[2003–04 Gib LR 294]

CHERNOGORNEFT JOINT STOCK COMPANY v. WARDOUR TRADING LIMITED

SUPREME COURT (Schofield, C.J.): November 17th, 2003

Arbitration—stay of proceedings—conditions for obtaining stay—possible to stay enforcement of award, pending application to set aside award, under Arbitration Ordinance, s.52(5)—not possible to stay award pending any other application, even if possible outcome is setting aside award

Arbitration—stay of proceedings—conditions for obtaining stay—should only rarely stay enforcement of award under Civil Procedure Rules, Schedule 1, para. 45.11—where pending application unlikely to succeed and would be unjust to stay enforcement, no order staying enforcement to be made

The defendant applied for enforcement of an award to be adjourned pursuant to s.52(5) of the Arbitration Ordinance or, alternatively, for the court order enforcing the award to be stayed.

In 1993, the parties made an agreement for the delivery of crude oil, the proper law being Russian law, and containing an arbitration agreement. A dispute arose and it was validly referred to an arbitration tribunal in Russia. The tribunal gave an award in favour of the claimant, but the defendant applied to set it aside on the grounds that the tribunal had not conducted itself properly, gave an appearance of bias and had not given it an opportunity to present its case properly. The application was dismissed, and in the judge's conclusion he made an incorrect statement as to the appeal procedures left open to the defendant. This led to a delay in the defendant's pursuing an appeal which took it outside the relevant time-limits, and the defendant therefore applied for an extension of time in which to file a proper appeal. This was rejected and an appeal against this rejection was also rejected, but an appeal against this subsequent rejection remained pending.

As the defendant had not met the award, the claimant applied in the present proceedings for permission to enforce it in Gibraltar, and this was granted subject to the defendant's right to apply to set the order aside. The defendant originally sought to set it aside on the grounds set out in s.52(2)(f) of the Arbitration Ordinance, but it was later conceded that this sub-section had no application. It then applied for enforcement of the award to be adjourned pursuant to s.52(5) of the Ordinance or, alterna-

tively, for the order enforcing the award to be stayed pursuant to para. 45.11 of Schedule 1 to the Civil Procedure Rules.

The defendant submitted that (a) the pending appeal may have been for the setting aside of the decision refusing the application to appeal out of time and for an order for the case to be sent for a new trial, but the court had the power to set aside the award, and so it could be considered as an application for the award to be set aside, meaning that s.52(5) of the Ordinance should in fact apply so as to permit adjournment; and (b) if this were not the case, the court should stay the enforcing of the award pursuant to para. 45.11 of Schedule 1 to the Civil Procedure Rules on the grounds that the pending appeal was at least arguable and the strict time-limits applicable to it meant that little extra delay would result in any case.

The claimant submitted that (a) s.52(5) of the Ordinance did not apply because the only application pending was for an extension of time in which to appeal and there was no application for setting aside or suspending the award; (b) the authorities showed that para. 45.11 of Schedule 1 to the Civil Procedure Rules should only be used in rare circumstances; (c) in the present case, the pending appeal was very unlikely to succeed, especially considering the fact that only 1% of appeals before the relevant court were successful; (d) the defendant's numerous failed appeals and the fact that the award remained unhonoured over six years after the award was made were evidence of the defendant's doubtful conduct; (e) although the pending appeal would only take six weeks, there would be no point in allowing further time unless allowing for the whole procedure (which could take one year or more) and to delay for this length of time would be unjust; and (f) the court should award the costs against the defendant on an indemnity basis on the basis of the delays and its conduct in delaying acknowledgment that s.52(2)(f) did not apply.

Held, dismissing the application:

(1) The enforcement of the award could not be adjourned under s.52(5) of the Arbitration Ordinance since for that provision to apply, the pending application must have been to set aside an award. In the present case, the pending application was for an extension of time, and although it may have been possible for the relevant court to set aside the award, that was not the application before it (para. 25).

(2) The order enforcing the award should not be stayed pursuant to para. 45.11 of Schedule 1 to the Civil Procedure Rules as this provision should only be used in rare circumstances, and in the present case, although it was possible that the defendant would succeed in having the award set aside, there was only a remote chance of success. The allegations of bias, *etc.* had not been substantiated, as the Russian court had considered the allegations against the tribunal and rejected them rather than simply not considered them, and since the court handling the pending appeal had only allowed 1% of appeals, it was extremely

unlikely to allow this appeal. It would be unjust to the claimant to stay the proceedings any further and no order should therefore be made adjourning the enforcement of the award (para. 27; paras. 29–30; para. 33).

(3) The claimant should be awarded costs on the standard scale, rather than on an indemnity basis, as it had to prepare for the summons on just one occasion, with the delay in accepting the non-applicability of s.52(2)(f) not causing inordinate inconvenience (paras. 35–36).

Cases cited:

(1) *Far Eastern Shipping Co.* v. *AKP Sovcomflot*, [1995] Lloyd's Rep. 520, followed.
(2) *Minmetals Germany GmbH* v. *Ferco Steel Ltd.*, [1999] 1 All E.R. (Comm.) 315; [1999] C.L.C. 647, considered.
(3) *Soleh Boneh Intl. Ltd.* v. *Uganda & National Housing Corp.*, [1993] 2 Lloyd's Rep. 208, followed.

Legislation construed:

Arbitration Ordinance (1984 Edition), s.52(2): The relevant terms of this sub-section are set out at para. 4.
s.52(5): The relevant terms of this sub-section are set out at para. 13.

Civil Procedure Rules (S.I. 1998/3132), Schedule 1, para. 45.11:
"Without prejudice to Order 47, rule 1, a party against whom a judgment has been given or an order made may apply to the court for a stay of execution of the judgment or order or other relief on the ground of matters which have occurred since the date of the judgment or order, and the court may by order grant such relief, and on such terms, as it thinks just."

M. Bloch, *Q.C.* and *N. Howard* for the claimant;
M. Pelling, *Q.C.* and *Ms. G. O'Hagan* for the defendant.

1 **SCHOFIELD, C.J.:** The defendant (to which I shall refer as "Wardour") is a private limited company registered in Gibraltar. The claimant is a joint stock company formed and existing in the Russian Federation. On April 20th, 1993 the parties entered into an agreement for the delivery of crude oil. It is common ground between the parties that the proper law of the agreement is Russian law and that the agreement contained an arbitration agreement.

2 A dispute arose between the parties which was validly referred to an arbitration tribunal. The arbitration was conducted under the Rules of the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation in Moscow. On February 21st, 1997 the tribunal, by a majority of two to one, issued an award in favour of the claimant, in the sum of US$13,727,195.23, together with interest of

US$3,019,533.22 and costs assessed at US$55,856. The award also provided for interest to be paid at the rate of 24.5% per annum until payment. The award has not been met and it was stated by counsel for Wardour in argument before me, that Wardour does not have the means to comply with it.

Proceedings in Gibraltar

3 On July 7th, 1998 the claimant applied to this court, *ex parte*, for permission to enforce the award. The application was granted subject to a right granted to Wardour to apply to set the order aside. On July 24th, 1998 Wardour issued a summons seeking to have such order set aside. On August 14th, 1998, on the hearing of such summons, the matter was adjourned on Wardour giving a *Mareva*-type undertaking.

4 The award is an award under the New York Convention and, accordingly, the provisions of Part IV of the Arbitration Ordinance apply to it. By s.52 of the Ordinance, enforcement of the award may be refused only on the grounds set out in sub-s. (2) thereof. In its summons of July 24th, 1998, seeking to set aside the order giving permission to enforce the award, Wardour relied upon s.52(2)(f), *i.e.* "that the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, it was made."

5 Wardour claimed that the award had not become binding because there were appeal processes being gone through in the courts of the Russian Federation. The applications on the summons were prepared on that basis and directions sought and complied with, including the preparation of experts' opinions on Russian law. It was only when Mr. Pelling's skeleton argument was filed and served according to those directions, on October 28th, 2003, that the court was apprised of the fact that Wardour did not seek to pursue its arguments, that the award was not binding and conceded that s.52(2)(f) had no application. On October 9th, 2003 Wardour's solicitors filed an application to amend the summons of July 24th, 1998, to include a claim for relief under s.52(5) of the Ordinance and a claim for a stay of execution in the alternative. This was followed by a further application, filed on October 30th, 2003, five days before the hearing, seeking orders adjourning the enforcement proceedings pursuant to s.52(5) of the Ordinance and, in the alternative, orders staying execution of the *ex parte* order of July 7th, 1998 pursuant to para. 45.11 of Schedule 1 to the CPR, in either case pending resolution of all outstanding applications in the matter by Wardour to the courts of the Russian Federation. In the event Mr. Pelling withdrew the summons of July 24th, 1998 for relief under s.52(2)(f) of the Ordinance and the application to amend the summons, dated October 9th, 2003, fell away

with it. I dismissed such applications, reserved the question of costs and shall deal with that question later in this judgment.

6 We are therefore left to consider Wardour's application filed on October 30th, 2003, that enforcement of the award be adjourned pursuant to s.52(5) of the Ordinance or, alternatively, that the order of this court of July 7th, 1998 be stayed pursuant to para. 45.11 of Schedule 1 to the CPR. The basis of these applications is that there are proceedings pending before the courts of the Russian Federation which will, if successful, result in the award being set aside.

Proceedings in the courts of the Russian Federation

7 The award was issued on February 21st, 1997. On July 21st, 1997 Wardour commenced proceedings in the Moscow City Court to set aside the award. The first ground in that action involved a complaint that the arbitrators did not conduct themselves properly, gave an appearance of bias against Wardour and did not give Wardour an opportunity to present its case properly. I do not think it is in dispute that if Wardour made good these complaints that the award would stand to be set aside. These are the complaints which are maintained by Wardour and which form the basis of its current attack on the award before the Russian court.

8 The application before the Moscow City Court was heard by a single judge and was dismissed on November 27th, 1997. At the conclusion of the judge's order is a statement that the order was not subject to "cassation appeal," which is an appeal on the legal and factual merits. It is common ground between the parties that this statement is incorrect and that the order was subject to cassation appeal. Be that as it may, Wardour's legal advisers maintain that the statement misled them into failing to file such an appeal in time.

9 Nevertheless, it was open to Wardour to seek to set aside the order of the Moscow City Court by applying for a procedural review of the judge's decision. This is referred to in the proceedings as "a supervisional review" and is sought by persuading one of a number of Government officials to take up Wardour's case. Several such petitions were filed and were either rejected or ignored. At the time of the hearing of this application, two such petitions lay with the Supreme Court of the Russian Federation, dated October 11th, 2000 and September 3rd, 2001 respectively. Professor Musin, one of the experts in Russian law called by the parties, opined that these petitions can be regarded as dismissed by lapse of time. I accept that opinion.

10 The only other comment I need make about those petitions is that Mr. Pelling has suggested in his written submissions that the substance of the complaint in them is that the Moscow City Court at first instance should have been constituted with three judges rather than a single judge.

However, the petitions, as translated, seem to go beyond that single complaint, containing, for example, a complaint that the court did not take into account that the arbitrators did not pay regard to commercial customs when making their award. Professor Musin, in his evidence, seemed to agree that the petitions were wider than the single complaint referred to by Mr. Pelling. Be that as it may, for our purposes, nothing turns on the supervisional appeals.

11 When Wardour's legal advisers awoke to the fact that the Moscow City Court had been in error in stating that there could be no cassation appeal against the decision of July 21st, 1997, an application was lodged before that court to extend time in which to file an appeal. The application was filed on October 14th, 2002, and was rejected on January 16th, 2003. An appeal against that rejection was filed before the Civil Cases Collegium of the Supreme Court of the Russian Federation. That was dismissed on March 21st, 2003. An appeal has been lodged against that decision to the full court of the Supreme Court of the Russian Federation ("the S.C.R.F."). This appeal was filed on October 20th, 2003, and is the only appeal outstanding in Russia at the present time. The appeal seeks the setting aside of the decision refusing the application to appeal out of time and seeks an order that the case be sent for a new trial.

12 When such an appeal reaches the S.C.R.F. there is a strict timetable laid down for its consideration by the court. A judge of the court must review the appeal within a period of two months, that is in the instant case within two months from October 20th, 2003, the date on which the appeal was filed. The judge can then reject the appeal and, whilst in theory there can be a re-application to appeal, Wardour argues that in practical terms that would be the end of the matter, if for no other reason than this court would have little sympathy with an application to hold back enforcement of the award because Wardour wishes to repeat complaints which have been rejected by the highest Russian court. If, on the other hand, the judge does not reject the appeal outright he will call for the documentation from the Moscow City Court (which according to Prof. Musin will reach him within three to seven days) and he must review them within four months. The judge may then either reject the appeal after consideration of the documents or refer the appeal for consideration by the Presidium. A hearing before the Presidium must take place within two months of such reference and is an oral hearing on the merits.

The law relating to this application

13 The application before me is, in its first limb, founded on s.52(5) of the Ordinance, which reads:

> "Where an application for the setting aside or suspension of a Convention award has been made to such a competent authority as

> is mentioned in subsection (2) (f) the court before which enforcement of the award is sought may, if it thinks fit, adjourn the proceedings and may, on the application of the party seeking to enforce the award, order the other party to give security."

14 Three matters are worthy of comment in relation to the application under this provision. First, that the court should only adjourn enforcement proceedings "if it thinks fit," and must exercise a discretion in the matter. Secondly, that, whilst I could order Wardour to give security on adjourning the enforcement of the award, Wardour's position is that it could not meet such security. Thirdly, that it is the claimant's argument that s.52(5) does not apply in this case. The argument goes that I can only adjourn enforcement proceedings pursuant to s.52(5) if there is an application pending before the S.C.F.R. for the setting aside or suspension of the award. The only application pending before the Russian court, it is argued, is for an extension of time in which to appeal a decision of the Moscow City Court which does not bring the application within the terms of s.52(5).

15 Wardour puts its application in the alternative, and seeks to persuade the court that if an adjournment is not granted under s.52(5) then the court ought to exercise its discretion to stay execution of the judgment pursuant to para. 45.11 of Schedule 1 of the CPR. It is common ground between the parties that the court has a discretion to order a stay of execution under this provision. Such a route was considered by Coleman, J. in *Minmetals Germany GmbH* v. *Ferco Steel Ltd.* (2), in circumstances where an application did not fall to be made under the English equivalent to our s.52(5), although the report does not contain information as to the outcome.

16 In *Far Eastern Shipping Co.* v. *AKP Sovcomflot* (1), Potter, J. held that once judgment had been entered in terms of an arbitration award it should, for purposes of enforcement, be treated as any other judgment or order. In other words, it is open to the court to order a stay pursuant to the relevant provision of the CPR. However, Potter, J. went on to say ([1995] 1 Lloyd's Rep. at 524):

> "That said, however, I envisage that the Court will rarely, if ever, regard it as appropriate to make such an order in respect of a Convention award, when, by definition, under the Convention, the time for enforcement has arrived. Plainly the rationale of the Convention is aimed at the enforcement of foreign arbitral awards unless either the unsuccessful party is seeking to have it set aside in the country where the award was made (in which case an adjournment of the enforcement proceedings under s.5(5) may be appropriate) or there is some fundamental ground of objection on grounds provided for in s.5(2)–(4). I do not venture to speculate on

what circumstance if any, might induce a Court in another case to grant a stay in respect of a judgment upon a Convention award properly obtained. I am certainly satisfied that none such exists in this case."

17 Before leaving the question of the law governing the application, I ought to mention one passage in an English Court of Appeal judgment which assists me in my approach to the exercise of my discretion. *Soleh Boneh Intl. Ltd.* v. *Uganda & National Housing Corp.* (3) was an appeal against a decision of the High Court ordering a deposit as security, of the principal amount of an award, together with interest upon it, on adjourning execution of the judgment for a period of three months. Staughton, L.J. said ([1993] 2 Lloyd's Rep. at 212):

> "In my judgment two important factors must be considered on such an application, although I do not mean to say that there may not be others. The first is the strength of the argument that the award is invalid, as perceived on a brief consideration by the Court which is asked to enforce the award while proceedings to set it aside are pending elsewhere. If the award is manifestly invalid, there should be an adjournment and no order for security; if it is manifestly valid, there should either be an order for immediate enforcement, or else an order for substantial security. In between there will be various degrees of plausibility in the argument for invalidity; and the Judge must be guided by his preliminary conclusion on the point."

It seems to me that although this passage related to the ordering of security, and the second factor referred to by His Lordship is not relevant here, the passage is relevant to the applications before me for adjournment or stay of execution.

The arguments

18 It is Wardour's case, supported by the expert appointed on its behalf, that the S.C.R.F. has the power, on hearing the appeal before it, to set aside the award even though the petition for appeal seeks an order that the case be sent for a new trial. If such is the case, then the applications before me are applications "for the setting aside" of the award, and fall within s.52(5) of the Ordinance. If, on the other hand, the S.C.R.F. can only grant the relief sought, then the CPR comes into play. Wardour argues that where an application has been made to reverse a decision by a curial court refusing to set aside or suspend a Convention award, the court will consider the exercise of its discretion to adjourn or stay execution and, in the circumstances of this case, it ought to do so. Mr. Pelling, on Wardour's behalf, has emphasized the short time limits governing the appeal to the S.C.R.F. If there is nothing in the appeal it will be rejected within the space of something like six weeks from the

hearing of this application. If the appeal has merit, he argues that there should be no objection to it going forward. There is no question of an adjournment or stay for an indefinite period and Wardour offers an undertaking to pursue the Russian proceedings expeditiously. The enforcement of the award has waited for a long time and a little extra delay would not be prejudicial to the claimant, especially as there is an undertaking in *Mareva* terms in force.

19 Professor Musin has testified that in his opinion the Civil Cases Collegium of the Supreme Court was in error in denying an extension of time in its ruling of March 21st, 2003, and it is argued by Wardour that in the face of that opinion the appeal pending before the S.C.R.F. is at least arguable and most certainly is not manifestly unsustainable. Professor Musin opines that the appeal has a possibility of success. If the appeal is successful and the award is ultimately overturned then, if I refuse the relief sought, any enforcement of the award would somehow have to be reversed.

20 With regard to the grounds upon which it is sought to set aside the award, that the arbitrators gave an appearance of bias and did not permit Wardour to present its case properly, Wardour calls in aid two passages of the written opinion of the dissenting arbitrator as being supportive of its grounds. These are:

> "Decision on case in the said part, on my opinion, doesn't consider enough a state, applicable to the contract, by virtue of the parties agreement, Russian Civil Code, U.N.O. Convention of April 11th, 1980 on 'agreements of international purchase of goods' (hereinafter 'U.N.O. Convention of 11/04/80'), formed world practice on interpretation of international commercial agreements. Besides, there is no due legal valuation of some evidences and actual materials, represented at arbitration proceedings, which analysis in aggregate with the analysis of the above said legal statements and practice leads, from my point of view, to different conclusions than these ones in the decision."

And:

> "By my opinion, by setting decision on this case wasn't take into consideration, wasn't made due legal valuation and were not made corresponding conclusions concerning further exposed legal arguments and proofs, which I exposed many times in detail to arbiters on this case, as well as informed them of my position in letters of March 17th, 1997 and March 19th, 1997. By my request, address to responsible secretary of I.C. and reporter on this case (my letter of March 31th, 1997), the above mentioned letters were included in case."

21 It is Prof. Musin's opinion that these passages confirm the complaint in the petition to the Moscow City Court and, if what is asserted in that petition is proved by evidence, then the award would be set aside should the appeal before the S.C.R.F. succeed, and the case be re-heard by that court or the Moscow City Court. Wardour argues that in its original decision of November 27th, 1997, the Moscow City Court did not grapple with the seriousness of the allegations against the arbitrators.

22 For the claimant, it is argued that the petition before the S.C.R.F. for a new trial seeks an order that the case be remitted to the Moscow City Court. It is not an application to set aside the award so as to bring the application before me within s.52(5) of the Ordinance. The only basis upon which the application could succeed is, it is therefore argued, under the court's general power contained in the CPR. The authorities show that it would be rare in a case such as this, involving an award under the New York Convention, for the court to invoke this general power.

23 The claimant points to the multiplicity of proceedings brought by Wardour before the Russian courts, all of which have been unsuccessful. The expert appointed by the claimant, Prof. Bonner, has opined that the appeal pending before the S.C.R.F. is unlikely to succeed and stated in evidence that only about 1% of appeals succeed in that court. Furthermore, if Wardour succeeds in obtaining a review of the decision of the Moscow City Court, there is no reason to believe that it would result in an order setting aside the decision of July 21st, 1997, let alone a decision setting aside the award.

24 The claimant points to the fact that the award remains unhonoured after six years. Whilst the first decision on the outstanding appeal is due in about six weeks there is no point in allowing further time unless the court is prepared to allow a stay which will permit the whole of the appeals procedure to be undertaken, which could be for a year or more. Given the history of this matter, it is argued that it would be unjust to the claimant to do so. Relevant to the issue of delay is the fact that Wardour delayed its petition in the current appeal from the date of the decision appealed against, March 21st, 2003, to October 20th, 2003, a date when this hearing was imminent and not in sufficient time for the Russian court to consider its rejection within the two month time-limit for its initial consideration.

Conclusion

25 In my judgment, I have no power to order an adjournment under s.52(5) of the Ordinance. That section would only apply if there were an application before the S.C.R.F. for "the setting aside or suspension" of the award. As it is, the petition before the S.C.R.F. is for a review of the decisions of the Moscow City Court and the Civil Cases Collegium of the

Supreme Court refusing leave to appeal out of time. The petition seeks an order that the case be sent for a new trial, and not that the award be set aside or suspended. It may be that, in accordance with Prof. Musin's opinion, the S.C.R.F. can of its own volition set aside the award, but that is not the application before it, and therefore this application falls outside the scope of s.52(5).

26 Be that as it may, I do not consider that my decision in the matter would be any different if s.52(5) of the Ordinance applied, for I would not exercise my discretion in favour of Wardour whichever provision applied.

27 Dealing first with the argument that there is a possibility that Wardour will succeed in having the award set aside by the Russian courts, whilst I cannot discount that as a possibility, I consider it to be remote. Mr. Pelling has argued that the Moscow City Court did not pay sufficient regard to Wardour's allegations that it did not receive a fair hearing. However, the order of November 27th, 1997 shows that the court considered the complaints by Wardour and rejected them. The relevant passage of the order reads:

> "The assertion by Wardour Trading Ltd. that the company could not present their explanations, was not substantiated during the court proceedings. Thus, it was established that Wardour Trading Ltd. presented their objections to the claims of action and filed counter-claims; the company representatives took part in the arbitration sessions, where they also offered their explanations and filed motions as evidenced by materials of the case and explanations of the parties."

It may be a short passage, but it clearly deals with the issue. The order itself is only $2\frac{1}{2}$ pages long. It was made after all parties had been given an opportunity to present their cases in full hearing.

28 Wardour would have me say that the two passages quoted from the opinion of the dissenting arbitrator support its assertions in regard to an unfair hearing. I accept that the two passages do not appear to be perfect in translation, but it takes a particular bias in reading them to find in them support for Wardour's complaints. There is no clear assertion in those passages that the dissenting arbitrator considered that Wardour was not permitted to present its case.

29 My view is that the validity of the award is unlikely to be further reviewed by the Russian courts because the S.C.R.F. is unlikely to overturn the decisions of the Moscow City Court and the Civil Cases Collegium refusing an extension of time in which to appeal. It was Prof. Bonner's uncontroverted evidence that only 1% of cases which reach the Presidium of the S.C.R.F. succeed. It is unlikely that after a period of six years from the original decision, the court would uphold such an appeal.

30 It is, in these circumstances and on that view, tempting to allow a stay to enable the S.C.R.F. to complete its consideration of the appeal, given the short time-limits within which the court has to work. But, in my judgment, to allow any further delay in execution is unjust to the claimant.

31 It is said that the mistake of the Moscow City Court, in asserting that there was no cassation appeal against its decision, misled Wardour into not making such an appeal. Yet clearly Wardour has been represented throughout and no explanation has been tendered as to why this mistake was not picked up by those legal advisers until October last year, a full five years after the decision was announced. That mistake cannot, and should not, be laid at the door of the claimant.

32 Let us look at the conduct of proceedings in this court. The application which has resulted in the delay in execution was filed on July 24th, 1998, five years ago. It was only when the applications before me were being prepared that Wardour's legal advisers acknowledged that the basis on which the summons was filed was erroneous. The basis of such summons was that there were supervisionary petitions pending before the Russian courts. The last of such petitions was filed on September 3rd, 2001. According to Prof. Musin, such petition could be regarded as dismissed by default once it had been unanswered three to six months after it was filed. So by March 2002, at latest, the last petition for a supervisionary appeal could be deemed to be dismissed. Wardour's appeal to the Moscow City Court for an extension of time to appeal the decision of July 21st, 1997 was not filed until October 14th, 2002. Therefore on Wardour's highest case, the claimant was held out of its award without any grounds existing at all for seven months in 2002. I am also less than impressed that the decision of the Civil Court Collegium, made on March 21st, 2003, had to await until October 20th, 2003, at a time when the application before me was well in preparation, before it was challenged. It is no answer that the appeal has been filed in time.

33 Attractive as a short stay may seem at first blush, on reviewing all the material before me, I have concluded that to grant any further delay in the enforcement of the award would be unjust to the claimant.

Costs

34 Mr. Bloch, for the claimant, has sought costs on Wardour's summons of July 24th, 1998, and the application to amend that summons, filed on October 9th, 2003, on an indemnity basis. He put his application on the basis of the delays in the matter being resolved and the conduct of Wardour in its late acknowledgement that the original summons was without foundation.

35 In the context of the proceedings in this court, I am conscious that no action was taken by the claimant from the date of the hearing in which Wardour gave an undertaking in *Mareva* terms, August 14th, 1998, for a period of two years. The claimant has had to prepare for the summons on just the one occasion. True it is that there was a later change of tack by Wardour, but the arguments on the new summons were dealt with well within the time set for the hearing, without an adjournment and without inordinate inconvenience to the claimant's legal advisers and the experts.

36 In all the circumstances, I order costs on the summonses of July 24th, 1998, and October 9th, 2003, on the standard scale.

37 I can anticipate a similar application by Mr. Bloch on the summons filed on October 30th, 2003, but the same considerations apply as to the earlier summonses. Unless counsel wish to bring any specific matter to my attention in that regard, for which a short application may be applied for, I would award the claimant costs on the standard scale, to be assessed if not agreed, on the summons of October 30th, 2003.

Application dismissed.