

# Cases of Interest for Fraud Practitioners

# LITTLETON

Welcome to the first edition of the Littleton Civil Fraud Group's quarterly newsletter. We thought it would be useful for busy practitioners if we highlighted approximately 10 cases of interest each quarter, provide brief details of what each case is about, and why it may be of interest. We do not intend to analyse the cases. This newsletter is intended to be simple and easily accessible. We very much hope to host some form of in person event as and when we are allowed to in 2021, but until then we do hope you find these newsletters to be of benefit.

**Nick Goodfellow**, Head of Littleton's Civil Fraud Group

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## Case 1

***Nigeria v Process and Industrial Developments Ltd*** [2020] EWHC 2379 (Comm)

Queen's Bench Division (Commercial Court) (Sir Ross Cranston): 4 September 2020.

Extension of time to challenge an arbitration award granted where it was alleged the awards had been procured by fraud

Despite an "*unprecedented*" delay of nearly three years from the date of a final award and the initiation of the current proceedings [263], the Court granted an extension of time to the Federal Republic of Nigeria ('Nigeria') to challenge an arbitration award, which it alleged had been procured by fraud. The Court held that although the extraordinary delay weighed heavily against an extension, other factors such as the "*strong prima facie case of fraud*", the finding that the delay was not the result of a "*deliberate decision made because of some perceived advantage*", and that Nigeria had acted "*reasonably*" in all the circumstances, brought the balance down in favour of an extension: [270], [274], [275].

## Case 2

**Barrowfen Properties v Patel** [2020] EWHC 2536 (Ch)

Chancery Division (Tom Leech QC): 24 September 2020

Successful application for disclosure of documents containing legal advice given by a firm of solicitors

The Court held that the iniquity exception, which disappplies legal professional privilege where it was intended to act as a cloak for crime or fraud, extends to breaches of a director's statutory duties [34]-[35]. The Court was satisfied that the company had established a "very strong *prima facie* case" that its former director had breached his duties to the company, and ordered disclosure of documents that would otherwise have been protected by legal professional privilege (see [36]-[40] for the Court's commentary on the applicable merits threshold).



## Case 3

**Global Metals AG v Colony Capital Ltd** [2020] EWHC 3361 (QB)

Queen's Bench Division (HHJ Sarah Richardson, sitting as a High Court Judge): 21 October 2020

Application for summary judgment in claim alleging dishonesty

Although particular *caution* is required when granting summary judgment in claims alleging dishonesty [24]-[26], the Court granted summary judgment on a claim in conspiracy against the defendants (regarding the misappropriation of the claimants' funds) where the claimants had provided documentary evidence in support of their conspiracy claim [44] and the defendants had not provided any relevant evidence to the contrary [45].



## **Case 4**

**Grondona v Stoffel & Co** [2020] UKSC 42

Supreme Court: 30 October 2020

Appeal against a damages award in mortgage fraud case based on illegality defence

The Supreme Court rejected an appeal by conveyancing solicitors, who admitted breach of contract and negligence, but denied liability on the basis that they had been instructed for the purpose of furthering a mortgage fraud. The Supreme Court considered the proper approach to applying the guidelines on the illegality defence set out in *Patel v Mirza* [2016] UKSC 42 (see [22]-[25]) and observed that “*The essential question is whether to allow the claim would damage the integrity of the legal system. The answer will depend on whether it would be inconsistent with the policies to which the legal system gives effect...*” [26]. In rejecting the appeal, the Supreme Court held inter alia that to permit the claimant’s claim to proceed would not undermine the public policies underlying the criminalisation of mortgage fraud [35].

## **Case 5**

**Qatar Airways Group QCSC v Middle East News FZ LLC** [2020] EWHC 2975 (QB)

Queen’s Bench Division (Saini J.): 6 November 2020

Permission for service out of the jurisdiction granted in malicious falsehood claim

When granting permission for service out in a jurisdiction dispute, in a claim alleging malicious falsehood and other torts, the Court considered the pleading requirements for ‘malice’, which it acknowledged was tantamount to an accusation of fraud or dishonesty [149]. The Court observed that (a) where malice is alleged against a corporate defendant it is necessary to identify in the pleading the individual(s) who are responsible for the publication of the words complained of and had the relevant state of mind [150], and (b) this principle is of wider application in relation to any allegation of knowing and deliberate wrongdoing in the nature of fraud/malice or dishonesty [154]. Whilst the original draft pleading failed to satisfy this requirement, the amended pleading produced on the morning of the hearing rectified the deficiency [160], and permission for service out was granted on that basis.



## Case 6

### **Takhar v Gracefield Developments Ltd** [2020] EWHC 3025 (Ch)

Chancery Division District Registry (Birmingham) (Steven Gasztowicz QC): 11 November 2020.

Determination of costs after the setting aside of a judgment entered against the claimant procured by fraud

The Defendants forged a signature to a document in order to deceive the Court into granting judgment in their favour, and subsequently lied in court about doing so; seeking to deflect the blame for the forgery onto third party professionals who were not before the Court [9]. This was (unsurprisingly) conduct which justified an order for costs on the indemnity basis [10].

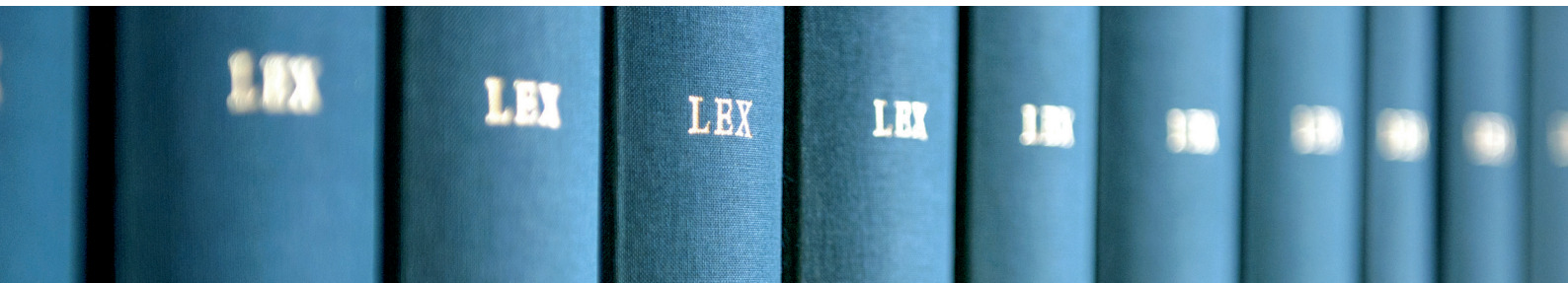
## Case 7

### **IFT SAL Offshore v Barclays Bank Plc** [2020] EWHC 3125 (Comm)

Queen's Bench Division, Commercial Court (Sir Michael Burton): 19 November 2020

Application for permission to rely on documents obtained under a Norwich Pharmacal order

The victim of bank transfer scam had originally obtained a *Norwich Pharmacal* order against the defendant bank in an attempt to identify the fraudster; however, the documents obtained suggested that the bank might have been on notice of wrongdoing prior to the fraud. The claimant was granted permission to rely on the documents obtained under the *Norwich Pharmacal* order in subsequent proceedings against the bank, satisfying the Court that there were "*cogent and persuasive*" reasons to grant such permission: see [9], [10] and [14].



## Case 8

### **ETC Export Trading Co SA v Aplas Importer** [2020] EWHC 3229 (QB)

Queen's Bench Division (Pepperall J.): 26 November 2020

Application for injunctive relief to enforce an undertaking relating to a performance guarantee

The Court granted the application for an injunction without notice, to restrain a buyer from seeking to enforce a performance guarantee, when in breach of an undertaking not to do so, and in circumstances where it was alleged that the demands were fraudulent. The Court held that even if the arbitration rules applicable under the contract should be construed to oust the Court's jurisdiction, the parties could not be taken to have contracted out of the Court's jurisdiction to restrain a possible fraud [17.5].

## **Case 9**

### **Vale SA v Steinmetz [2020] 11 WLUK 439**

Queen's Bench Division, Commercial Court (Andrew Baker J.): 27 November 2020

Order for further disclosure relating to freezing order in joint venture agreement fraud claim

In proceedings concerning a claim that a US\$1.25 billion investment in a mining joint venture had been procured by fraud, where a worldwide freezing order had been granted initially, the Court ordered further disclosure relating to the tracing of a payment of US\$500 million. In a separate judgment in the same proceedings, an application for summary judgment by the seventh and eighth defendants dismissing the 'trust' aspect of the claim (i.e. one asserting beneficial ownership of assets held by recipients of traceable proceeds of consideration paid as part of the joint venture) was rejected: see [\[2020\] EWHC 3501 \(Comm\)](#).



## **Case 10**

### **Livingston Properties Equities Inc v JSC MCC Eurochem [2020] UKPC 31**

Privy Council: 30 November 2020

An appeal regarding the appropriate forum in an international fraud claim

The Privy Council held that the British Virgin Islands (BVI) court had not erred in concluding that the BVI was the most appropriate forum for a claim brought by a Russian company against two Russian defendants, where many of the other corporate defendants were companies registered in the BVI, and the Russian defendants had failed to show that Russia was an alternative available forum [29], [39]. The Privy Council upheld the first instance Judge's view that he could not make any finding as to governing law, because there was no factual material on which to ascertain the law with which each of the torts had their most real and closest connection [32].

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