

**ENGLISH COURT OF APPEAL REJECTS IMMUNITY CLAIM FOR IRAQI
STATE OIL MARKETING COMPANY**

*Taurus Petroleum Ltd v State Oil Marketing Co of the Ministry of Oil, Republic of
Iraq* [2015] EWCA Civ 835

Introduction

By a decision handed down on 28 July 2015 in *Taurus Petroleum Ltd v State Oil Marketing Co of the Ministry of Oil, Republic of Iraq* [2015] EWCA Civ 835, the English Court of Appeal held, in the course of dismissing an appeal against a decision setting aside third party debt orders and receivership orders made in the course of efforts to enforce an arbitration award, that the State Organisation for Marketing of Oil (created by the Republic of Iraq) was not entitled to state immunity.

Background

By a decision handed down on 13 February 2013 by Ian Hunter QC, the Appellant obtained an arbitral award against the Respondent for US\$8,716,477 in contractual claims relating to the sale of crude oil. The Appellant sought leave to enforce the award as a judgment of the court.

The Appellant was aware that the Shell group had purchased crude oil from the Respondent with two letters of credit issued by the London branch of Crédit Agricole SA. The Appellant successfully applied for interim third party debt orders and receivership orders over the funds that the Respondent was to receive under these letters of credit. The Respondent applied for those orders to be set aside.

Legal Principles

The property of a State shall not be subject to any process for the enforcement of a judgment or arbitral award (section 13(2), State Immunity Act 1978 (“the 1978 Act”). However, there is an exception in respect of property which is for the time being in use or intended for use for commercial purposes (section 13(4), 1978 Act). The property of a State’s central bank shall not fall within that ‘commercial purposes’ exception (section 14(4), 1978 Act).

An entity that is separate from the state is still immune from the English jurisdiction if the proceedings relate to anything done by that entity in the exercise of sovereign authority (section 14(2)(a), 1978 Act).

Before the High Court

The Respondent relied on the terms of the letters of credit, which provided that payment was to be made to the ‘Iraq Oil Proceeds Account’ at the Federal Reserve Bank of New York in New York and that each letter of credit contained a promise on the part of Crédit Agricole in favour of the Central Bank of Iraq (“CBI”).

Field J held that, notwithstanding that it had been created by the Republic of Iraq and the Ministry of Oil maintained a supervisory function over the Respondent, the Respondent was a separate juridical entity and had been formed for commercial purposes. The Respondent had its own budget and management. There was a presumption in favour of respecting the Respondent’s separate corporate status, and this presumption had not been rebutted. The debts due under the letters of credit were therefore not ‘property of the state’ and, thus, the Respondent could not rely upon the immunity from execution in Section 13(2) of the 1978 Act.

Field J also held that the relevant acts of the Respondent in this case were the selling of oil and procuring the opening of letters of credit. These acts are of a commercial character rather than a sovereign character. Accordingly, the Respondent did not benefit from state immunity under Section 14(2) of the 1978 Act.

However, the fact that CBI had acquired the legal interest in the debt triggered the protection afforded by Section 14(4) of the 1978 Act. Accordingly, the Respondent had established immunity on that basis and the third party debt orders and the receivership orders were set aside.

On Appeal

Before the Court of Appeal, the Respondent contended that it was “nothing more than an emanation of the state of Iraq”. Alternatively, the Respondent argued, its business was “disposing of the natural assets of the state”, and these were sovereign acts.

On the separate status of the Respondent, Moore-Bick LJ described how the Respondent had been formally incorporated as a state company in June 1988 with the objective of participating in supporting the Iraqi economy’s oil sector through marketing crude oil and natural gas within and outside Iraq and marketing oil products outside Iraq. The Respondent was to enter into contracts with purchasers of oil and to charter tankers for the transportation of oil. Its wide ranging powers were “typical of a commercial organisation to enable it to carry out its objects”.

Moore-Bick LJ reviewed the Privy Council’s decision in *La Générale des Carrières et des Mines Sarl v FG Hemisphere Associates LLC* [2012] UKPC 27, where Lord Mance had stated that, although separate juridical status was not conclusive, “constitutional and factual control and the exercise of sovereign functions do not without more convert a separate entity into an organ of the State”. Where an entity formed by the State for commercial purposes had its own management and budget, there was a strong presumption in favour of respecting that separate corporate status and it would take “quite extreme circumstances” to rebut that presumption. On the evidence in the instant case, there was nothing suggesting that the Ministry of Oil dictated day-to-day operations of the

Respondent.

On the issue of sovereign authority and what constitutes a sovereign act, Moore-Bick LJ viewed the acts of the Respondent, in selling and marketing oil, as fundamentally commercial. Although the Republic of Iraq could sell the oil itself, it had opted to entrust that function to the Respondent as a separate entity.

Moore-Bick LJ also considered the issue of whether the debts under the letters of credit had become the property of CBI. Moore-Bick LJ concluded that the debts were not the property of CBI as Crédit Agricole's obligation to pay might give CBI a contractual right to demand payment but it did not give CBI a proprietary interest.

Accordingly, the Respondent had no immunity under the 1978 Act.

Concluding Remarks

The confirmation that the Respondent, as the sole body invested with the authority to organise the sale, export and import of Iraqi oil, is not immune from the English jurisdiction is important for the international oil trading sphere.

The judgment is also important in demonstrating that the English courts will require evidence of significant and regular management by state officials before concluding that a separate corporate personality of an entity originally created by the state should be disregarded.

18 August 2015