Neutral Citation Number: [2023] EWHC 2820 (Comm)

Case No: CL-2023-000665

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT

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

Date: 15/11/2023

Before :

THE HON MR JUSTICE BUTCHER

- -

Between :

RSM PRODUCTION CORPORATION	**Claimant**
- and -	
GAZ DU CAMEROUN SA	**Defendant**

- -
- -

Iain Quirk KC and Stephen Donnelly (instructed by **Baker Botts**) for the **Claimant**
James Leabeater KC and Daniel Khoo (instructed by **Armstrong Teasdale**) for the **Defendant**

Hearing date: 2 November 2023

- -

Approved Judgment

This judgment was handed down remotely at 10.00am on 15/11/23 by circulation to the parties or their representatives by e-mail and by release to the National Archives (see eg https://www.bailii.org/ew/cases/EWCA/Civ/2022/1169.html).

....

MR JUSTICE BUTCHER

Mr Justice Butcher :

1. This is an application by the Claimant ('RSM') to continue an anti-suit injunction granted by HHJ Pelling KC at a hearing without notice on 4 October 2023 ('the ASI').

2. The basis on which the ASI was sought and granted was, in brief, as follows.

   (1) RSM is an independent oil and gas exploration and production company. The Defendant ('GdC') is RSM's contractual partner and the operator, under a series of agreements, in the development of the Logbaba hydrocarbons block in Cameroon.

   (2) RSM sought the injunction to restrain GdC from continuing legal proceedings in Cameroon by which GdC had already provisionally attached about US$ 18 million of RSM's funds in a without notice procedure. RSM also believed that GdC would seek further relief in Cameroon by way of a without notice application to the Cameroonian court for payment of that money to GdC.

   (3) RSM's contention was that those Cameroonian proceedings were brought in breach of an arbitration agreement contained in a Settlement Agreement dated 27 September 2021 (the 'SA') between RSM, GdC, and GdC's parent Victoria Oil & Gas plc ('VOG').

3. The ASI was varied by a consent order of Jacobs J made on 17 October 2023, to preserve the parties' respective positions in the Cameroonian proceedings pending the return date.

4. The return date hearing was held before me on 2 November 2023. GdC resisted the continuation of the ASI on four grounds, which may be summarised as follows:

   (1) That the dispute RSM seeks to enjoin is not a dispute governed by an English-seated arbitration agreement, or at least RSM cannot show a high degree of probability that it is;

   (2) There has been no breach of any arbitration agreement because GdC had merely sought and obtained interim relief in Cameroon in support of anticipated arbitration proceedings, and that it is established that seeking such interim relief does not breach an agreement to arbitrate;

   (3) The English Court has no jurisdiction over GdC;

   (4) There was a failure to make a fair presentation at the without notice hearing.

Background

5. The background to the current dispute is complex and contentious. It is both unnecessary and undesirable that I should say more about it than is strictly necessary for the purposes of putting in context and addressing the issue which I have to decide. What follows in this section of the judgment is not intended to be contentious.

6. The parties entered into a Joint Operating Agreement (the 'JOA') dated 6 December 2005. Under the JOA the parties' interests are 60% (GdC) and 40% (RSM). On 12 June 2017 the parties entered into a 'Participation Agreement' (the 'PA') with the

national oil and gas company of Cameroon, Société Nationale des Hydrocarbures ('SNH'). After the PA the respective interests in the Logbaba Project were GdC (57%), RSM (38%) and SNH (5%). The JOA remained in force between GdC and RSM.

7. The JOA is governed by Texas law and contains an arbitration agreement providing for ICC arbitration seated in Houston, Texas. The PA is subject to the laws of the Republic of Cameroon. Article 16 of the PA is entitled 'Interpretation and Settlement of Disputes' and provides as follows:

'16.1 The Parties shall make reasonable efforts to amicably settle any dispute arising between them regarding this [PA]. Failing amicable settlement, the Parties hereby agree to submit to the International Centre for the Settlement of Investment Disputes (hereafter "ICSID"), any dispute arising from or related to this [PA] for purposes of settlement by arbitration in accordance with the provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (hereafter "ICSID Convention").

16.2 Any arbitral tribunal constituted pursuant to this [PA] shall consist of three (3) arbitrators being appointed in accordance with the ICSID Convention and Arbitration rules.

16.3 Any arbitral tribunal constituted pursuant to this [PA] shall apply Cameroonian law, in accordance with the provisions of this [PA] and the Contract.

16.4 The **STATE** hereby waives any right, for itself or its property, of sovereign immunity intended to stop the execution of a judgment rendered by an arbitral tribunal constituted in accordance with this [PA].

16.5 The arbitration shall take place in London, United Kingdom. The language used for the arbitral proceedings shall be English.

16.6 Any arbitration initiated pursuant to this [PA] shall be held in accordance with the ICSID Rules of arbitration in force of the day of its initiation.

16.7 The Parties hereby agree that for the purposes of Article 25(1) of the ICSID Convention, any dispute arising from or connected with this [PA] is a legal dispute arising directly out of an investment.

16.8 The Parties shall not be absolved of their obligations under this [PA] during the arbitration proceedings. However, the introduction of the arbitral proceedings suspends the execution of the contested act for the duration of said proceedings.

16.9 The judgment of the arbitrators shall be final and irrevocable. It binds the Parties and is executory, in accordance with Article 54 of the ICSID Convention. The Parties hereby waive, formally and without reserve, any right to oppose such judgment, to obstruct is execution by any means or to have recourse to any court or jurisdiction whatsoever, except for the recourse provided in Articles 50 and 52 of the ICSID Convention.

16.10 In the event of incompetence by ICSID for whatever reason to rule on or settle any dispute submitted to it under Article 15.1 above, any dispute, controversy or claim

arising from or related to this [PA], or to the breach, cancellation or invalidity of this [PA], shall be settled by arbitration under the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules actually in force. In such case, all the provisions of this Article 16, except for Articles 16.1 and 16.7, shall apply *mutatis mutandis*.'

8. On 10 October 2018 RSM commenced an ICC arbitration under the JOA. One of the claims made by RSM was that it ought to be reimbursed for certain expenditures on wells LA-107 and LA-108. These claims were, apparently, in respect of matters occurring before the remediation operations on well LA-108 which were then the subject of a claim in the UNCITRAL arbitration which I refer to below.

9. GdC contends that, in mid 2019, RSM had stated that it did not consent to or participate in remediation operations on well LA-108, and that GdC had said that it intended to go ahead with those operations on a 'Sole Risk' basis.

10. In February 2020 RSM commenced arbitration pursuant to UNCITRAL rules under the arbitration provision in the PA. One of the claims made in that arbitration related to what RSM contended was GdC's wrongful charging of costs relating to well LA-108. RSM sought an order enjoining GdC from charging RSM with costs associated with a remediation of that well, and sought to recover a sum of some US$ 4.3 million in respect of expenditure on that remediation. RSM contended that there had not been proper authorisation under the PA, and that GdC bore sole responsibility for such costs. GdC contended, in the arbitration, that there had been proper authorisation.

11. The SA was concluded on 27 September 2021. It provided, in part, that the parties agreed to 'dismiss with prejudice the claims in the UNCITRAL arbitration set for hearing beginning on September 27, 2021, provided that this Settlement Agreement and the dismissal of the UNCITRAL arbitration shall have no effect on, and shall be without prejudice to, all of the claims in the pending ICC arbitration case No. 23991/MK.' By clause III, 2b it was provided that 'RSM's 40% share of the LA-108 remediation costs that have not yet been netted by GdC is US$ 2,657,350…' This, RSM says, was then netted off against sums due to RSM.

12. By clause III, 1Ia, it was further provided that:

'The LA-108 additional perforations operation proposed by GdC on June 4, 2021 (the "LA-108 Workover") is authorized to proceed, with RSM committed to fund its proportionate share of those costs up to but not exceeding US$ 125,000 payable in XAF equivalent (the "RSM Cap"); provided that if the costs exceed the RSM Cap, GdC will carry RSM for the balance of the operation at no cost to RSM, and RSM shall retain its entire proportionate working interest in the well without recourse, notwithstanding that RSM did not fund the entirety of its proportionate share of the costs of the LA-108 Workover.'

13. The Governing Law and Dispute Resolution provision of the SA was as follows:

'The laws of England and Wales, exclusive of any conflicts of laws principles, shall govern this [SA] (including the arbitration agreement) for all purposes, including the resolution of all disputes between the parties.

Subject to the expert determination provisions described above, the dispute resolution provisions of Article 16 of the [PA] shall apply to all disputes arising out of the [SA], provided, however, that the parties agree that disputes shall be submitted under the UNCITRAL Arbitration Rules and provided further that the parties agree that any dispute under this [SA] may be consolidated with any dispute that arises under the JOA and/or the [PA] in a single arbitration under the UNCITRAL Arbitration Rules (or, where applicable, the ICSID).

…

Without prejudice to any other permitted mode of service, the parties agree that service of any claim form, notice or other document upon GdC for the purpose of any proceedings or disputes begun in England and/or Wales shall be duly served upon it if delivered by hand or by courier to: VOG, to 200 Strand, London WC2R 1DJ, United Kingdom (marked for the attention of the Board of Directors).'

The Cameroon Demand and Proceedings

14. On 7 August 2023, GdC's Cameroonian lawyers, Besong & Co., wrote a letter to RSM's attorneys which made a claim under Article 7.5 of the JOA in respect of well LA-108. That clause provides that in the case of a party which has not consented to participate in (and pay its proportion of) operations, if it then opts to reinstate its rights in the subject of those operations, it must pay its proportion of the liabilities and expenses incurred in the operation which was performed by the other party at its Sole Risk, and in addition 'seven hundred percent (700%) of such Non-Consenting Party's Participating Interest share of all liabilities and expenses that were incurred in any Sole Risk Operation …'. On that basis Besong & Co said that a sum of US$ 48,855,450 was payable by RSM to GdC.

15. The response of RSM's attorneys, on 9 August 2023, was that this claim was 'frivolous given, inter alia, the express language of [the SA]'. On 16 August 2023 GdC's Cameroonian lawyers issued a 'Sommation de Payer' which stated that, if the sum demanded was not paid within 8 days 'the applicant will institute compulsory collection proceedings against [RSM]'. RSM served an opposition to this Sommation de Payer on 24 August 2023.

16. On 4 September 2023, GdC commenced proceedings in the First Instance Court of Douala-Ndokoti, seeking the provisional attachment of RSM's receivables in support of its claim under Article 7.5 of the JOA. On 8 September 2023, the President of the First Instance Court of Douala-Ndokoti made an order for the provisional attachment of receivables against RSM (the "Provisional Attachment Order"). The order stated in part:

'We order that the provisional attachment will expire if it is not executed within a term of three months from this date, and if the creditor does not initiate proceedings to obtain an enforcement order within a term of one month following this execution.'

17. The Provisional Attachment Order was served on RSM's bank in Cameroon on 11 September 2023, and also on GdC itself, as operator of the project, on 13 September 2023.

18. On 27 September 2023, GdC commenced substantive proceedings in Cameroon. RSM did not learn of these until after the ASI was ordered by this court. In those proceedings GdC sought an order that, in light of Cameroon's OHADA Uniform Act on the Organization of Simplified Recovery Procedures and Enforcement Measures, RSM should pay the amount of GdC's claim.

The ASI

19. As I have already said, on 4 October 2023 RSM obtained, without notice, the ASI from HHJ Pelling KC.

20. The transcript of the hearing and of the note of the judgment which the judge gave shows that he was satisfied that the arbitration clause in the SA was binding on GdC and that it was a breach of that clause for GdC to pursue its claim in Cameroon. The order which he made provided, in part:

'Until further order of this Court, the Defendant [viz GdC] shall not whether by itself or by its directors, officers, employees, servants or agents or by any company that it directly or indirectly controls or otherwise howsoever:

(1) Prosecute, pursue, and/or otherwise continue and/or take any further substantive or procedural step in, or procure or assist in the pursuit of, the Cameroonian Proceedings as against the Claimant, save for the purposes of dismissing, withdrawing and/or otherwise discontinuing the said Cameroonian Proceedings against the Claimant; and/or

(2) Oppose any application made by the Claimant to stay the Cameroonian Proceedings or to adjourn any hearing or procedural deadline in the Cameroonian Proceedings; and/or

(3) Seek, issue, advance, commence, pursue, continue, maintain or assist in any further proceedings relating to disputes arising under or in respect of the Settlement Agreement otherwise than by arbitration in London under the UNCITRAL Arbitration Rules.'

Legal Principles

21. There was little dispute between the parties as to the basis on which this court will grant an anti-suit injunction. The jurisdiction to grant such an order stems from s. 37 Senior Courts Act 1981. The court will ordinarily require to be satisfied, to a high degree of probability, that there is an arbitration agreement which governs the dispute in question. If that is the case, then, at least in relation to a case where the arbitration has or will have an English seat, the court will ordinarily grant an injunction to restrain breach of the arbitration agreement unless there are strong reasons not to do so.

22. One other aspect of the law relating to the grant of anti-suit injunctions was emphasised by GdC. This was that an English court will not ordinarily grant relief based on breach of an arbitration agreement to restrain a party from seeking relief, such as the arrest of a vessel or a freezing order or similar relief, for the purposes of obtaining security for a claim to be advanced in the agreed forum (see Aquavita International SA v Indagro SA [2023] 1 Lloyd's Rep 61 at [18]-[20] per Foxton J).

23. Further, it will ordinarily not be a breach of an arbitration agreement if a party commences substantive proceedings in another court if those proceedings are initiated only for the purpose of obtaining an arrest or other interim relief of the type referred to in the previous paragraph and do not need to be pursued on the merits in order to obtain or retain the benefit of that arrest or relief. (See SRS Middle East FZE v Chemie Tech DMCC [2020] EWHC 2904 (Comm) at [43] per Andrew Baker J).

Should the injunction be continued?

Preliminary points

24. Before considering GdC's grounds for resisting the continuation of the ASI order, it is convenient to set out certain matters which are or have become clear.

25. First, I am in no doubt, on the material before me, that the arbitration agreement in the SA was binding on the parties, including GdC. I did not understand GdC to dispute this.

26. In the second place, I regard it as clear that the seat of an arbitration under the SA would be London. The SA dispute resolution clause provided that, subject to specific provisions of the same clause, Article 16 of the PA should apply. Article 16.5 of the PA provides that the arbitration 'shall take place in London, United Kingdom'.

27. Third, there was a debate between the parties as to whether the order granted by HHJ Pelling KC had restrained GdC from commencing arbitration proceedings under the JOA. During the hearing before me, it was made clear on behalf of RSM that it did not contend that the order had that effect. While it did not accept that GdC was entitled to commence ICC arbitration proceedings in Texas under the JOA in respect of its claim for the sum it contended to be due under Article 7.5 of the JOA, RSM stated that the injunction had been intended to preclude court proceedings, and in particular the Cameroonian proceedings, and not arbitration. Given this stance, an order was made by consent, immediately following the hearing, which made this point clear.

GDC's Grounds of Resistance

28. I now turn to consider GdC's grounds for resisting the continuation of the order.

The first ground: the dispute sought to be enjoined is not subject to SA

29. The first ground is that the claim which RSM seeks to enjoin is not subject to the arbitration agreement in the SA, or at least that RSM cannot show a high degree of probability that it is.

30. To understand this argument it is necessary to say rather more about the parties' positions on the merits of the claim which GdC has initiated. RSM's case is that it had, in the UNCITRAL arbitration, been claiming that the remediation operations relating to LA-108 had been conducted by GdC on a Sole Risk basis; but that in the SA it had settled that claim, and had agreed to pay, and had, by netting, paid, its proportion of the relevant costs; and that there was therefore no possibility of a claim for an Article 7.5 penalty. That was a matter which had been concluded and settled by the terms of the SA. GdC on the other hand, contends that its claim is made under the terms of the JOA,

and that it was not settled by the SA. The JOA had remained in full force and effect; and the provisions of the SA on which RSM particularly relied were not a settlement of the issue as to whether the remediation works on well LA-108 had been conducted by GdC on a Sole Risk basis but had been intended only as a means of holding the ring.

31. The merits of that dispute are not a matter for the court. I consider, however, that the issue of whether GdC has a valid claim or is a claim which has been settled is a dispute arising out of the SA. Given that that is, and has from the first intimation of the relevant claim been, RSM's primary response to that claim, it was (subject to GdC's argument as to the proceedings being for the purposes of obtaining security, which is considered below) a breach of the arbitration agreement in the SA to commence court proceedings in Cameroon, or elsewhere, on the claim. Such proceedings would have involved the subject matter of the dispute being litigated and potentially adjudicated in a forum other than that agreed by the parties.

32. I accept that there is a stronger argument that it would not, as a matter of the construction of the SA, have been a breach of the arbitration provision therein for GdC to have commenced an ICC arbitration under the JOA in relation its claim for the premium it says is due in respect of well LA-108. However, GdC did not commence such an arbitration. Furthermore, the dispute resolution clause of the SA seeks to make express provision for cases in which a claim may be made under the JOA or PA and there is also a dispute under the SA. As I have set out above, it says '… the parties agree that any dispute under this [SA] may be consolidated with any dispute that arises under the JOA and/or the [PA] in a single arbitration under the UNCITRAL Rules (or, where applicable, the ICSID).' In my view the intention and effect of this provision is that where there is simultaneously both a dispute which arises under the JOA (or PA) and also a dispute arising from the SA, then both are treated as one dispute which may be arbitrated under the UNCITRAL or ICSID Rules and subject to the arbitration provisions of Article 16 of the PA. I should clarify that in 'arbitration provisions' I do not include Article 16.3, which would apply only to any matters arising under the PA, and not under the JOA or SA, which have their own choice of law provisions.

33. The provision from the SA's dispute resolution clause which I have cited is not, in my judgment, simply one which provides that *arbitrations* commenced under the JOA and under the SA can be consolidated. The clause states that it is the *disputes* which may be consolidated in a single arbitration. Furthermore, if there were an arbitration under the JOA (ICC Rules) and also under the SA (UNCITRAL or ICSID Rules) consolidation of the arbitrations could not reliably be assured. Instead, the construction of the clause which I consider to be correct allows a party to refer to arbitration under this provision any dispute which arises under the JOA, where a dispute also arises under the SA. This is consistent with what may be assumed to be the intention of the parties, to seek to have a 'one stop shop', rather than having simultaneous disputes dealt with in separate arbitrations.

34. The language of the provision is that the dispute under the JOA or the PA 'may' be consolidated with a dispute under the SA in a single arbitration. In my view, this provides for an option to invoke the clause and have a consolidated dispute in a single arbitration. Such option could be exercised by the commencement of such an arbitration, or by requiring the other party to submit the dispute to such an arbitration by making an unequivocal request to that effect and/or by applying for a corresponding stay of any relevant proceedings. This is in line with the approach of the courts to

clauses which provide that one or both parties 'may' submit a dispute to arbitration: see Aiteo Eastern E&P Co Ltd v Shell Western Supply [2022] EWHC 2912 (Comm), at [17]-[18]. The statement in Mr Escobar's witness statement to the effect that RSM intended to invoke the provision was, I think, itself sufficient to exercise the option; but in any event, RSM has issued a Notice of Arbitration dated 2 November 2023 said to be in accordance with Article 3 of the UNCITRAL Arbitration Rules, commencing such an arbitration. That Notice provides, in part (in para. 37):

'RSM hereby seeks relief under the UNCITRAL Settlement Agreement. In addition, RSM hereby seeks relief under the JOA. In accordance with Article VI of the UNCITRAL Settlement Agreement, RSM hereby consolidates its dispute and request for relief under the UNCITRAL Settlement Agreement with its dispute and request for relief under the JOA in a single arbitration under the UNCITRAL Rules which is the subject of this Notice.'

35. Given these matters, I am satisfied to a high degree of probability that the arbitration provision in the SA is binding on GdC and applicable to its substantive claims made before the Cameroonian courts.

The Second Ground: interim relief in support of arbitration?

36. GdC contends that the Cameroonian proceedings were not, in any event, a breach of any arbitration provision because they were intended only to provide security for a claim which would be pursued in ICC arbitration.

37. In my judgment, the evidence of what happened is not consistent with GdC's case that the Cameroonian proceedings were to obtain security in support of an arbitration claim. Specifically, GdC did not commence any arbitration. It could have done so, certainly up to the date of HHJ Pelling KC's order. There was certainly nothing to have prevented it from doing even as late as the point at which it commenced the substantive proceedings in Cameroon on 27 September 2023, and yet it did not do so. Moreover, in its Sommation de Payer, and in the proceedings which it brought no mention was made of the claim being sought as security for a sum intended to be pursued in arbitration. Equally, when, after the grant by HHJ Pelling KC of the ASI on 4 October 2023, GdC's solicitors sought certain variations of the order on 10 October 2023, none was designed to permit (or clarify) that GdC could commence an arbitration.

38. I therefore conclude that the Cameroonian proceedings were not begun for the purpose, and certainly not for the sole purpose, of obtaining security or interim relief in relation to a claim to be brought in arbitration.

39. Mr Leabeater KC submitted, however, that whatever the position when the proceedings began, it had now been made clear by GdC that the Cameroonian Proceedings are only intended henceforward to provide security or an interim attachment measure; and that, in accordance with this, it had said that it intended to stay the substantive Cameroonian proceedings. For that reason, there was no justification in the continuation of the injunction.

40. I did not consider that this provided a sufficient reason why the order should not be continued, for the following reasons:

(1) In circumstances where, as I have said, the Cameroonian proceedings were brought in breach of an arbitration provision, there is a justifiable degree of suspicion on the part of RSM that GdC will take no steps in those proceedings if the injunction is not continued.

(2) There is evidence indicating that it is not now possible, as a matter of Cameroonian law, for the provisional attachment to be maintained in support of an arbitration which may be commenced, as opposed to being in support of the substantive claim which has been brought in Cameroon. In other words, the only basis on which the provisional attachment in Cameroon is now capable of being justified, as a matter of Cameroonian law, is by reference to the substantive proceedings. If that is right there is clearly reason to believe that, if GdC is seeking to maintain the provisional attachment, it may seek to maintain the substantive proceedings.

(3) What GdC has offered in relation to the stay of the substantive Cameroonian proceedings does not provide any sufficient assurance that they will not, hereafter, be pursued. That offer is to provide a notarised deed providing that GdC has 'committed to suspend all proceedings on the merits that it has brought in Cameroon … in favour of arbitration proceedings in Texas', but subject to a reservation of its 'right to resume such proceedings after the issuance of the arbitration award or in the event of failure of such arbitration proceedings'. However, there is evidence which indicates that, as a matter of Cameroonian law, it is not possible validly to stay substantive proceedings of the relevant kind whether by notarised deed or otherwise. Furthermore, the terms of the proposed deed are limited to a stay in favour of arbitration in Texas, and are unclear as to what is meant by the reference to the 'failure of such arbitration proceedings'.

41. Given these matters, the current stance of GdC does not provide a reason why the ASI should not be continued.

The third ground: jurisdiction

42. GdC's third ground for resisting the continuation of the injunction is that this court has no jurisdiction over it.

43. I can deal with this point briefly. I have already set out the Governing Law and Dispute Resolution Clause of the SA. It provides that the parties agree that service of 'any claim form, notice or other document upon GdC for the purpose of any proceedings or disputes begun in England and/or Wales shall be duly served upon it' if delivered to VOG's stated address. This is a contractually agreed method of service within CPR r. 6.11. The Arbitration Claim Form was served in accordance with that agreement, within the jurisdiction.

44. Further, and although it is unnecessary to consider in detail because of the applicability of CPR r. 6.11, RSM was entitled to serve GdC out of the jurisdiction without permission, by reason of CPR r. 62.5(2A), as the seat of the arbitration pursuant to the SA 'is or will be in England'.

45. Accordingly I consider it clear that the English court has jurisdiction over GdC in respect of the claim in the Arbitration Claim Form.

Fourth ground: no full and frank presentation

46. GdC's fourth ground is that RSM failed to make a full and frank presentation of the case on the ex parte application to HHJ Pelling KC. There are two points relied upon. It is said, first, that there was a failure to draw the court's attention to the argument that by seeking interim measures before the Cameroonian courts there was no breach of any arbitration agreement; and second, that there was a failure to identify that the injunction prevents GdC from commencing arbitration proceedings in Texas. These failures are said to be grounds for refusing RSM the relief it now seeks.

47. I do not consider that there is any substance in these points. As to the first, had there been an indication that the Cameroonian proceedings were being pursued for the purpose of obtaining security or interim relief in relation to an anticipated arbitration, then RSM should have referred to that, and doubtless should also have drawn attention to the line of authority which indicates that the obtaining of an arrest or other analogous relief in support of a claim in arbitration is not a breach of an arbitration clause. But, as I have said, there was no such indication. Furthermore, reference to this line of authority would have made no difference, in the absence of any reason for considering it applicable.

48. As to the second, I do not consider that it was incumbent on RSM to inform the judge that, on one interpretation, the order had the effect of preventing GdC commencing an ICC arbitration, in circumstances where GdC had had the opportunity to commence such an arbitration, but had neither done so nor said that it was going to do so.

49. In any event, had this been a concern, I would have expected GdC promptly to have sought clarification of this point. That was not done. I am left with the impression that this point is an afterthought. Moreover, as I have said, it has now been clarified that the ASI does not prevent the commencement of such an arbitration, and this point does not, in my view, tell against the continuation of the injunction as now clarified.

Overall assessment

50. Having considered all the points made by GdC, I am of the view that the ASI should be continued. Specifically, and to repeat, I am satisfied to a high degree of probability that there is an arbitration agreement which governs the dispute in question. I do not consider that there are strong reasons not to grant an injunction restraining its breach.

51. I can see no good reason why the relief granted should not now be final. There does not seem to be a real prospect of evidence hereafter coming to light that would make a significant difference to the issues to be decided.

52. I also consider that it is appropriate to make a mandatory order requiring the discontinuance of the substantive Cameroonian proceedings. That would do little more than express what is expected and assumed to occur when final injunctive relief is granted preventing a defendant from prosecuting, pursuing or otherwise continuing proceedings brought in breach of an arbitration provision. Such a mandatory order will give proper effect to the contractual position, and protect against any risk of an adverse judgment in Cameroon even without further positive steps taken by GdC in the Cameroonian proceedings.

53. I will receive further submissions, if necessary, as to what should be the precise form of the order, to reflect the decisions which I have reached and expressed above.