

[1991–92 Gib LR 251]

**BANCO ESPAÑOL DE CREDITO S.A. v. GINATA,
GONZALEZ, DELGADO and ATLANTIC VILLAGE
LIMITED**

SUPREME COURT (Kneller, C.J.): March 17th, 1992

Banking—interpleader—competing claims to funds—relief available under Rules of Supreme Court, O.17, r.1(1)(a) only if bank sued or genuine prospect of being sued by competing claimants for property or debt—claim may be for lien or right of possession over money—no jurisdiction based on dispute over proper person authorized to dispose of company funds in bank

Banking—interpleader—locus standi—non-claimant with purely financial interest in outcome of application, e.g. applicant for Mareva injunction over claimant's assets, has no right to be heard

The plaintiff bank applied for interpleader relief in respect of claims to moneys held in an account in the fourth defendant's name.

The fourth defendant company opened two deposit accounts with the bank, for which one of its directors, the second defendant, was the sole authorized signatory. It also secured the use of a safe-deposit box by another director, the third defendant, on its behalf. The mandate relating to the accounts provided that a transfer of the funds required a resolution signed by two directors or a director and the secretary. The bank was later provided with two powers of attorney authorizing each of the directors generally to act on the company's behalf.

The bank was instructed, first, by a senior employee of the company and then by the third defendant, to transfer the moneys in the two deposit accounts to an account with another bank. It refused on the ground that the instruction had not come from a person named on the mandate or the relevant power of attorney. It asked for a resolution by the board authorizing the third defendant to operate the accounts, as it was aware that the company's directors were involved in an internal dispute and that the second defendant had resigned from the company's parent company. Furthermore, the first defendant director informed the bank that the powers of attorney carried the condition that they be used only outside Gibraltar and were being used for unauthorized purposes.

In the face of a clear dispute as to whether the third defendant was entitled to operate the deposit accounts, and to safeguard the interests of the company and its shareholders, the bank applied for interpleader relief.

The joint liquidators of E Co., a minority shareholder of the fourth defendant company, supported the bank's application, and asked to be represented at the hearing of the summons. They had applied for a *Mareva* injunction against the company's assets, and so had a financial interest in the outcome of the proceedings. The bank applied for them to be joined as a defendant.

The third and fourth defendants opposed the application. They submitted that (a) the proceedings should be dismissed, as the dispute did not involve two or more adverse claims to the funds in the account; (b) the joint liquidators had no *locus standi* to be heard on the application; and (c) as the holder of a general power of attorney, the third defendant had the company's authority to operate the deposit accounts.

Held, dismissing the applications:

(1) Under O.17, r.1(1)(a) of the Rules of the Supreme Court, interpleader relief was available only when the applicant (the stakeholder) held some property or a debt which it did not itself claim but in respect of which it was being sued or expected to be sued by two or more persons with adverse claims to the property or debt. In this way the relative merits of the claims to the property or debt could be decided. The court's jurisdiction was discretionary, and the applicant had to show some real foundation for the expectation of being sued and that the claims were actual rather than anticipated. A claim to a lien or right of possession over money, rather than to the absolute property in it, was included in stakeholder claims contemplated by r.1(1)(a). The proper form for the application was set out in rr. 2 and 3 (paras. 22–24).

(2) Since the liquidators of E Co. had no direct interest in the subject-matter of the action other than a financial stake in its outcome, they had no standing to be joined in the interpleader proceedings. They did not question the ownership of the funds in the accounts. The application for them to be joined would be dismissed (paras. 31–32).

(3) Although the bank was faced with a clear difficulty as to whether to comply with the third defendant's demand, in view of the conflicting terms of the bank mandate and the relevant power of attorney, the court had no jurisdiction to resolve the question by interpleader proceedings. There were not two or more adverse claims to a lien on the funds in the accounts. The proceedings would be dismissed with costs to the third and fourth defendants (paras. 34–37).

Cases cited:

- (1) *Ford v. Baynton* (1832), 1 Dowl. 357, referred to.
- (2) *Greenwood v. Bennett*, [1973] Q.B. 195; [1972] 3 All E.R. 586, considered.
- (3) *Hilliard v. Hanson* (1882), 21 Ch. D. 69; 47 L.T. 342, considered.
- (4) *Mersey Docks & Harbour Bd., Ex p.*, [1899] 1 Q.B. 546; (1899), 68 L.J.Q.B. 540; 80 L.T. 143, referred to.

- (5) *Sanders Lead Inc. v. Entores Metal Brokers Ltd.*, [1984] 1 W.L.R. 452; [1984] 1 All E.R. 857, applied.
- (6) *Sun Ins. Office v. Galinsky*, [1914] 2 K.B. 545; (1913), 110 L.T. 358, followed.

Legislation construed:

Rules of the Supreme Court, O.17, r.1(1)(a): The relevant terms of this sub-paragraph are set out at para. 22.

r.5(2): The relevant terms of this paragraph are set out at para. 23.

H.J.M. Levy for the plaintiff bank;

R.A. Triay for the first defendant and the joint liquidators of Europa Construction Ltd.;

P.J. Isola for the third and fourth defendants;

The second defendant was unrepresented.

1 **KNELLER, C.J.:** Banco Español de Credito S.A. (“Banesto”), by an originating summons dated December 24th, 1991, expressed to be brought under the provisions of O.17, r.3 of the Rules of the Supreme Court, applied for interpleader relief against the claims of Juan Calvo Ginata (“Calvo”), Francisco Cabeza Gonzalez (“Cabeza”) and Eduardo Martin Duarte Delgado (“Delgado”) in respect of moneys held in the name of Atlantic Village Ltd. in Banesto’s branch in Main Street, Gibraltar.

2 The summons was amended without leave on January 20th, 1992 to add Atlantic Village as the fourth defendant. It is a company incorporated in Gibraltar, with its registered office in Library Street here. Its writing paper suggests that it is involved in reclamation work at Waterport.

3 Manuel Rocca, the manager of Banesto’s Gibraltar branch, provided some of the background to Banesto’s application in his affidavits of February 7th and 8th, 1992. Calvo, Cabeza and Delgado are directors of Atlantic Village, and in September 1991 Calvo and Cabeza discussed with Mr. Rocca the opening of two deposit accounts in the name of Atlantic Village at Banesto’s branch in Gibraltar. Atlantic Village’s secretary in September 1989 was Sector Corporate Services Ltd., and its solicitor in Gibraltar sent a certified true copy of the original minutes of the board of directors of Atlantic Village with his letter of September 25th, 1989 to Rocca, appointing Banesto and the Royal Bank of Scotland of Corral Road, Gibraltar, as Atlantic Village’s bankers. The resolution refers to Banesto and the Royal Bank of Scotland being appointed Atlantic Village’s bankers for the purpose of current (not deposit) accounts. The same letter arrived with Cabeza’s (not Calvo’s or Delgado’s) specimen signature and another letter signed by Cabeza and Sector’s lawyer, approving the use of safe deposit box No. 100 by Delgado at Banesto.

4 Atlantic Village's mandate to Banesto of Main Street, Gibraltar is dated September 15th, 1989 and certifies that at a meeting of the board of directors held on September 15th, it was resolved that Banesto be appointed Atlantic Village's bankers "and that an account(s) be opened in the name of Atlantic Village with Banesto at its Main Street branch." Cabeza was the only authorized signatory of the account(s). Deposit accounts No. 1010051 and 10100520 in the name of Atlantic Village were opened, and Rocca swears that thereafter Cabeza was the only one who operated them.

5 When the accounts were opened and the safe deposit box facility was provided, Banesto was given copies of two powers of attorney. Rocca declares that one was from Atlantic Village to Cabeza for dealings with Atlantic Village's accounts, and one from Atlantic Village to Delgado relating to the safe deposit box. Each power of attorney is in common form and does not confine that of Cabeza to Atlantic Village's accounts in Gibraltar or Delgado's to the safe deposit box here, as Calvo asserts. Rocca adds that Delgado's dealings with Banesto in Gibraltar have been only with the box and never with the accounts, because he had no authority to do so. The contents of the box are a mystery to Rocca.

6 Rocca knew that the majority of the shares in Atlantic Village were owned by a Spanish company called Inversion Hogar S.A. ("IHSA") and Cabeza was employed in some senior position. Atlantic Village's solicitors, Isola & Isola, told Banesto's solicitors, J.A. Hassan & Partners, that Cabeza was Director General of IHSA but was removed from that post.

7 Banesto received instructions on Atlantic Village's fax form on November 27th, 1991 to transfer the moneys from its two deposit accounts to Banco Central S.A. Gibraltar, deposit call account No. 10504. The total sum was £175,000. It was marked for the attention of Banesto's transference department. Atlantic Village's project manager, Daniel F. Barton, signed it. It was not clear in what name the Banco Central account was held. Barton is not mentioned on the mandate (or the power of attorney), so his fax was referred to Rocca, who believed Barton was Atlantic Village's quantity surveyor. Rocca telephoned Barton and told him that Banesto could not obey his instructions because his name was not on the mandate.

8 At 4.15 p.m. on November 28th, 1991, Delgado and Barton came to see Rocca with another man whose name was unknown to Rocca. They demanded the transfer of Atlantic Village's money with Banesto to Banco Central. Rocca told him this would not be done because Delgado was not a signatory to the accounts and he had to have (a certified copy of) a resolution of Atlantic Village's board of directors authorizing Delgado to operate the accounts. Delgado said that this was unnecessary because he

had its valid power of attorney. Rocca asked for a sight of it and the books of Atlantic Village, to make sure it had not been revoked. He added that even if he saw it and found it had not been revoked, he would take legal advice before making the transfer, because he believed a resolution of Atlantic Village was required before he could proceed and he knew there were disputes among the directors and shareholders about the running of Atlantic Village.

9 Barton and Delgado did not telephone or return to see Rocca on November 28th, 1991, so Rocca telephoned Barton and Isola & Isola the next day and told them that Banesto could not make the transfer but he would meet Hassan & Partners the next day, which he did, and the next day they told him not to do so.

10 Rocca explains that even if Cabeza had given the instructions, because Banesto has a duty to protect the interest of Atlantic Village and its shareholders, its directors were embroiled in an internal dispute, and Cabeza had resigned from IHSA—which was in financial difficulties in Spain and subject to administration or receivership proceedings there—the money would not have been transferred.

11 Rocca's misgivings were increased by a letter dated December 2nd, 1991 from Calvo's solicitors telling him that the general powers of attorney issued to Cabeza and Delgado by a resolution of Atlantic Village's directors on December 6th, 1989 were conditional on the power being exercised by Cabeza and Delgado to enable Atlantic Village to develop works on land in the Waterport area. No development was being done, so Calvo believed that Cabeza and Delgado were using their powers of attorney for purposes other than Atlantic Village's business, which was an abuse of the powers which Calvo and the Atlantic Village had given them. Triay & Triay, in their letter to Rocca, continued that the transfer of the moneys from Atlantic Village's deposit account in Banesto to Central Bank had to be submitted to Atlantic Village's board for approval by resolution. The powers of attorney were reserved for Atlantic Village's business outside Gibraltar. Sections 31 and 143 of the Companies Ordinance supported this. Banesto was put on notice by Triay & Triay, on behalf of Calvo, that without the authority of a resolution of Atlantic Village's board of directors the transfer of its moneys from its deposit accounts would be *ultra vires* and Banesto would be liable in damages. Calvo's views were shared by Cabeza.

12 Rocca could find no limitation on the face of Delgado's general powers of attorney, but Calvo's solicitors' warnings made him even more disinclined to transfer the moneys on Delgado's or Barton's say-so.

13 Delgado's solicitors, Isola & Isola, purportedly on behalf of Atlantic Village, wrote to Banesto's solicitors, Hassan & Partners, on December

12th, 1991, admitting that the directors were at loggerheads but the transfer would not affect the interests of Atlantic Village or its shareholders, since the moneys were going into Atlantic Village's account with Central Bank. Rocca was unmoved by this because the Central Bank account could be an overdraft or pledged to someone else and, in any event, could be withdrawn by Delgado if Central Bank accepted his or Barton's instructions without further ado.

14 Banesto took out this application for interpleader relief because there was a clear dispute as to whether or not Delgado is entitled to exercise any control over these deposit accounts and the moneys in them. It believes it is acting in the interests of Atlantic Village by protecting its moneys for the time being and itself from claims for transferring or not transferring the moneys without proper authority. It claims none of the moneys for itself and is not colluding with Calvo, Cabeza, Delgado or Atlantic Village.

15 Delgado's position in all this is set out in his replying affidavit dated February 13th, 1992. He was not served with these proceedings in Gibraltar, and Banesto has not asked for the leave of the court to serve him with them outside Gibraltar, but he instructed his solicitors to acknowledge service of them on his behalf. He makes no claim of any kind to the moneys lodged or deposited by Atlantic Village with Banesto, and so he has been improperly joined. He asks the court to dismiss the proceedings against him with costs on an indemnity basis.

16 In another affidavit of the same date he describes himself as the Chairman of Atlantic Village and duly authorized to make it on its behalf. Atlantic Village asks the court to dismiss the interpleader summons with costs on an indemnity basis. He is also the President of IHSA, which is the registered and beneficial owner of 65% of the share capital of Atlantic Village. He and Cabeza represent IHSA on the board of directors of Atlantic Village. Calvo represents Europa Construction Services Ltd. (Europa) which owns 15% of the equity in Atlantic Village. Alcantara, A.J. ordered the winding up of Europa on February 10th, 1992, despite Calvo's opposition. This was because it had failed in its statutory obligations to keep books of accounts and refused to account to its shareholders.

17 Calvo, according to Delgado, was Director General of IHSA's operation in Seville, Spain, but was relieved of his post by IHSA in the first quarter of 1991 and has taken little or no active part in the running of Atlantic Village since then. Delgado has taken the helm of Atlantic Village, which is developing certain land in Gibraltar held by it under a licence agreement dated September 4th, 1989 with the Gibraltar Government.

18 There was, according to Delgado, only one movement of any significance in Atlantic Village's accounts in Banesto. The powers of attorney were not limited and they were handed to Banesto according to Delgado to make it clear that Calvo had no such powers on behalf of Atlantic Village. Delgado was entitled to instruct Banesto to transfer Atlantic Village's moneys to Banco Central. Barton sent Delgado's written instructions to Rocca after his own. Delgado was incensed by Rocca's refusal to obey them. He admitted he was not a signatory to Atlantic Village's accounts with Banesto, but as its attorney he had its authority to operate all its accounts. Rocca had a copy of that power of attorney and Delgado told him it had not been revoked.

19 Atlantic Village, IHSA and Delgado were involved in battles at the time with Europa and Calvo (and possibly Cabeza?) but, in Delgado's view, that did not affect Banesto's obligation to Atlantic Village to act on its attorney's instructions to transfer its names to its account with Banco Central. Calvo's solicitors' letter of December 2nd, 1991 to Banesto, expressing his and Cabeza's apprehension that Delgado was using his power of attorney and Atlantic Village's moneys for purposes other than its genuine business of developing land in the Waterport area, led Delgado to suspect collusion between Banesto and Calvo.

20 After that letter, Banesto should have asked if Calvo had any claim to Atlantic Village's moneys. He should have asked Calvo how Atlantic Village came to use those powers of attorney and whether they had been revoked. Banesto should also have asked Calvo where he thought the moneys would go if not to the development works. Instead, Banesto asked Atlantic Village how it came to give orders for the transfer of its moneys.

21 Rocca, in a second affidavit of February 18th, 1992, denied that Banesto had colluded with Calvo who was one of its private clients. The row between the directors of Atlantic Village and Europa's winding-up proceedings were known to the bank even before Intexport Services Ltd. (a Europa shareholder) served it with a *Mareva* injunction against Calvo in November 1991.

22 Order 17, r.3 deals with the correct mode for applying for interpleader relief, and if Banesto is entitled to it then it is sufficient to add that it has applied in the proper way. It should be noted that Atlantic Village has made its claim by affidavit. Is Banesto entitled to interpleader relief? Order 17, r.1 provides for it:

“(1) Where—

- (a) a person is under a liability in respect of a debt or in respect of any money, goods or chattels and he is, or expects to be, sued for or in respect of that debt or money or those goods

or chattels by two or more persons making adverse claims thereto . . .”

The commentary on this in 1 *The Supreme Court Practice 1991*, para. 17/1/1, at 262 explains that interpleader is a protection from legal proceedings for a person who has some property or debt which he does not claim for himself but which two or more persons do, so he calls on them to claim against one another so that ownership of the property or debt is decided. Sheriffs initiate these proceedings and so do others who are called “stakeholders.” The general principles apply to both types. The stakeholder must show a real foundation for the expectation that he will be sued for the money by two or more persons. He must prove that the claims are actual and not anticipated.

23 This jurisdiction is discretionary and its exercise must be judicial. Normally an order is made. The absolute discretion is subject to the existence of the conditions mentioned in O.17: see *Ex p. Mersey Docks & Harbour Bd.* (4) ([1899] 1 Q.B. at 554, *per* Collins, L.J.). At the hearing the court may, among other things, (a) dismiss the application, *e.g.* on the ground that the conditions of rr. 2 and 3 are not satisfied; or (b) decide the merits of the claims summarily under O.17, r.5(2), which is discretionary and applies only “where (i) the applicant on a summons under this Order is a sheriff, or (ii) all the claimants consent or any of them so requests, or (iii) the question at issue between the claimants is a question of law and the facts are not in dispute.”

24 A claim to a lien or right of possession over the money, goods or chattels, and not to the absolute property in them, is within those words in O.17, r.1(1)(a): see *Ford v. Baynton* (1). The Sheriff of the county of Kent called on the judgment creditor, who issued a writ of *fi. fa.* against a judgment debtor’s goods, and an inn-keeper, who claimed a lien on one of the judgment debtor’s horses for the keep of it and another of his horses plus the board and lodging of his servants, to interplead under the Interpleader Act 1831. The judgment creditor applied for the interpleader summons to be set aside because the inn-keeper claimed for a lien and not the absolute property in the horse that the servants had not taken away with them when they left before the *fi. fa.* was issued. Taunton, J. doubted that a claim to a lien was within the Act and decided to consult the other Judges of the King’s Bench. The sum in dispute was very small and it was hardly worth directing an issue to try the rights of the parties. Two days later he held that it was the object of s.6 to quiet claims where the Sheriff was concerned. A lien, in the commercial world, may be equal to the entire value of the goods. There could be no lien on the horse for the board and lodging of the servants but that for the keep of both horses was made out and the inn-keeper must be paid that part of his bill.

25 *Hilliard v. Hanson* (3) concerned a writ of *fi. fa.* issued by Hanson against Hilliard, a solicitor, in respect of costs which he had been ordered

to pay but had not paid. It was to be levied on the goods and chattels of Hilliard at an address in Maida Vale which was his father's house, where he slept occasionally and had no goods and chattels save some wearing apparel. The Sheriff's officer went to the house and seized some furniture belonging to the father. The Sheriff called on Hanson and Hilliard's father to interplead. When the summons was heard, Hanson admitted that the furniture belonged to Hilliard's father and not to Hilliard. The father was in the right when he issued a writ against the Sheriff alone on the day the furniture was seized, claiming damages for an improper seizure and an injunction to restrain the Sheriff from remaining in possession and proceeding to a sale of the goods. He obtained an injunction from the Vice-Chancellor. This was condemned as vexatious, premature and unwarranted, because he ought to have awaited the result of the interpleader. He did not get his costs against the Sheriff.

26 *Sun Ins. Office v. Galinsky* (6) concerned the freehold of seven houses in Cable Street in the East End of London, vested in trustees of a will and leased by them to Isaac Cohen who assigned it to Marks Galinsky. He insured them with Sun Insurance in the joint names of himself, the trustees and Mrs. Johnston, a mortgagee of the lease, against loss and damage by fire. One house was damaged by fire and £242 became due under the policy. The lease contained the proviso that that sum had to be paid out in rebuilding, repairing or reinstating the house. The trustees and Galinsky failed to agree on which builders should do the repair. Galinsky employed his son, Harry, a builder, to do it. The trustees called on Sun Insurance to pay out £292 for the repair of the house. Marks Galinsky asked it to pay it to Harry. Sun Insurance called on Marks Galinsky, the trustees and Mrs. Johnston to interplead. Bucknill, J. heard the summons and ordered Sun Insurance to pay the £292 into court.

27 The trustees appealed. The Court of Appeal held that although a liberal construction ought to be placed on enactments relating to interpleader, Sun Insurance was not entitled to relief by way of interpleader. Marks Galinsky had not made a claim. Mrs. Johnston made no claim. The trustees claimed performance by Sun Insurance of its statutory obligation under s.83 of the Fires Prevention (Metropolis) Act, 1774 to lay out the £292 in rebuilding or reinstating the house. Marks Galinsky asked it to arrange for Harry Galinsky to do this and pay him for it. These were not adverse claims for any debt, money, goods, or chattels.

28 *Greenwood v. Bennett* (2) arose out of interpleader proceedings issued by Greenwood, the Chief Constable of Devon and Cornwall Constabulary, in the county court because he had received adverse claims in respect of a 1963 Jaguar automatic car worth £400. One was by Bennett, its owner; another by Harper, who purchased it in good faith from someone who had stolen it from Bennett and then repaired it to the

value of £226.47, for which he claimed; and another was by Prattle who had it on hire purchase from a company to whom Harper had sold it for £400. The county court held that Bennet's claim was valid and the others had no claims to it. The Jaguar was unconditionally repossessed and sold. The Court of Appeal (Lord Denning, M.R., Phillimore and Cairns, L.J.J.) allowed Harper's appeal and ordered he should be repaid the £226 he had spent on improving its value because without such a condition Bennett obtained an unjust enrichment.

29 On February 17th, at the first hearing, Mr. Azzopardi, for the joint liquidators of Europa, appeared and asked for an adjournment, but Mr. Isola, for the third and fourth defendants, objected because they and Europa had nothing to do with the interpleader proceedings and Banesto had not chosen them as a claimant. Mr. Levy, for Banesto, was of the view that if the joint liquidators wanted to make a claim to the moneys they should apply to be joined. Mr. Triay, for Calvo, considered that the joint liquidators should be represented. Mr. Azzopardi explained that the joint liquidators had a statutory interest in Atlantic Village's assets because Europa was a shareholder in Atlantic Village. They should be represented by different solicitors from those who appeared for Mr. Calvo.

30 Mr. Isola then consented to Mr. Azzopardi "sitting in" on the application but still opposed an adjournment. At that point the time allowed for this summons was used up, and the matter was adjourned to an early date and the question of the standing of the joint liquidators was reserved.

31 The summons came on two days later and Mr. Triay appeared for the joint liquidators and Calvo to support Banesto's application. Mr. Isola objected again on the ground that they had no standing because Banesto did not wish to join them. They had no directly related or connected interest with the subject-matter of the action. An alleged creditor who had obtained a *Mareva* injunction against a subsidiary company of the plaintiffs was not allowed to intervene or be joined as a party to an action between the plaintiff and defendant with which he was not concerned, and in which he had no interest, other than a financial interest in the outcome of the action which might be liable to destroy the effectiveness of his injunction: see *Sanders Lead Inc. v. Entores Metal Brokers Ltd.* (5). They had applied for a *Mareva* injunction against the assets of Atlantic Village and given an undertaking as to damages. They did not question the ownership of Atlantic Village's £175,000. They were in the same position as Metal Traders (UK) Ltd. were in the *Sanders* case. Adding the joint liquidators would add needlessly to the costs. Mr. Triay confirmed that his submissions on behalf of Calvo and the joint liquidators would be the same.

32 The hearing continued without the joint liquidators being added as defendants for the reasons expounded by Mr. Isola. Mr. Levy applied the next day for leave to join them and Mr. Isola opposed that application. During the submissions for the parties, these further facts emerged. Atlantic Village wanted to have that £175,000 in a current account to pay its architects and other professional advisers for their work in connection with the development. Its directors and Rocca had forgotten it had one with Banesto. Atlantic Village's account with Centro Banco was not in the red or pledged, but it was the subject of a debenture in favour of another bank. Calvo, and presumably Cabeza, now allege that Cabeza's and Delgado's powers of attorney were conferred by the board of directors of Atlantic Village to be used only outside Gibraltar. Mr. Triay prayed in aid ss. 31 and 143 of the Companies Ordinance to support this.

33 One fact was adumbrated from time to time, namely that Calvo and Europa had never put money into Atlantic Village.

34 I can see that Banesto is in difficulty over what to do about Delgado's demand that it transfer the £175,000 in Atlantic Village's accounts with it to Atlantic Village's account with Banco Central. On the one hand, Atlantic Village's mandate of September 15th, 1989 provides that this can only be done by a resolution signed by two of its directors, or one director and one secretary, or as otherwise may be required for the time being. On the other hand, there is Atlantic Village's power of attorney with the later date of December 6th, 1989 granted to Delgado which confers on him powers which may be sufficient to enable Banesto to move Atlantic Village's moneys anywhere. It is not, at first blush, as widely drawn as the mandate is on this issue. The mandate and the power of attorney have not been cancelled. The power of attorney, on the face of it, is not limited to the affairs of Atlantic Village in Spain or elsewhere outside Gibraltar.

35 So the question is what is Banesto bound to do? Transfer Atlantic Village's £175,000 on the instructions of Delgado, brandishing his power of attorney, from Atlantic Village, or not transfer it until it has a certified copy of the original resolution of Atlantic Village's board of directors, or two directors, or one director and one secretary?

36 This is not in any way, as it appears to me, within the words of the rule. It is outside the conditions mentioned in O.17. These are not two adverse claims to the £175,000. There is no claim to a lien on the sums in its deposit accounts. The only issue is whether or not Banesto must act on Delgado's instructions because he presents his power of attorney. Banesto's application to join the joint liquidators of Europa, in the circumstances of this interpleader proceeding, was not made out because it was caught by the principle in the *Sander* case (5).

37 The order will be that the applications to join the joint liquidators of Europa Construction Services Ltd. are dismissed with costs for the third and fourth defendants against plaintiff and first defendant. The application for interpleader proceedings is dismissed with costs to the third and fourth defendant against the plaintiff and first defendant.

Applications dismissed.
