD AND THE ARBITRATION ACT 1996

19. The Award runs to 136 pages. On page 1, under the heading "Partial Award" it is stated: "**Date** 11 April 2024" (emphasis added).

20. On page 135 the Partial Award (Operative/Dispositive part) is set out. Immediately thereafter (and immediately before the arbitrators' three signatures) the Award provides, "**This Partial Award is made** and signed **on this eleventh day of the month of April in the Year Two Thousand and Twenty Four**." (emphasis added)

21. There therefore is, and can be, no dispute that the Award was **made** on 11 April 2024. That is what is expressly stated and provided for in the Award itself.

22. That is also the effect of section 54 of the Arbitration Act 1996 which provides:

> "**Date of award**
>
> (1) Unless otherwise agreed by the parties, the tribunal may decide what is to be taken to be the date on which the award was made.
>
> (2) In the absence of any such decision, the date of the award shall be taken to be the date on which it is signed by the arbitrator or, where more than one arbitrator signs the award, by the last of them."

23. In the present case the Arbitrators decided what was taken to be the date on which the Arbitration was **made** because they expressly stipulated that: "This Partial Award is made and signed on [11 April 2024]." Even if that was not a decision by the Tribunal (which I consider it clearly was) the effect of section 54(2) is that the date of the Award (which is the date it is made) is the date it was signed, which is also 11 April 2024.

24. Obviously, once an award has been made and signed, the date it was made and signed is set. The date an award was made does not change thereafter (save if it is postponed by reason of a relevant application under section 57 of the Act - see *Daewoo Shipbuilding & Marine Engineering Company Ltd v Songa Offshore Equinox Ltd & Anor* [2018] EWHC 538 (Comm)).

25. Under the Arbitration Act 1996 time for appealing runs from the date of the award, section 70(3) of the Act providing that, "Any application or appeal must be brought within 28 days of the date of the award..."

26. Under the Arbitration Act 1996 there is an express statutory distinction between when an award is made and dated, and when the parties are **notified** of the same. Under the Arbitration Act 1996 time for appealing runs from the date of the award, **not** the date of notification.

27. This distinction is expressly recognised in section 55 of the Arbitration Act 1996 which provides:

> "**Notification of Award**

> (1) The parties are free to agree on the requirements as to notification of the award to the parties.
>
> (2) If there is no such agreement, the award shall be notified to the parties by service on them of copies of the award, which shall be done without delay after the award is made.
>
> (3) Nothing in this section affects section 56 (power to withhold award in case of non-payment)."

Notification therefore takes place when the parties are served with a copy of the Award.

28. Section 56(1) of the Act provides:

> "The Tribunal may refuse to deliver an award to the parties except upon full payment of the fees and expenses of the arbitrators".

29. It is therefore built into the whole structure of the Arbitration Act 1996 (and the time for appeal) that there may be (and usually is) a passage of time between when the Award is made and when it is notified to the parties by service on them of a copy of the award (reducing the available time for any appeal).

30. The distinction between the date of the Award and when it is notified to the parties (by service on them of a copy of the award), and the consequences of the same, are important and well known to any shipping solicitor or barrister. Time runs from **the date of the Award** regardless of when the Award is **notified to the parties by service upon them**.

31. Tactically, either or both parties may choose not to pay for the Award until very shortly before the end of the 28 days period or even thereafter (for example, if they consider the Award will be in their favour). Equally, if neither party pays for the award before expiry of the 28 days the period for appealing can have expired even before the parties are aware of the contents of the award and the outcome thereof.

32. Even if an application for an extension of time can be made (where it has not been contractually excluded) the courts have repeatedly emphasised "the importance of finality and the time limits for any court intervention in the arbitration process" (see *Nagusina Naviera v Allied Maritime Inc* [2003] 2 CLC 1 at [14]) and the court will require "cogent reasons" for extending time (see O9.2 of the Commercial Court Guide), even in cases where an extension is possible.

33. The statutory framework in the Arbitration Act 1996 as to the making of an award, the notification thereof and the time for appealing an award, forms part of the backdrop (and factual matrix) to any contractual agreement of the parties to arbitrate in England under the LCIA Rules.

34. The rules of particular arbitral bodies may seek (as a matter of contract) to modify the provisions of the Arbitration Act 1996.

35. So far as the date of the Award and the making of the Award, and equally as to when it is notified to the parties, the LCIA Rules do not do so. The LCIA Rules are relevant in

this case as they form part of the Arbitration Agreement entered into by the parties as addressed in due course below.

36. In terms of the dating and making of the award, Article 26.2 of the 2020 LCIA Arbitration Rules provides that:

> "The Arbitral Tribunal shall make any award in writing ... **The award shall** also **state the date when the award is made** and the seat of the arbitration and shall be signed by the Arbitral Tribunal..." (emphasis added)

Similar wording existed in Article 26.1 of the 1998 LCIA Arbitration Rules.

37. Equally, the LCIA Rules track the same distinction as the Arbitration Act 1996 between the award being **made** and **notification** to the parties (and the same provision viz payment of arbitrators' costs).

38. Thus Article 26.7 of the 2020 LCIA Rules provides:

> "26.7 The sole or presiding arbitrator shall be responsible for delivering the award to the LCIA Court, which shall transmit to the parties the award authenticated by the Registrar as an LCIA award, provided that all Arbitration Costs have been paid in full to the LCIA in accordance with Articles 24 and 28."

39. The equivalent (shorter) provision in the 1998 LCIA Rules again envisaged the LCIA then transmitting copies to the parties provided the costs of the arbitration had been paid.

40. This is precisely what occurred in the present case. The Award having been made and dated by the arbitrators on 11 April 2024 (the date when the Award was made), on 16 April 2024 the Deputy Registrar of the LCIA emailed the parties attaching a letter of the LCIA, "with a PDF of the Tribunal's Partial Award, dated 11 April 2024" (the date when the Award was notified to the parties).

41. Whilst the provisions as to the making of an award and the notification to the parties under the LCIA Rules therefore track the distinction in the Arbitration Act 1996 between the making of the award and notification thereof, there are respects in which the LCIA Rules depart from the Act (most obviously in Article 26.9 the parties, "waive irrevocably their right to any form of appeal, review or recourse to any state court or other legal authority, insofar as such waiver may be validly made") - though, as shall be seen, in this case the parties contractually provided for a circumscribed right of appeal.

E. THE ARBITRATION AGREEMENT AND ITS CONSTRUCTION

42. The 2003 Indemnity (pursuant to which the parties proceeded to arbitration) contained the following contractual arbitration agreement. Its wording is at the heart of the Summary Judgment Application, and the Arbitration that arose out of the 2003 Indemnity. It provides at paragraph 14 in relation to "SETTLEMENT OF DISPUTES",

after setting out a provision for consultation to endeavour in good faith to resolve any disputes, at paragraph 14.2, as follows:

> "14.2 **Arbitration**
>
> (a) Failing such amicable settlement as provided for in Clause 14.1 [in the original], any dispute arising out of or in connection with this Deed, including any question regarding its existence, validity or termination, interpretation, application, performance or non-performance shall be referred to and finally resolved by arbitration in the London Court of International Arbitration, England by a tribunal of three (3) arbitrators in accordance with the LCIA Arbitration Rules applicable to arbitration for the time being in force which rules are deemed to be incorporated by reference in this Clause 14.2 [original emphasis], provided however that the Parties may agree in writing to refer any disputes to binding arbitration before a single arbitrator.
>
> (b) The Arbitration Tribunal shall be appointed by mutual agreement of the Parties in dispute, and failing agreement, pursuant to the LCIA Arbitration Rules. The arbitration tribunal shall conduct its session and **render its decision** in English. **The decision** of the arbitration tribunal shall be final and binding upon the parties and may be used as a basis for judgment thereon in any state or legal jurisdiction. Such decision shall include a determination as to how the costs of the arbitration proceedings shall be borne by the parties in dispute.
>
> (c) The Arbitration tribunal shall have the power to issue such orders for interim relief pending its final decision as may be necessary to preserve the rights of the Parties, without prejudice to the final determination of the dispute. The arbitration tribunal shall also have authority in its final decision to direct the specific performance of the obligations of the parties under this deed as well as to grant any other relief whether legal or equitable in nature. However, the arbitration tribunal shall not have power to alter, modify or reform any express provision of this deed or to make any award which by its terms affects any such alteration, modification or reforming." (emphasis added)

43. The "decision" and "its decision" here is, and only can be, a reference to the Award itself which the Tribunal had to produce after the session. That is what is clearly being referred to. The word "render" is here intrinsically linked to the work of producing/creating the Award itself, and what the Tribunal are doing is rendering its Award by making it, which is what they expressly do on 11 April 2024, it being clear beyond peradventure that the Tribunal made its Award on 11 April 2024. Indeed, as already quoted, that is exactly what the Award states on its face.

44. Clause 14.3 headed "Appeal" then provides as follows:

> "(a) In the event that the arbitration tribunal has materially erred in fact and/or law, the Parties are entitled to appeal the decision of the arbitration tribunal to a court in England provided that such appeal is brought within thirty (30) days after **the decision is rendered**. [emphasis added]
>
> (b) The parties shall not be entitled to commence or maintain any action in any court of law upon any matter in dispute arising out of this Deed except for the enforcement of an arbitral award granted pursuant to this clause 14 [original emphasis]. **For the avoidance of doubt, the parties expressly waive all rights to make an application or to appeal to the English courts under the Arbitration Act**, [emphasis added] except pursuant to clause 14.3(a) [original emphasis] above.
>
> (c) Judgment upon any award rendered in an arbitration hereunder may be entered in any court of competent jurisdiction, including without limitation the courts of the canton of Geneva, Switzerland, and the BVI. For the avoidance of doubt, for the purposes of this clause 14(a) [original emphasis] each of the parties hereby irrevocably submits to the jurisdiction of such courts and waives any objections or defences which it may have now or hereafter to such jurisdiction."

45. Clause 14.3(a) is contractually providing for a right of appeal but such right of appeal is delimited by its terms. The appeal must be brought within 30 days after the decision is rendered. The word "rendered" must have the same meaning as in clause 14.2(b) and it is clear from paragraph 14.2(b) that the rendering is intrinsically linked with the work of producing/creating the award itself and what the Tribunal is doing is rendering its award by making it.

46. I am satisfied that the 30 days therefore runs from the date when the Award is made which is 11 April 2024.

47. Such an approach as to when time runs from, based on the express contractual language is, of course, entirely consistent with the statutory distinction between the making of an award and its notification and the contractual regime under the LCIA Rules which again separate out the making of the award from notification to the parties (after payment).

48. Having reached that conclusion as a matter of construction, I also note, as has been drawn to my attention, that this is not the only occasion on which the word "render" has been used where it is intrinsically linked to an award itself. An example of that to which I was referred by Mr Richard Morgan KC, on behalf of the Defendants, was the ICC Rules of Arbitration in force as from 1 January 1998 which provides at Article 24 as follows:

> "**…Time limit for the Award**
>
> 1. The time limit within which the Arbitral Tribunal must **render** its final Award is six months..."

49. That is another example where the word "render" in the context of an arbitration clause is intrinsically linked to the production of the final award itself.

50. I also note, although the same do not have any contractual force, that the LCIA also produced a guidance note to the LCIA Rules. At paragraph 296 of that guidance note under a heading "Section 14 awards" it is stated as follows:

> "The Arbitral Tribunal is required to seek to **render** its final award as soon as reasonably possible. Pursuant to Article 15.10, the Arbitral Tribunal shall endeavour to do so no later than three months following the last submission from the parties whether that last submission is oral in writing..." (emphasis added)

51. It will be seen that in the LCIA guidance too the word "render" is also used intrinsically linked to the words "its final award" i.e. to the award itself.

52. Turning to clause 14.3(b), I consider that that clause is equally clear. The only application that can be made to the Court is one for the enforcement of an arbitral award granted pursuant to that clause 14. The provision continues in clear and unequivocal terms in the second sentence. The second sentence of paragraph 14.3(b) amounts to an express and unequivocal waiver of all rights to make an application or to appeal to the English courts under the Arbitration Act 1996 except pursuant to clause 14.3(a) above. That means that the only action the parties can bring before the Commercial Court is one by way of an appeal under paragraph 14.3(a) which amounts to an appeal with the "agreement of the parties" under section 69(2)(a) of the Arbitration Act. Clause 14.3(c) addresses the entering of judgment on the Award which is relevant in due course to the enforcement of the Award.

53. The suggestion that the decision was only rendered on 16 April when a copy of the Award was provided to the parties by the Deputy Registrar is, I am satisfied, hopeless. It is clear under the structure of both the Arbitration Act 1996 and the LCIA Rules that what occurred on 16 April was the notification of the Award which under both the Act and the LCIA Rules is distinct from and subsequent to the making of the Award. It is also distinct from and subsequent to the rendering of the Award in this case on 11 April 2024, as already identified and for the reasons already given.

54. The Claimant seeks to suggest that this is in some way unfair or that that cannot be the objective common intention of the parties but I cannot see any unfairness or lack of objective common intention to such an interpretation on the part of the parties. On the contrary, the express language of clause 14.2(b) and the words "render its decision in English" and 14.3(a) "the decision is rendered" which has to be read, as I say, together with the words in 14.2(b) could not be clearer. It is a regime which is also entirely consistent with that under the Arbitration Act 1996.

55. It is suggested that, "it is common sense that the limitation period for an appeal cannot start to run before the court or tribunal has communicated its judgment to the parties," but that is precisely the scheme in relation to arbitration awards under the 1996 Act: time runs from the **date of the award** as addressed above, **not notification/provision** of the award to the parties. It is possible and it is a function of the distinction between when an award is made/rendered and when it is notified. Indeed, it is perfectly possible that there will be a delay between the time the award is made/rendered (from when time

commences to run) and when the parties are notified of the award (most obviously following payment of fees). Indeed, and as already foreshadowed, it is also commonplace that awards are deliberately not picked up until soon before the time for appealing expires, or indeed after it expires.

56. The Claimant then seeks to argue that the Tribunal have agreed a different date for the making/rendering of the Award as a result of correspondence after the Award was notified. In this regard on 1 May 2024 a Mr Ian Ross, who was the legal advisor acting for the Claimant in the Arbitration, wrote directly to the Chairman of the tribunal alone (i.e. not copying in either the other tribunal members nor those acting for the Defendants) in the following terms:

> "Dear Niels,
>
> ... I need to trouble you on one point, please.
>
> The Tribunal's Partial Award was delivered somewhat later than planned and is very lengthy document. It deserves careful analysis. The point which is not clear to me is if the Tribunal prescribed a period for submitting an appeal and if so from what period. I do not think the Partial Award reached Friedhelm Eronat [the Claimant] until April 17th.
>
> Could I ask you please to help on that question?
>
> With best regards,
>
> Ian Ross"

57. That email was responded to by Niels Schiersing, the chairman of the Arbitral Panel in the following terms:

> "Dear Mr Ross (Ian),
>
> On behalf of the Arbitral Tribunal ("Tribunal"), I acknowledge receipt of your email below, the contents of which are noted.
>
> I do not wish to appear rude, but in an arbitration like this, it is important for the Tribunal to refrain from ex parte communications with one of the parties. Therefore, counsel for the Claimants, as well as my co-arbitrators, will also receive this reply and become aware of your email to me.
>
> On 16 April 2024, the Partial Award was delivered by the LCIA to the parties' contact email addresses on record. The Tribunal is not aware that LCIA's email was returned undelivered.
>
> On 17 April 2024, the Tribunal issued directions regarding costs submissions. As you will be aware, these directions provided as follows (*in italics*) "[those directions are then set out]."

> On 26 April 2024, the Claimants filed their submissions on costs. The Respondent did not file any such submissions. The next time limit is 3 May 2024.
>
> **Concerning issues of appeal etc., it is not appropriate for the Tribunal to provide any guidance to counsel**.
>
> I kindly ask you not to communicate further with the Tribunal or any of its members on an ex parte basis.
>
> Best regards,
>
> Dr Niels Schiersing"
>
> (emphasis added)

58. I am satisfied that it is absolutely plain that the Tribunal were not in that email agreeing a different date for the making/rendering of the Award from that which would otherwise be the case. Indeed, it is absolutely plain not only that they were not doing so but rather that they were studiously **not** providing any guidance to counsel in relation to any appeal which is exactly what one would expect in terms of response of an Arbitral Tribunal by reference to such an enquiry.

59. It also, as I have noted already, referred to a further email which had been sent on 17 April which was sent on behalf of the Tribunal to the parties. That email provided:

> "Dear Parties and Counsel
>
> On behalf of the Arbitral Tribunal ("Tribunal"), I refer to the email below from Deputy Registrar attaching the Tribunal's Partial Award **dated 11 April 2024**.
>
> The Tribunal then **directs** as follows:
>
> 1. The Parties shall file their costs submissions **on or before 26 April 2024**.
>
> 2. The Parties shall file any comments on the other Party's/Parties' costs submissions **on or before 3 May 2024**.
>
> The Tribunal will endeavour to make and issue a final Award as soon as possible thereafter."

60. As Mr Morgan KC pointed out in his oral submissions to me, it is clear, therefore, that such directions in relation to costs were ordered 14 days after the Award on 11 April, and therefore the Tribunal are taking the time for costs submissions to be made to run by reference to 11 April.

61. The Claimant filed the claim form for the Section 69 Appeal on 16 May 2024. This is more than 30 days since the decision was rendered on 11 April 2024. In such circumstances and for the reasons that I have given, any appeal claim is time barred. As such, the Section 69 Appeal not only stands no realistic prospect of success; it stands

no prospect of success whatsoever and stands to be dismissed in circumstances where I am satisfied that there is no other compelling reason why the case or issue should be disposed of at a trial.

62. I turn then to the next application of the Claimant, and I use the word "application" loosely, which is if the Section 69 Appeal is time barred (as I have found it is) the Claimant applies for an extension of time in which to advance the Section 69 Appeal. I am satisfied that the Claimant is not entitled to an extension of time. As I have already noted, clause 14.3(b) is clear in its terms. For ease of reference, I will repeat it at this point:

> "The parties shall not be entitled to commence or maintain any action in any court of law upon any matter in dispute arising out of this deed except for the enforcement of an arbitral award granted pursuant to this Clause 14 [original emphasis]. For the avoidance of doubt, **the parties expressly waive all rights** to make **an application** or to appeal **to the English courts under the Arbitration Act**, [bold/underline emphasis added] except pursuant to Clause 14.3(a) [original emphasis] above."

63. I am satisfied that this amount to a waiver of a right to make any application including an application for an extension of time, as the ability to make an application or to appeal is defined, and circumscribed (in terms of timing) by the contractual terms of clause 14.3(a) and the parties have contractually agreed to waive any right to make any application to the English courts under the Arbitration Act 1996. I am satisfied, therefore, and find, that this Court does not have jurisdiction to extend time, the right to seek any extension having been expressly waived in clause 14.3(b).

64. Nevertheless, for completeness, I will go on to consider whether, if the court had had jurisdiction to do so, it would have been appropriate in the exercise of the Court's discretion to extend time. In this regard, and as Mr Simon Davenport KC on behalf of the Claimant candidly accepts, (1) there has in fact been no claim made by arbitration claim form to seek an extension of time, nor (2) has there been any supporting witness statement giving reasons, still less cogent reasons, as to why an extension of time should be granted.

65. In this regard, Mr Morgan KC draws my attention to CPR 62.9 which provides:

> "**Variation of time**
>
> **62.9**
>
> (1) The court may vary the period of 28 days fixed by section 70(3) of the 1996 Act for –
>
> (a) challenging the award under section 67 or 68 of the Act; and
>
> (b) appealing against an award under section 69 of the Act.

> (2) An application for an order under paragraph (1) may be made without notice being served on any other party before the period of 28 days expires.
>
> (3) After the period of 28 days has expired –
>
> (a) an application for an order extending time under paragraph (1) must –
>
> (i) be made in the arbitration claim form; and
>
> (ii) state the grounds on which the application is made;
>
> (b) any defendant may file written evidence opposing the extension of time within 7 days after service of the arbitration claim form; and
>
> (c) if the court extends the period of 28 days, each defendant's time for acknowledging service and serving evidence shall start to run as if the arbitration claim form had been served on the date when the court's order is served on that defendant."

66. Mr Davenport KC accepts that none of those requirements have been met but says if contrary to my findings the Court did have jurisdiction to extend time I should do so notwithstanding the fact that no application has been made by arbitration claim form and no grounds have been stated therein. He also acknowledges that no witness statement has been served explaining the delay or evidencing why it would be appropriate to grant an extension of time.

67. This Court has repeatedly emphasised the importance of finality and time limits for any court intervention in the arbitration process, as indeed was recognised by Mance LJ in *Nagusina Naviera* (supra) at [14]. As I have already noted, paragraph O9.2 of the *Commercial Court Guide* also notes that the practice of the Commercial Court is to require "cogent reasons for extending time." In the present case, there has been no formal application. The requirements for making an application have not been complied with and there is no witness statement whatsoever explaining (a) the reasons for the delay in commencing the Section 69 Appeal and (b) as to why it would be appropriate to extend time even if there had been jurisdiction to do so.

68. In this regard I also note that at paragraph 9 of the Claimant's skeleton argument it is stated:

> "9. Further, being alive to the time limit for appeal, Mr Eronat's (then) solicitor, Ian Ross, who alone conducted the hearings on behalf of Mr Eronat, wrote to the Tribunal on 1 May 2024 to seek clarification."

69. That suggests that, certainly, Mr Eronat's legal representatives were alive to the contractual time bar as they would be taken to be, in any case, as long ago as 1 May and a considerable period of time thereafter was allowed to expire without any appeal being lodged. That delay is completely unexplained, unexcused and unjustified.

70. Had I had jurisdiction to extend time, I am satisfied that this is an archetypal case where this Court would not extend time in the absence of any proper application to extend time and, more importantly, in the absence of any witness statement explaining why there had been a delay and why it was appropriate to allow further time. As I say, this Court has repeatedly stressed the importance of finality in arbitration and progressing all stages of any arbitral process with the utmost expedition. Accordingly, if this Court did have any jurisdiction to extend time, this is not an appropriate occasion on which to extend time, and any such application that is made informally before me is itself dismissed.

F. CONCLUSION

71. Accordingly and for the reasons I have given, I grant reverse summary judgment on the Summary Judgment Application, dismiss the Section 69 Appeal brought under section 69(2)(a) of the Arbitration Act 1996, confirm the Award under section 69(7) of the Arbitration Act 1996, and dismiss the associated informal applications made on behalf of the Claimant.

72. I will now hear the parties in relation to the consequential orders that I should make and any other orders I should make in the light of my judgment on the section 69 Appeal . Having done that, I will then proceed to consider the second application which is that of enforcement.

G. PERMISSION TO APPEAL

73. The Claimant applies for permission to appeal in relation to the dismissal of the Section 69 Appeal as a consequence of the outcome of the Summary Judgment Application and dismissal of the associated informal applications made on behalf of the Claimant. Mr Davenport KC candidly recognises, on behalf of the Claimant, that I have expressed my conclusions as to the proper construction of the time-bar clause (Clause 14.3(a)) in clear terms following a detailed analysis of the relevant contractual provisions set against the backdrop of the Arbitration Act 1996 and finality thereunder, but he submits that a different Court might take a different view were I to grant permission to appeal.

74. Notwithstanding the eloquence of his submissions, a central difficulty that the Claimant faces is that by the very nature of the application that I was considering it was a reverse summary judgment application where I was having to put my mind as to whether or not there was a real prospect of success in circumstances where the meaning of Clause 14.3(a), which is a one-off clause not raising any issue of general importance, is clear, as a result of which the Section 69 Appeal stands no prosect of success as it is contractually time-barred and, accordingly such Section 69 Appeal was, therefore, always doomed to fail.

75. The Summary Judgment Application could have heard at the hearing in February 2025 in relation to the Section 69 Appeal, but the Court sensibly listed the Summary Judgment Application first, as it would have made no sense to hear the Summary Judgment Application together with arguments on the merits of the Section 69 Appeal at the February hearing, as the Court could have dismissed the Section 69 Appeal as contractually time-barred without addressing the substantive merits at all – as I consider it inevitably would have done for the reasons identified in this judgment. In such circumstances by dismissing the Section 69 Appeal now, on the basis that it is time-

barred, the costs of a further hearing in February 2025 have been saved, Court time has been released, and the finality of the Award after the expiry of the contractual period specified in Clause 14.3(a) has been upheld.

76. I am satisfied that any appeal would not have any prospect of success, still less any real prospect of success, in the circumstances where Clause 14.3(a) could not be clearer in its meaning, and it is not suggested that there is any other compelling reason why I should give permission to appeal to the Court of Appeal in circumstances where Clause 14.3(a) is a one-off clause of no general importance in the context of the policy under the Arbitration Act 1996 of injecting speed and finality into arbitration awards.

77. In this regard there are far-reaching limitations on the right to appeal from decisions or orders of the High Court on a Section 69 appeal (such as the present) to the Court of Appeal which are imposed in section 69(8) of the Arbitration Act 1996 and section 18(1)(g) of the Senior Courts Act 1981. Section 69(8) provides that the decision of the court on an appeal under Section 69 shall be treated as a judgment of the court for the purposes of a further appeal. But no such appeal lies without the leave of the court which shall not be given unless the court considers that the question is one of general importance or is one which for some other special reason should be considered by the Court of Appeal.

78. I do not consider the question sought to be appealed (whether the Section 69 Appeal stands no real prospect of success as it is contractually time-barred) is one of general importance or one which for some other special reason should be considered by the Court of Appeal. On the contrary the question not only stands no real prospect of success, but is not of general importance (in the context of what is a one-off clause) and there is no other special reason why it should be considered by the Court of Appeal.

79. I accordingly refuse permission to appeal. In accordance with section 69(8) of the Arbitration Act 1996 and section 18(1)(g) of the Senior Courts Act 1981, there is no further right to apply to the Court of Appeal for permission to appeal (see *Henry Boot Construction (UK) Ltd v Malmaison Hotel (Manchester) Ltdl* [2001] QB 388 at 396A-397A).

H. ENFORCEMENT ACTION

80. The second application that is before me today is an application by the second defendant dated 13 June 2024 under section 66 of the Arbitration Act 1996, (the Enforcement Application), seeking permission to enforce the Award and enter judgment therein.

81. The applicable principles in relation to the granting of such relief were addressed in the case of *Sodzawiczny v McNally* [2021] EWHC 3384 (Comm) at [13] by Foxton J. It is unnecessary to quote the entirety of that paragraph but the principle there identified is that:

> "Leave should readily be given to enforce an award as a judgment (*Middlemiss & Gould v Hartlepool Corporation* [1972] 1 WLR 1643, 1646H, rejecting the more cautious approach previously suggested by Scrutton LJ in *In re Boks & Co and Peter Rushton & Co Ltd* [1919] 1 KB 491, 497)."

82. In the Claimant's Skeleton Argument Mr Davenport KC indicated that if the Summary Judgment Application was unsuccessful, and notwithstanding the Defendants having a prima facie entitlement to pursue the fruits of the Award, he would urge the Court to exercise its discretion to stay enforcement pending the outcome of the Appeal which was listed for 1 day on 12 February 2025.

83. However, the Summary Judgment Application having been successful, and the Appeal under section 69 of the Arbitration Act having now been dismissed, he realistically recognises that such a submission is no longer available to him. He makes a residual submission, which is that if there is any possibility of seeking permission to appeal from another court, notwithstanding the fact that one is concerned with an Appeal under section 69 of the Arbitration Act 1996, he submits that I should consider staying the Enforcement Application pending any such application for permission to appeal (if such an application can be made). I do not consider it would be appropriate to do so. Leave should readily be given to enforce an award as a judgment, and the normal order is that arbitration awards should be enforced as a judgment regardless of any other application that may be made hereafter.

84. Accordingly the Enforcement Application seeking permission to enforce the Award and enter judgment succeeds, and I give leave to enforce the Award as a judgment. Again, I will hear from counsel as to the precise wording of the Order to be made.