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The Law Reports

Chancery Division

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Chancery Division

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Bank of Beirut SAL and another *v* HRH Prince Adel El-Hashemite and another

Arab National Bank *v* HRH Prince Adel El-Hashemite and another

[2015] EWHC 1451 (Ch)

D

2015 March 30;
May 22

Nugee J

Partnership — Limited partnership — Registration — Certificate — Registration of limited partnerships procured by fraud — Whether despite fraud certificates of registration issued by Registrar of Companies conclusive evidence of E *partnerships' existence — Whether jurisdiction to order registrar to remove reference to partnerships from register — Limited Partnerships Act 1907 (7 Edw 7, c 24), s 8C(4) (as inserted by Legislative Reform (Limited Partnerships) Order 2009 (SI 2009/1940), art 7)*

The effect of section 8C(4) of the Limited Partnerships Act 1907[1], as inserted, is that the certificate of registration of a limited partnership issued by the Registrar of F Companies is conclusive evidence that a limited partnership came into existence on the date of registration, even if the registration was procured by fraud or forgery (post, paras 103, 106).

Lazarus Estates Ltd v Beasley [1956] 1 QB 702, CA distinguished.

Where, therefore, the claimant banks applied for summary judgment on their claims for, inter alia, orders requiring the Registrar of Companies to remove from the register any reference to certain supposed limited partnerships in which they were G named as the general partners on the ground that the registration of those partnerships had been procured by fraud on the part of the first defendant—

Held, refusing the applications, that although in truth there had been no partnerships to register and they should not have been registered, once they had been registered section 8C(1) of the Limited Partnerships Act 1907, as inserted, imposed on the registrar a duty to issue certificates of registration; that since the registrar had acted entirely bona fide, although mistakenly, in registering the partnerships and H giving certificates section 8C(4) rendered such certificates conclusive proof that each partnership had come into existence on the date of registration, even though the mistake had been procured by fraud and forgery; and that, since the jurisdiction to order the registrar to remove a document from the register was based on his being in

[1] Limited Partnerships Act 1907, s 8C, as inserted: see post, para 82.

breach of his public law duties and since the registrar was not in breach of any such duty in declining to remove the partnerships from the register as if they had never existed, it was not open to the court to order him to do so (post, paras 84–85, 103, 106, 109, 111, 113).

In re Calmex Ltd [1989] 1 All ER 485 considered.

Per curiam. Anyone searching for the partnerships on the register will be alerted by the annotations to the fact that there is something unusual about them and that all is far from well (post, para 109).

The following cases are referred to in the judgment:

Arab National Bank v El-Abdali [2004] EWHC 2381 (Comm); [2005] 1 Lloyd's Rep 541
Arab National Bank v Registrar of Companies [2005] EWHC 3047 (Ch)
Bowman v Secular Society Ltd [1917] AC 406, HL(E)
Calmex Ltd, In re [1989] 1 All ER 485
Caratal (New) Mines Ltd, In re [1902] 2 Ch 498
Company (No 007466 of 2003), In re A [2004] EWHC 60 (Ch); [2004] 1 WLR 1357; [2004] 2 BCLC 434
Exeter Trust Ltd v Screenways Ltd [1991] BCC 477; [1991] BCLC 888, CA
Financial Services Authority v Rourke (trading as J E Rourke & Co) [2002] CP Rep 14
HIH Casualty and General Insurance Ltd v Chase Manhattan Bank [2003] UKHL 6; [2003] 1 All ER (Comm) 349; [2003] 2 Lloyd's Rep 61, HL(E)
Holmes (Eric) (Property) Ltd, In re [1965] Ch 1052; [1965] 2 WLR 1260; [1965] 2 All ER 333
igroup Ltd v Ocwen [2003] EWHC 2431 (Ch); [2004] 1 WLR 451; [2003] 4 All ER 1063; [2004] 2 BCLC 61
Lazarus Estates Ltd v Beasley [1956] 1 QB 702; [1956] 2 WLR 502; [1956] 1 All ER 341, CA
National Debenture and Assets Corpn, In re [1891] 2 Ch 505
Nye (C L) Ltd, In re [1971] Ch 442; [1970] 3 WLR 158; [1970] 3 All ER 1061, CA
R v Registrar of Companies, Ex p Attorney General [1991] BCLC 476, DC
Wall v London and Northern Assets Corpn (No 2) [1899] 1 Ch 550
Wrexham Association Football Club Ltd v Crucialmove Ltd [2006] EWCA Civ 237; [2008] 1 BCLC 508, CA

The following additional cases were cited in argument.

Hammond v Prentice Bros Ltd [1920] 1 Ch 201
Registrar of Companies v Swarbrick [2014] EWHC 1466 (Ch); [2014] Bus LR 625

APPLICATIONS

Bank of Beirut SAL and another v HRH Prince Adel El-Hashemite

By a claim form issued on 25 November 2014 the claimants, Bank of Beirut SAL and Banque du Liban, claimed against the first defendant, HRH Prince Adel El-Hashemite, declaratory and injunctive relief and damages for the tort of unlawful interference with business interests, and against the second defendant, the Registrar of Companies of England and Wales, an order that the registrar remove from the records held at the registry at Companies House all documents and information relating to each of the limited partnerships registered by the first defendant, on the ground that the registration of the partnerships had been procured by fraud. The first defendant failed to file an acknowledgment of service, admission or defence.

By an application notice dated 19 January 2015 the claimants applied for summary judgment on their claims. On 30 March 2015 Nugee J entered judgment against the first defendant, for reasons to be given later, but reserved judgment on the question of the relief sought against the registrar.

The facts are stated in the judgment.

Arab National Bank v HRH Prince Adel El-Hashemite

By a claim form issued on 18 December 2014 the claimant, Arab National Bank, claimed against the first defendant, HRH Prince Adel El-Hashemite, declaratory and injunctive relief and damages for the tort of unlawful interference with business interests, and against the second defendant, the Registrar of Companies of England and Wales, an order that the registrar remove from the records held at the registry at Companies House all documents and information relating to a limited partnership registered by the first defendant, on the ground that the registration of the partnership had been procured by fraud. The first defendant failed to file an acknowledgment of service, admission or defence.

By an application notice dated 2 February 2015 the claimant applied for summary judgment on its claims. On 30 March 2015 Nugee J entered judgment against the first defendant, for reasons to be given later, but reserved judgment on the question of the relief sought against the registrar.

The facts are stated in the judgment.

Iain Munro (instructed by *Reed Smith LLP*) for the claimant banks.

The registration of limited partnerships in which the claimant banks are named as general partners was procured by the first defendant by fraud. Although a conclusion that a party has not acted in good faith should generally be reached at trial, it is not the case that such a conclusion can never be reached on a summary judgment application: see *Wrexham Association Football Club Ltd v Crucialmove Ltd* [2008] 1 BCLC 508. The first defendant had no authority to act for the banks. He therefore had no authority to constitute the banks as general partners of the partnerships or to sign the application forms for registration on behalf of the banks. Accordingly, they should not have been registered. [Reference was made to *Arab National Bank v El-Abdali* [2005] 1 Lloyd's Rep 541.]

The general principle is that "fraud unravels all": see *HIH Casualty and General Insurance Ltd v Chase Manhattan Bank* [2003] 1 All ER (Comm) 349. The unravelling effect of fraud applies even if there is a conclusive evidence provision; therefore a conclusive evidence provision should be interpreted as not applying in the case of fraud. [Reference was made to *Wall v London and Northern Assets Corpn (No 2)* [1899] 1 Ch 550; *In re Caratal (New) Mines Ltd* [1902] 2 Ch 498; *Lazarus Estates Ltd v Beasley* [1956] 1 QB 702; *Arab National Bank v Registrar of Companies* [2005] EWHC 3047 (Ch); *Registrar of Companies v Swarbrick* [2014] Bus LR 625 and *Halsbury's Laws of England*, 5th ed, vol 11 (2009), para 767.]

The policy underlying the conclusive evidence provision in section 8C(4) of the Limited Partnerships Act 1907, inserted by article 7 of the Legislative Reform (Limited Partnerships) Order 2009, is that potential investors in a limited partnership should be certain that they cannot be exposed to unlimited liability. The essential requirement is that an innocent investor

who agrees in good faith to become a limited partner should not be put at risk: see the Explanatory Document of the Department for Business Enterprise and Regulatory Reform in relation to the 2009 Order.

It is appropriate for the court to make an order requiring the Registrar of Companies to remove from the records held at Companies House all documents and information relating to each of the limited partnerships. [Reference was made to *Financial Services Authority v Rourke (trading as J E Rourke & Co)* [2002] CP Rep 14.]

Mark Mullen (instructed by *Treasury Solicitor*) for the registrar.

The certificates under section 8C of the Limited Partnership Act 1907, as inserted, are conclusive evidence of the existence of the partnerships, and that cannot be "unravelled" by fraud. It is not part of the registrar's statutory function to resolve disputes concerning the registration of limited partnerships or to carry out extensive checks on the identity of applicants: see *Bowman v Secular Society Ltd* [1917] AC 406. [Reference was also made to *In re National Debenture and Assets Corpn* [1891] 2 Ch 505; *Hammond v Prentice Bros Ltd* [1920] 1 Ch 201; *In re Eric Holmes (Property) Ltd* [1965] Ch 1052 and *R v Registrar of Companies, Ex p Attorney General* [1991] BCLC 476.]

The 1907 Act contains no power for the registrar to rectify the register. Section 1095 of the Companies Act 2006 enables regulations to be made permitting the registrar to amend the registers maintained by him under statute, but no such regulations apply to limited partnerships. Section 1096 of the 2006 Act does not apply to the register of limited partnerships. There is no authority which suggests that the court can go behind the certificate. [Reference was made to *In re Calmex Ltd* [1989] 1 All ER 485; *Exeter Trust Ltd v Screenways Ltd* [1991] BCLC 888; *igroup Ltd v Ocwen* [2004] 1 WLR 451; *In re CL Nye Ltd* [1971] Ch 442 and *In re A Company (No 007466 of 2003)* [2004] 1 WLR 1357.]

The remedy for the wrongful registration of limited partnerships may be an order for their dissolution under section 35 of the Partnership Act 1890.

The first defendant did not appear and was not represented.

The court took time for consideration.

22 May 2015. **NUGEE J** handed down the following judgment.

Introduction

1 On 30 March 2015 I heard an application by the claimants in these two actions for summary judgment and other relief. I indicated at the end of the argument that I was satisfied that judgment should be given against the first defendant and made an order accordingly. I did not however have time on that day to give my reasons; and I also wished to consider my judgment on the question of the relief sought against the second defendant, which was opposed.

2 This judgment therefore both sets out the reasons why I gave judgment against the first defendant, and my conclusions on the claim against the second defendant that I reserved for further consideration.

A **3** In each action the claimants are Middle Eastern banks ("the Banks"), as follows: (1) In Claim No HC-2014-001497 they are two Lebanese banks, namely (i) Bank of Beirut SAL ("BoB"), one of the leading commercial banks in Lebanon; and (ii) Banque du Liban ("BdL"), the Central Bank of Lebanon. (2) In Claim No HC-2014-001951, there is one claimant, Arab National Bank ("ANB"), a Saudi Arabian bank. Each of the Banks claims to be the
B victim of a fraud carried out by a man who styles himself HRH Prince Adel El-Hashemite. I have heard no evidence or submissions as to whether he is entitled to use this title (there is an indication in the papers that he is, or claims to be, the grandson of King Feisal, who became the first ruler of the Hashemite kingdom of Iraq in 1921) but I will refer to him, as counsel did, as "the Prince". The Prince is the first defendant in each action.

4 In outline the Banks' case is that the alleged fraud in each case
C followed the same pattern, as follows. (1) The Prince claims (falsely) to be owed money by the relevant Bank. (2) The Prince claims (falsely) to have an irrevocable power of attorney from that bank. (3) Using that supposed power of attorney, the Prince claims (falsely) to have entered into a limited partnership governed by English law pursuant to the Limited Partnerships Act 1907, under which the relevant bank is the general partner and he is the
D limited partner. (4) The Prince has registered that supposed limited partnership with the Registrar of Companies ("the Registrar"), the Registrar being under a duty under the 1907 Act to register limited partnerships, and has been issued by the Registrar with a certificate of registration. (5) The Prince has used that certificate of registration as an instrument of fraud, in particular in Germany where he is resident.

E **5** The Banks' primary aim in these actions is to obtain rectification of the register by asking the court to order the Registrar to delete the registration of the supposed limited partnerships, and have joined the Registrar as second defendant for that purpose.

6 The Registrar has appeared by counsel, Mr Mark Mullen, to oppose that relief, not because the Registrar challenges the factual basis of it, on which he is neutral, but because of concerns as to the limits of the Registrar's
F statutory powers and of the court's jurisdiction. In particular section 8C of the 1907 Act provides that a certificate of registration is "conclusive evidence" that a limited partnership came into existence on the date of registration; and the Registrar is concerned that if the court were able to go behind the certificate of registration, there would be wider implications as a certificate of registration under the 1907 Act is but one example of various
G certificates issued by the Registrar which are made by statute conclusive evidence, and any decision that the court might nevertheless hold that registration could in effect be set aside as a nullity would undermine the conclusive nature of such certificates. This is the point on which I heard extended argument and which I reserved.

7 The Banks also sought various declaratory and other relief against the Prince either in default of acknowledgment of service or by way of summary
H judgment. The Prince has not acknowledged service and did not appear at the hearing. Instead he took the bold, but undoubtedly consistent, step of using his supposed powers of attorney to serve notices of discontinuance on behalf of each Bank thereby seeking to put an end to each action. He has not served any witness statement as such, although the notices of discontinuance

contain lengthy statements of his position and numerous attachments. He has also by e-mail sought an adjournment of the hearing.

8 Strictly speaking the questions of whether the hearing should be adjourned, and whether the notices of discontinuance are (or may be) valid, are no doubt logically prior to the question whether the Banks have made out their claims for relief, but in practice it makes sense to consider all the material before me before deciding any of the questions as it is impossible to divorce the questions of adjournment and of the validity of the notices of discontinuance from the Banks' substantive case.

The facts—Arab National Bank

9 This account of the facts is taken from the material before me, making due allowance for the fact that a summary judgment application is not a mini-trial and that the substantive question before me in the end is whether the Banks have shown that the Prince has no real prospect of successfully defending the claims (and that there is no other compelling reason for a trial).

10 I will start with ANB where there has been a long history which has already involved three applications to the High Court, one in 2004 which was dealt with in the Commercial Court by Morison J; a second in 2005 which was dealt with in the Chancery Division by Lawrence Collins J; and a third in 2007 also dealt with in the Chancery Division, by David Richards J and Pumfrey J. The background to the application to Morison J can be taken from his judgment dated 22 October 2004, *Arab National Bank v El-Abdali* [2005] 1 Lloyd's Rep 541:

(1) In 1994 ANB had provided banking services in Saudi Arabia to Mr El-Abdali (the defendant in that action). Disputes arose between them and litigation in Saudi Arabia followed. ANB recovered judgment against Mr El-Abdali on two promissory notes for some $6·6m. There was also litigation before the Saudi Arabian Monetary Authority ("SAMA") concerning Mr El-Abdali's margin trading account which had not concluded when Morison J gave judgment.

(2) On 2 January 2002 ANB received out of the blue a fax purporting to be an order, made in an arbitration commenced by Mr El-Abdali as applicant against ANB as defendant, requiring ANB to provide copy documents in relation to the margin trading account. None of the agreements between ANB and Mr El-Abdali contained an arbitration agreement (and in Saudi Arabia all proceedings relating to banking, including claims under arbitration agreements, have to be submitted to SAMA for approval which Mr El-Abdali had not done). The fax purported to come from the "International Fraud Bureau, Division Of Human Rights Arbitration Forum, Member of London Court of International Arbitration", and was signed by the Prince, described as "President & CEO, Human Rights Arbitration Forum". It gave a docket number of 281201S02 and a "current Saudi address" at a hotel in Mecca.

(3) The evidence before Morison J (and before me) is that Mr Zuhair Al-Herbish, the head of legal affairs for ANB, contacted the hotel to see if the fax was authentic and spoke to someone claiming to be the Prince very briefly. ANB contacted SAMA who told it not to respond, and Mr Al-Herbish says he did not send any written acknowledgment of the fax.

A Nevertheless in May 2004 Richards Butler, who acted for ANB in the proceedings before Morison J, received a copy of what purported to be an acknowledgment of the fax signed by Mr Al-Herbish. Mr Al-Herbish's evidence (before Morison J and before me) is that the signature was a copy of his signature which he believed had been taken from genuine legal documents signed by him in the proceedings between ANB and
B Mr El-Abdali in Saudi Arabia and cut and pasted onto the acknowledgment form. Morison J concluded that this document was a forgery.

(4) On 8 February 2002 ANB received what purported to be an arbitral award, dated 13 January 2002 and signed by the Prince, awarding Mr El-Abdali very large sums (81m Saudi Riyals and some $110m) against ANB. The basis for the assertion of jurisdiction over ANB was the return of the form of acknowledgment of service.

C (5) Also in February 2002 Richards Butler was contacted by an English solicitor, Mr Michael Robinson. Mr Robinson had been approached by the Prince (of whom he had never previously heard) to register the arbitral award, and to register at Companies House a mortgage against an English branch of ANB. He made inquiries of the London Court of International Arbitration but was told by the registrar that he had no knowledge of the
D Human Rights Arbitration Forum and it was not a member. Mr Robinson declined to accept instructions. He provided ANB with a copy of what purported to be a fixed and floating mortgage made by ANB as mortgagor in favour of Mr El-Abdali as mortgagee, dated 30 January 2002 and expressed to be by order of the Arbitral Court—Human Rights Arbitration Forum. It too had a copy of Mr Al-Herbish's signature on it. Mr Al-Herbish's evidence is that he had never signed the document, or talked to the Prince about it, or
E indeed seen the document until he was shown a copy by Richards Butler in July 2004.

(6) In May 2004 ANB's London branch received a letter from English solicitors, Forum Law, seeking to enforce the arbitral award, which was said to then stand (with interest) at about $160m. It was this which prompted the application to the Commercial Court.

F (7) Morison J found that ANB had established by overwhelming evidence that the arbitral award had been obtained by fraud, that there was no arbitration agreement in place, that the arbitral tribunal was not properly constituted and there was no agreement as to the scope of the arbitration. He also found that Mr Al-Herbish's signature had been forged on the mortgage. He declared both the award and the mortgage to be not binding
G on or enforceable against ANB, and restrained Mr El-Abdali from taking any steps to enforce or publicise them.

11 The Prince was not a party to the litigation and no orders were made against him; moreover, as I read the judgment, Morison J did not make any direct factual findings as to the Prince's involvement in or responsibility for the fraud and forgery which he had found established. But he did make some comments. He described the award as "curious in a number of
H respects". He referred to the fact that the forum specified as the arbitral body (Human Rights Arbitration Forum) was different from that in the earlier disclosure order (International Fraud Bureau, Division of Human Rights Arbitration Forum) and said it was doubtful if any such recognised arbitral forum existed. He referred to various aspects in which the

procedure differed from what one would expect with a normal arbitration: there was no arbitration agreement, no discussion between the parties about arbitration, no agreement as to the forum, applicable law or seat, no notification of the appointment of an arbitrator or that an arbitral process had commenced, and no statement of claim served on ANB; an acknowledgment of service procedure in arbitration was unusual if not unique. He found that a statement that the mortgage was couriered to the British Embassy in Rabat during the period 1 January to 28 February 2002 "can be shown to be untrue": this statement was made by the Prince in a signed statement (headed Statutory of Declaration) dated 17 June 2004 which he provided to Forum Law. Morison J also said that it was "strange, to say the least" that the arbitrator should be seeking to enforce his own award rather than the alleged successful party.

12 The Prince's statutory declaration referred to the arbitral forum under a different name again, namely the IEC-Human Rights Arbitration Forum, and gave a postal address at PO Box 2073, 116 Palace of Justice, Beirut, Lebanon. ANB's inquiries suggested that this PO Box belonged to a Lebanese law firm.

13 The Prince also described himself in his statutory declaration as Chief Justice of the ECOWAS (Guinea) Court of International Arbitration, with an address at a PO Box in Conakry, Guinea. Following the judgment of Morison J (which was handed down on 22 October 2004) the Prince in February 2005 attempted to correspond with him. His letters were issued under the letterhead of the "ECOWAS Court of International Arbitration—Arab League & Africa Region Office", naming the Prince as chief arbitral judge and international prosecuting judge and giving as his address the PO Box in Beirut. They referred to the arbitration between Mr El-Abdali and ANB under the same docket number (281201S02) as if it had been decided (as a civil matter) or was still pending (as a criminal matter) in the ECOWAS Court of International Arbitration. ECOWAS is the Economic Community of West African states. It has no obvious connection with Lebanon. Morison J caused his clerk to reply that it was inappropriate to correspond with him.

14 In November 2005 ANB discovered through a routine check that a mortgage or charge had been registered against it at Companies House in the UK. The form 395 filed at Companies House was dated 15 December 2004. It gave the date of creation of the charge as also 15 December 2004, the name and address of the mortgagee or person entitled to the charge as "ECOWAS Court of International Arbitration—docket numbered 281201S02 El Sharif, PO Box 2073, 116 Palace of Justice, Beirut", the presentor's name and address as the arbitral justice clerk at the same PO Box address, and the amount secured as some $132m with interest. ANB applied to the Chancery Division for an order removing the registration.

15 On 2 December 2005 Lawrence Collins J made an order directing the Registrar to remove from ANB's records at Companies House any reference to the mortgage. In his judgment he held that the registration of the charge, which took place some two months after Morison J's order, was an undoubted breach of that order, and that the purported mortgage, being an instrument of fraud, should never have been registered. Again he made no direct findings against the Prince who was not a party to the litigation,

A but he did refer to the correspondence the Prince had sought to have with Morison J, said that ANB had been unable to establish whether ECOWAS had a Court of International Arbitration (although certainly its website did not indicate that it did) and commented that the correspondence from the Prince "strengthens the suspicion that the award is just as much a forgery as the mortgage".

B **16** The next encounter of ANB with the Prince concerned a series of purported Treasury bonds. ANB has a branch in London and during 2005 and 2006 ANB's London branch received a number of inquiries as to the validity of bearer bonds supposedly issued by ANB: these were reported to the police and the Financial Services Authority. In April 2007 ANB was approached by a Dr Matthew Mannish who also made inquiries about the bonds; he met with ANB's solicitors Richards Butler and provided them with C copies of the bonds in question. They were a series of 66 US$10m bonds and one US$1m bond (making a total of US$661m in all) purportedly issued on 12 May 2005 under which ANB purportedly promised to pay their face value at its London branch on 10 May 2007 for value received from a Mr Saleh Bin Abdullah M Sharaf. They are purportedly signed by "Zouhair Harbash". ANB's evidence before me is that they are a forgery: ANB has D never issued bonds of this type, and if it had they would have been in electronic and not paper form anyway.

17 Dr Mannish told Richards Butler that he was in contact with the Prince and that the Prince was playing an active role in presenting the bonds as genuine. He provided copies of e-mails which bear this out, and a copy of a letter dated 5 January 2007 from the Prince, this time as CEO of a company, Société d'Investissement Financière SAL, but with the same PO E box address in Beirut. The bonds themselves bear a reference of "281201S02 El Sharfif (sic)", i e the same reference number used for the arbitral award issued by the Prince in favour of Mr El-Abdali.

18 In 2007 ANB also discovered that a charge had again been registered at Companies House. The particulars given were that it was a fixed and floating charge/mortgage in favour of Mr Sharaf to secure $661m. It had F been registered by a firm of risk consultants called HM Consultants on behalf of Mr Sharaf; Richards Butler contacted HM Consultants who told them that the charge related to the bonds.

19 ANB therefore brought a third set of proceedings, this time against the Registrar and Mr Sharaf, for removal of the charge as fraudulent. On 26 April 2007 David Richards J declared the bonds of 12 May 2005 and the G charge to be a nullity and unenforceable, directed the Registrar to remove all documents relating to the charge from ANB's records held at the Registry, joined the Prince as third defendant, and granted an interim injunction against Mr Sharaf and the Prince restraining them from taking any steps to enforce the charge, the bonds or any financial instrument purportedly issued by ANB and containing Mr Al-Herbish's signature. A final injunction in the same terms was made by Pumfrey J on 22 May 2007.

H **20** On the basis of this, Reed Smith Richards Butler (as ANB's solicitors had become) asked Companies House for assistance to prevent ANB being the subject of further fraudulent registrations. Companies House accepted that ANB had been the subject of two instances of fraudulent charge registrations in the previous 18 months, and in the light of this agreed, as an

exceptional measure, to assist ANB for a short period, by putting a flag on its database to alert mortgage section examiners to contact ANB to confirm if charge documentation was genuine. This was agreed in June 2007 initially for a period of three months, and subsequently extended to 30 April 2008.

21 That forms the background to the present application. This was prompted by the discovery that the Prince had registered a limited partnership at Companies House. The evidence from Ms Carys Jones, a senior legal adviser at Companies House, is that the registrations team at Companies House received an application for registration of a limited partnership (on form LP5) on 30 August 2013, presented by the Prince (describing himself as "Irrevocable General Attorney-in-fact of [ANB]", with an address in Saarbrucken and with a reference of 281201S02/Elsharif/ArabNationalBank). The form gives the name of the partnership as "Arab National Bank Debenture Deed Limited Partnership", ANB as the general partner and the Prince as the limited partner. It describes the business of the partnership as "to manage all Arab National Bank Financial debentures owed to the Limited Partner" and the term of the partnership as commencing on 22 April 2013. It is signed by the Prince on his own behalf and on behalf of ANB with a "pp" followed by an Arabic signature. The Arabic signature looks similar to the signature of the Prince on various other documents (such as the arbitral award), and the Prince does not dispute that he signed the LP5 form on behalf of ANB as its attorney.

22 Ms Jones explains that after receipt of the application form, the next stage is for the limited partnerships registration team at Companies House to examine the documents. This examination does not include any validation or verification of the information received: it is simply a check that all of the necessary information has been included, and the documents are in effect accepted at their face value and in good faith. In this case the team completed their document checks by 5 September 2013 and on that date a certificate of registration of the limited partnership was therefore issued in the name of the Registrar, certifying that the Arab National Bank Debenture Deed Limited Partnership ("the ANB partnership") was that day registered under the 1907 Act as a limited partnership.

23 The evidence before me from Mr Al-Herbish is that ANB has never granted the Prince any power of attorney or authority to sign documents on its behalf, that ANB does not owe the Prince any money and that ANB has never entered into any form of limited partnership with the Prince.

24 ANB had become aware of the registration of the ANB partnership by 28 May 2014 when it instructed Reed Smith (as its solicitors are now known) to investigate the position with the Registrar. The upshot of that was that the Registrar maintained that there was no mechanism to remove the registration.

25 ANB also became aware that the ANB partnership had been registered on the German public register. The entry, dated 29 August 2014, gives an address for the ANB partnership in Germany in Frankfurt. ANB applied to the German Court to have this entry removed in Germany; the Prince objected to the removal.

26 I will have to refer in more detail below to the Prince's answers to ANB's claims but in essence his position is that he has an irrevocable power of attorney from ANB which was conferred by a deed of fixed and floating

A mortgage dated 15 December 2004, and the ANB partnership was created pursuant to that power of attorney. The entries on the register relating to this charge were removed under the order of Lawrence Collins J of 2 December 2005 on the basis that the charge was a forgery, although it is not clear (see below) that it was appreciated by anyone at the time that this is said by the Prince not to be the charge in favour of Mr El-Abdali (dated
B 30 January 2002) which Morison J had already held to be a forgery, but a different charge dated 15 December 2004 in favour of the Prince himself.

The facts—Bank of Beirut SAL

27 In the case of BoB, the history of its encounters with the Prince does not go back as far as that of ANB but still goes back to 2007. In 2007 BoB
C received a letter from the Prince claiming over US$1 billion pursuant to an arbitral award dated 17 March 2004 issued by the ECOWAS Court of International Arbitration in Guinea (Judge Ellen Wood) under Docket No 070204E07. As with ANB the Prince relies on an acknowledgment of service of the arbitral proceedings (in this case purportedly signed by Dr Salim Sfeir on 20 February 2004 and stating that BoB did not intend to contest the claims) and a power of attorney (in this case again purportedly
D signed by Dr Sfeir on 12 May 2005, appointing the Prince as BoB's Irrevocable General Attorney-in-fact). The evidence of Dr Sfeir, who is the chairman and CEO of BoB, is that BoB has never granted a power of attorney to the Prince and that this document is a forgery.

28 BoB's evidence is that combined civil and criminal proceedings were taken in Lebanon against the Prince. According to a translation of the
E (unanimous) judgment of the Penal Court in Beirut dated 19 December 2012, the Prince was arrested in November 2007 and detained until 2010 when he disappeared; he was again arrested in September 2012 and released in October 2012 when he disappeared again, and he was tried in absentia. The judgment recites among other things that the Ministry of Justice in Guinea had confirmed that there is no ECOWAS Arbitration Board in Guinea (the only arbitration awards in Guinea being given by the Chamber
F of Arbitration of Guinea); and that ECOWAS had confirmed that it had only one court, the Court of Justice, and no Court of International Arbitration, nor any judge called Ellen Wood. The court found the Prince and a co-accused guilty of criminal offences (forgery and the knowing use of false documents), sentenced him to seven years' hard labour, nullified numerous documents (including the acknowledgment of service purportedly issued by
G Dr Sfeir and the arbitration award) and ordered the Prince and his co-accused to pay compensation to BoB. I should add that the Prince disputes the authenticity of this document. The judgment does however have every appearance of being genuine and there is evidence from BoB's Lebanese lawyer confirming that it is, and from Dr Sfeir that it is being enforced through Interpol.

29 On 27 September 2013, the Prince lodged an LP5 form with the
H Registrar in relation to a limited partnership called "Bank of Beirut SAL Debenture Deed Limited Partnership" ("the BOB partnership"). It is in very similar form to that lodged on 30 August 2013 in relation to the ANB partnership, being presented by the Prince (describing himself as "Irrevocable General Attorney-in-fact of [BoB]", with the Saarbrucken

address), giving BoB as the general partner (signed on its behalf by the Prince) and the Prince as the limited partner, and describing the business of the partnership as "to manage all Bank of Beirut SAL assets and properties owed to the limited partner" and the term of the partnership as commencing on 22 April 2013. The presenter's reference is this time given as 0702024E07/Bank-of-Beirut-SAL. On 30 September 2013 a certificate of registration of the limited partnership was issued in the name of the Registrar, certifying that the BoB partnership was that day registered under the 1907 Act as a limited partnership.

30 On 2 September 2014 the Prince used the registration of the BoB partnership to register a German address for the partnership in the Frankfurt commercial register. On 10 September 2014 the Prince was able to obtain notarial acknowledgments of debts, in the total sum of €1·2m, supposedly owed by the BoB partnership in favour of a company called Hashemite Sovereign Royal of Iraq AG, of which the Prince is sole director, and the company has sought to enforce these notarial deeds against German banks (as third party debtors).

31 BoB has taken proceedings in Germany to have the BoB partnership removed from the Frankfurt register, and the notarial deeds nullified. In addition on 26 February 2015 the Prince was arrested at the Saarbrucken address in relation to the notarial deeds.

32 The Prince's defences to BoB's claims rest in effect on the power of attorney dated 12 May 2005 which was purportedly signed by Dr Sfeir.

Facts—Banque du Liban

33 The involvement of BdL with the Prince is, so far as the evidence before me is concerned, rather more recent. On 27 September 2013 the Prince lodged a form LP5 at Companies House for the registration of "Banque du Liban Debenture Deed Limited Partnership" ("the BdL partnership"). Save for the change of name, this was in the same form as the LP5 for the registration of the BoB partnership lodged on the same day: the presenter's reference in this case was 02112010E01/Banque-du-Liban.

34 As with BoB, on 30 September 2013 a certificate of registration of the limited partnership was issued in the name of the Registrar, certifying that the BdL partnership was that day registered under the 1907 Act as a limited partnership; and on 2 September 2014 the Prince used the registration of the BdL partnership to register a German address for the partnership in the Frankfurt commercial register. BdL has taken proceedings in Germany to have the BdL partnership removed from the Frankfurt register.

35 In the case of BdL, the Prince's answer refers to a power of attorney having been granted by BdL but no copy of any such power has been provided to the court. The closest that comes to it, which is said by the Prince to affirm his powers as attorney for BdL, is a document under the name and logo of ECOWAS which contains a specimen signature of the Prince for the purposes of the US Foreign Agents Registration Act 1938 and which describes the Prince as Irrevocable General Attorney-in-fact pursuant to an arbitral award (Docket No 02112010E011) dated 22 March 2011 issued by the ECOWAS Court of International Arbitration. This document

A does not purport to have been signed by anyone on behalf of BdL; nor has any copy of the arbitral award in this case been provided.

Procedural steps

36 I should next briefly mention the procedural steps that have taken place. The first claim to be issued was that brought by BoB and BdL (Claim B No HC-2014-001497), and the procedural history is as follows: (1) The claim was issued on 25 November 2014. (2) Attempts to serve the Prince by post at his Saarbrucken address were unsuccessful, but the claim form and enclosures were also sent by e-mail to him on 26 November 2014. (3) It is apparent that he received them as he sent to the court (and the Registrar) two notices of discontinuance, one in the name of BoB and the C other in the name of BdL, each being notarised in Luxembourg on 4 December 2014. (4) On 19 January 2015 BoB and BdL applied to the court for an order for substituted service and default and summary judgment. (5) On 6 February 2015 the Prince sent to the court a second notice of discontinuance (in the name of both BoB and BdL). (6) On 9 February 2015, Newey J directed that the service of the claim form and enclosures by e-mail on 26 November on the Prince stand as valid service D and that the time for him to serve an acknowledgment of service, admission or defence be 14 days after service of his order by e-mail, and gave directions for the balance of the application to be heard on 30 or 31 March 2015. (7) Service of the order took place on 10 February 2015. (8) No acknowledgment of service or defence has been received from the Prince by 24 February 2015, or at all.

E **37** The procedural history of the claim brought by ANB (Claim No HC-2014-001951) is as follows: (1) The claim was issued on 18 December 2014. (2) ANB applied to the court for permission to serve by e-mail which was granted by Master Teverson on 9 January 2015. (3) Service of the claim form and enclosures was effected by e-mail on 12 January 2015, meaning that the Prince had until 28 January 2015 to F respond. (4) The Prince has not filed an acknowledgment of service or defence but on 27 January 2015 sent a notice of discontinuance on behalf of ANB to the court. (5) On 2 February 2015 ANB applied for summary judgment and judgment in default of acknowledgment of service and for an order that its application be heard together with that in the other action. (6) This was served on the Prince on 3 February 2015 to which he G responded by asking for an adjournment for one month and sending to the court a second notice of discontinuance in the name of ANB. (7) On 9 February 2015 Newey J refused the adjournment and gave directions for the hearing of ANB's application together with the applications by BoB and BdL.

38 Among other directions for this hearing, Newey J directed that the Prince must serve any evidence on which he relied by 9 March 2015. He has H not served any evidence. On 28 March 2015 however his wife e-mailed the court asking for an adjournment on the basis that he had been suffering a spine problem, and that he could not travel to London; and on 30 March 2015 his sister, who gives an address in New Jersey, also e-mailed the court adding that he had been admitted to hospital.

Should there be an adjournment?

39 I deal first with the question of adjournment. I decided at the hearing not to grant an adjournment. My reasons for this course are as follows. The claim forms (together with the usual response pack) were served on the Prince by e-mail on 26 November 2014 (in the case of the BoB and BdL claim) and 12 January 2015 (in the case of the ANB claim). There is no doubt that he duly received them by (at the very latest) 4 December 2014 and 27 January 2015 respectively, as is shown by his notices of discontinuance. That has afforded him ample time to file acknowledgments of service and defences which he has chosen not to do. The order of Newey J of 9 February 2015 (which was made in both actions) was served by e-mail on 10 February 2015. There is no suggestion from the Prince, nor any reason to think, that it too was not duly received. That set out a timetable for evidence. Again the Prince has had ample time to file evidence if he chose to. He has evidently made a decision not to do so but to rely on his notices of discontinuance; these do in fact contain numerous assertions of fact and I am willing to treat them as if they were informal evidence. It is in any event not said that he wants an adjournment in order to file evidence.

40 His wife says that he has been suffering a spinal problem since the beginning of December 2012 and had a hospital stay in January 2015, and that as a result he could not file his arguments in time. I have made allowance for the fact that there is no formal argument from him, but his case is set out at great length in the notices of discontinuance he has served, and I do not think he is prejudiced by not filing further arguments.

41 His wife also says that he is unable to travel to London for the hearing as he does not have his passport and had to attend a hearing in Germany; and his sister that he has been admitted to hospital for an operation. The Banks express scepticism as to whether these are the real reasons for his inability to attend the hearing himself or whether it is really because he is currently under arrest in Germany. I accept that for whatever reasons he was unable to travel to London for the hearing. But a litigant is not entitled as of right to an adjournment simply because he is unable to attend and in circumstances where it seems unlikely that he would be able to travel to London in the reasonably near future even if an adjournment were granted, I do not think it appropriate or in accordance with the overriding objective to adjourn the hearing of the application in effect sine die. If a litigant is unable to attend a hearing himself, he can instruct lawyers to represent him. It is not said that the Prince cannot afford lawyers, and he has lawyers acting for him in Germany. What is said (by his wife) is that he could not find representation as all potential lawyers refused to act due to conflicts of interest. That is a statement that, without any detail of which lawyers the Prince attempted to instruct and why they declined to act, I am very reluctant to accept at face value.

42 In these circumstances I proceeded to hear the application on the basis that if it appeared in the course of the hearing that it was impossible to dispose of it fairly, I could either decline to grant relief or adjourn the further hearing of the application. As it is, for reasons given below, I am satisfied that there is no real prospect of the Prince's case succeeding and in those circumstances I infer that the last minute application for an adjournment of the hearing was simply an attempt by the Prince to put the hearing off.

The Banks' claims against the Prince

43 I next turn to the Banks' substantive claims against the Prince. The question whether these proceedings are still live or have been discontinued is no doubt in theory a prior question, but in practice it turns on the same material. In each case the essential question is whether the Prince has any authority to act for each of the Banks. If he does, or there is a reasonable prospect that he may do, he may have a substantive defence to the claims and may have successfully discontinued them in any event. But if it can be shown that there is no real prospect that he has a valid power of attorney for the Banks, he neither has a substantive defence to the claims nor any prospect of showing that the claims have been discontinued.

44 I am satisfied that each of the Banks has established that there is no real prospect of the Prince succeeding in his case that he has an irrevocable power of attorney for the Bank.

(1) Arab National Bank

45 I start with ANB which is historically the earliest. The Prince's case is that the power of attorney was contained in a deed of fixed and floating charge/mortgage dated 15 December 2004 entered into between ANB and himself. This was the charge which Lawrence Collins J in 2005 ordered to be removed from the register. At that stage it appears to have been thought (and indeed the evidence before me continues to assume) that this charge was the same one that Morison J had already declared to be forged. It is now apparent however that this is not the case. The Prince has included in his second notice of discontinuance a copy of what he describes as the first page of the mortgage from which it is clear that this is a different document, dated 15 December 2004 and purportedly made between ANB as mortgagor and the Prince as mortgagee (rather than the mortgage dated 30 January 2002 and purportedly made between ANB and Mr El-Abdali which was before Morison J). The Prince has not included any further pages, but I will assume that he is, or may be, right that subsequent parts of the document purported to grant an irrevocable power of attorney to him. The front page contains signatures, and that for the Bank looks on its face like Mr Al-Herbish's.

46 The difficulty for the Prince however is that nowhere in his very lengthy statements is there any explanation of the circumstances in which ANB is said to have entered into this deed (and Mr Al-Herbish to have signed it) or why they (and he) might have done so. It is a matter of record and beyond doubt that on 3 September 2004 ANB had applied to the Commercial Court for a declaration that neither the arbitration award dated 13 January 2002 purportedly made by the Prince as arbitrator in favour of Mr El-Abdali, nor the mortgage dated 30 January 2002 purportedly entered into by ANB pursuant to that award, were binding and enforceable on ANB; and had pursued that application to a hearing in front of Morison J in which he gave judgment in favour of ANB on 22 October 2004. It is quite clear from the judgment that ANB's case before him (which he accepted) was that Mr Al-Herbish's signature on both the acknowledgment of service in the arbitration and the mortgage had been fraudulently affixed and both documents were forgeries. It is very difficult to believe that less than two months after obtaining this judgment, ANB would voluntarily enter into a further fixed and floating mortgage in favour of the Prince, whom they

plainly regarded as complicit in fraud and forgery, or that Mr Al-Herbish would have signed any such document. This is particularly so as another matter of record is that not long afterwards (that is in December 2005) ANB, having become aware that the mortgage had been registered, went to court again to have it removed from the register.

47 In other words the case for the Prince involves accepting that between ANB's first claim asserting that it had been the victim of fraud and forgery, and its second claim to the same effect, it had nevertheless granted a mortgage containing an irrevocable and apparently unlimited power of attorney to a person whom it had no reason to trust and every reason to distrust. This is such extraordinary behaviour for a bank to engage in that one immediately looks for some explanation of how it could be the case. But no explanation, no account, no attempt even to suggest why it might have done such a thing can be found. The Prince's notices, for all their length, rely on references to documents (or purported documents) without any context to them.

48 Nor does it stop there. The only clues on the face of the mortgage of 15 December 2004 as to why it might have been entered into are (i) a reference number 281201S02 El Sharif; and (ii) a statement that the deed is made "in furtherness of the of (sic) original deed of the 13th day of January in the year 2002". The latter is unexplained and of no help, but the reference number is of some interest. This is the same number as the docket no given on the arbitral award put before Morison J, dated 13 January 2002, which was an award purportedly made by the Prince *as arbitrator* in favour of Mr El-Abdali. In this award the Prince claimed to act as president and CEO of the Human Rights Arbitration Forum, and the award itself bore a crest with the words "Human Rights Arbitration" underneath; in his statutory declaration of 17 June 2004 the Prince gave an address for the "IEC-Human Rights Arbitration Forum" in Beirut.

49 By the time that the Prince was corresponding with Morison J in February 2005, he was referring to the same arbitration (between Mr El-Abdali and ANB) under the same docket number (281201S02) as if it were taking place in the ECOWAS Court of International Arbitration, Arab League and Africa Regional Office, with himself as chief arbitral judge and international prosecuting judge, and its address as the PO Box in Beirut.

50 However one of the points that Morison J made in his judgment was that it was strange, to say the least, that the arbitrator should be seeking to enforce his own award rather than the alleged successful party; and in his second notice of discontinuance the Prince now relies on an arbitration award dated 11 January 2002 and purportedly made in an arbitration before the ECOWAS Court of International Arbitration (Human Rights Division) in Conakry, Guinea, in which the Prince appeared as *the successful party*, the arbitral judge being Ellen Wood. This award again has the same docket number (281201S02). In that arbitration it is again suggested that Mr Al-Herbish signed and returned an acknowledgment of service on behalf of ANB and this is again relied on as founding the jurisdiction of the arbitrator. Moreover Mr Al-Herbish in this case is supposed to have indicated that ANB did not intend to contest the claim, even though the claim was for over US$132m.

A **51** All this is, to use Morison J's words, strange to say the least. It is I suppose theoretically possible that there were two entirely different arbitrations against ANB in which the Prince was simultaneously involved, the first proceeding initially before the Human Rights Arbitration Forum and subsequently the ECOWAS Court of International Arbitration in Beirut with the Prince as arbitrator, and the second before the ECOWAS Court of
B International Arbitration in Conakry with the Prince as claimant and Judge Ellen Wood as arbitrator, which just happened to have the same docket number and in each of which ANB was supposed to have returned an acknowledgment of service (itself an unusual feature for an arbitration); but it does not seem at all credible.

52 When one adds to this various other features of the case such as the fact that the Prince was, at the very least, caught up in what Morison J found
C to be a fraud; that Lawrence Collins J recorded that ANB had been unable to confirm that the ECOWAS Court of International Arbitration existed and found that the Prince's correspondence strengthened the suspicion that his award was just as much a forgery as the mortgage; that the Prince was directly engaged in presenting as genuine the Treasury bonds (again with the same reference number) which David Richards J found and declared to be a
D nullity (along with yet another charge, this time to enforce the bonds), and Pumfrey J made consequential orders directly against the Prince which he did not challenge; and that according to what appears on its face to be a judgment of a criminal court in Beirut (although the Prince disputes the authenticity of this document) there was evidence before the court that ECOWAS had no Court of International Arbitration in Guinea or elsewhere,
E and no judge called Ellen Wood, and that the court found the Prince to be guilty of offences of forgery and the use of false documents—when one adds all this, the conclusion that the Prince's case is in the literal sense of the word incredible is overwhelming.

53 There is one other detail which I have not so far referred to but which I find telling because it involves documents not from a foreign arbitration or a foreign court but from a source with which the English court
F is much more familiar. The Prince has put before the court copies of certificates supposedly issued by Companies House for each of the limited partnerships. I can take the certificate for the ANB partnership by way of example. This looks like an official document issued by the Registrar—it has the Royal Arms, the title "The Limited Partnerships Act" and a reference number at the top, and a signature of an official on behalf of the Registrar at
G the bottom. The first half of the certificate is in the form of what is called a certificate of good standing—that is, as Ms Jones explains, a non-statutory certificate produced at the request of a customer which contains a summary of the information held on the public register. In the present case it contains a certificate by the Registrar that the ANB partnership was registered by lodging a statement of particulars pursuant to section 8 of the 1907 Act on
H 5 September 2013, and that according to the documents on the file ANB is the general partner and the Prince is the limited partner. Ms Jones says that this information was included on a genuine certificate issued by Companies House and exhibits copies of certificates in this form. However the certificates produced by the Prince contain further statements purportedly certified by the Registrar, namely that according to the documents on the file

the Prince is the authorised officer empowered to execute any instrument on behalf of the partnership, and that the Prince is the Irrevocable General Attorney-in-fact of ANB, empowered to execute any instrument on behalf of ANB. Ms Jones confirms that such statements do not appear on the certificates produced by Companies House and have been added. This means that the Prince is putting forward as genuine documents which on the face of it (unless Ms Jones's evidence is just wrong, which seems highly unlikely) have been deliberately tampered with. Again there is no explanation or account from the Prince of how this might have come about.

54 The principles applicable in deciding whether the defendant has a real prospect of success for the purposes of CPR Pt 24 are well established. I can take them from the notes in the *White Book*. These include the following: the proper disposal of an issue under Part 24 does not involve the court conducting a mini-trial (note 24.2.3); the criterion which the judge has to apply under CPR Pt 24 is not one of probability; it is absence of reality (ibid); the court hearing a Part 24 application should be wary of trying issues of fact on evidence where the facts are apparently credible and are to be set against the facts being advanced by the other side (note 24.2.5); choosing between them is the function of the trial judge, not the judge on an interim application, unless there is some inherent improbability in what is being asserted or some extraneous evidence which would contradict it (ibid); the respondent's case must carry some degree of conviction: the court is not required to accept without question any assertion they make (ibid).

55 I was also referred to *Wrexham Association Football Club Ltd v Crucialmove Ltd* [2008] 1 BCLC 508 for the proposition that although a conclusion that a party has not acted in good faith should generally be reached at trial, it is not the case that such a conclusion can never be reached on a summary judgment application (at para 51, per Sir Peter Gibson). In the same case Sir Igor Judge P at paras 57–58 said that experience teaches that on occasion apparently overwhelming cases of fraud and dishonesty somehow inexplicably disintegrate; that this collective judicial experience does not always require a judge considering a summary judgment application to reject the conclusion that there is no real prospect of a successful defence if satisfied that there is none; but that it is a factor constantly to be borne in mind if the judgment is consequent on a disputed finding which is adverse to the integrity of the unsuccessful party.

56 I have these principles well in mind. But I am entirely satisfied that the Prince has no real prospect of establishing that ANB granted him a power of attorney on 15 December 2004 or at all. This is not as a result of an impermissible mini-trial or weighing the probabilities or choosing between apparently credible rival versions of the facts: the Prince's case contains many inherent improbabilities and carries not the slightest degree of conviction. In my judgment it is properly characterised as having a complete absence of reality. Making every allowance for what he says and for any evidence that he might be able to adduce at trial, it stretches credibility well beyond breaking point.

57 As I have already pointed out, the Prince's defence to ANB's claims depends on his establishing that he has authority to act for ANB. If he does not, the purported partnerships never came into existence (and indeed it is notable that he has never produced a copy of a document establishing any of

A the partnerships), the statement in form LP5 that there was such a partnership was false, and must have been known by him to be false, and hence the registration was procured by fraud.

58 Moreover if he has no authority to act for ANB, his notices of discontinuance are of no effect. If I had concluded that there was a real prospect that he might be able to establish such authority, I think it would B have been necessary to direct a trial of the question whether the action had been discontinued; but in circumstances where ANB has satisfied me that there is no prospect of his establishing that, it seems to me that it is neither necessary nor appropriate to investigate the question of discontinuance any further.

(2) Bank of Beirut SAL

C **59** Having reached this conclusion in relation to ANB, it is now possible to consider the Prince's prospects of success in BoB's claim. There are many striking similarities between the two cases. In each case, the Prince claims to have the benefit of an arbitral award from the ECOWAS Court of Interrnational Arbitration given in his favour by the arbitral judge Ellen Wood. In each case it is said that the relevant officer of the Bank D (Mr Al-Herbish for ANB and Dr Sfeir for BoB) signed and returned an acknowledgment of service stating that the relevant Bank did not intend to contest the claims. In each case the same signatory is then said to have executed a document constituting the Prince as the Bank's Irrevocable General Attorney-in-fact. In neither case is there any explanation or account of why the Bank should choose to do such a thing. In each case the relevant signatory has given credible evidence that his signature has been forged. In E each case the Prince has gone on to use the supposed power of attorney to register a limited partnership at Companies House, but has not produced any document establishing the partnership; and in each case there is prima facie evidence that a certificate of good standing issued by Companies House has been tampered with to show the Registrar as confirming the Prince's authority.

F **60** In these circumstances I am satisfied that the conclusions I have already reached in relation to ANB are admissible and helpful in assessing whether there is any real prospect of the Prince successfully defending BoB's claim. Although in this case the Prince has produced a copy of what purports to be a power of attorney signed by Dr Sfeir, supported by a document purporting to come from the British Embassy in Beirut apparently G confirming that Dr Sfeir executed it (which however misspells "irrevocable" twice as "irrevorcable", a fact which tends to undermine confidence in its authenticity), I am entirely satisfied that there are so many inherent improbabilities in the Prince's case that it carries not the slightest degree of conviction and can properly be characterised as having a complete absence of reality.

H *(3) Banque du Liban*

61 I can deal with BdL very shortly. Here the Prince has not produced, or even identified, any document by which BdL is said to have conferred authority on him. All there is is a copy of an ECOWAS document containing a specimen signature of his which refers to him as Irrevocable General

Attorney-in-fact pursuant to an arbitral award issued by the ECOWAS Court of International Arbitration. No copy of such an award has been produced, nor is it explained how such an award could in any event constitute the Prince as BdL's attorney. Here too the Prince has used his supposed authority to register a limited partnership without producing any document establishing the partnership; and here too there is prima facie evidence that a certificate of good standing issued by Companies House has been tampered with to show the Registrar as confirming the Prince's authority.

62 The facts relied on in support of the Prince's defence are therefore exiguous in the extreme. Had this case stood alone, one might have wondered if there were more facts which could be deployed at a trial. But in the light of what the Prince has said in relation to the other two claims, and my conclusions in relation to those claims, I have not the slightest doubt that the reason why nothing else has been put forward by the Prince in answer to this claim is because there is nothing else to produce, and not the slightest hesitation in concluding that here too the Prince's case is so inherently improbable as to carry no conviction, and to be marked by a complete absence of reality.

63 Before turning to the relief claimed, I should deal, albeit briefly, with the other points raised by the Prince in his notices of discontinuance.

(1) The Prince says that each Bank is in an insolvency process, relying in each case on what he says is the approval of the Financial Conduct Authority. In fact the letters he produces from the Financial Conduct Authority are only concerned with the use of the name "bank" as a sensitive business name in the proposed name of each partnership.

(2) The Prince says that the powers of the board of directors and signatories of each Bank have been terminated since the partnerships have been registered. This assumes that the partnerships were validly entered into and I am satisfied that they were not.

(3) The Prince says that the judgment of the Beirut criminal court produced by BoB's solicitors is not authentic and that they have therefore misrepresented the position. I am very doubtful indeed that there is any real question mark over the authenticity of this document but even if it is put to one side there is ample material to show that the Prince's case is quite unsustainable.

(4) The Prince says that the Banks' solicitors (Reed Smith for ANB and CMS Cameron McKenna for BoB and BdL) have not produced any valid power of attorney to act for the Banks. In relation to the Lebanese banks (BoB and BdL) this point is elaborated on in great detail in his second notice by reference to extracts from the Lebanese Civil Procedure Code. I am not going to attempt to construe this foreign code on the basis of the translation of certain extracts and will proceed on the basis that the Prince is, or may be, right that it provides that in Lebanon a litigant that litigates certain claims must do so by a lawyer, and that such lawyer must hold a power of attorney, and that such power of attorney must be conferred by deed under seal. I will also assume, although there is less material to this effect, that similar provision is made in Saudi law. But even taking this at its highest, it seems to me to do no more than regulate procedure before the Lebanese or Saudi courts (as indeed the title of the Lebanese code suggests). Procedure is a matter for the forum and in particular it is a matter for the English court as

A to which representatives the court will hear. In England the practice is to hear counsel instructed (without a power of attorney) by solicitors who are themselves instructed (without a power of attorney) by the client. If it is established that solicitors acting for a claimant are doing so without authority the action is no doubt liable to be struck out as a nullity, but the court does not require any particular proof of such authority. In the present B case I have witness statements from Mr Spafford, a partner in Reed Smith, and Mr Foss, a partner in CMS Cameron McKenna, in each case saying that he is duly instructed by ANB, or by BoB and BdL respectively; and I have no reason to doubt that evidence. For the purposes of English procedure that is sufficient; it is also perfectly clear from the evidence of the officers of each Bank that the solicitors are indeed authorised to bring these claims.

(5) In his second notices, the Prince refers to the fact that parallel civil C proceedings are taking place in Germany which concern the same parties, the same evidence and the same subject matter. In a general sense this is no doubt true but the relief sought in each action is different. The object of the German proceedings, so far as appears from the evidence, is to nullify the registration of the partnerships in Germany and (in the case of BoB) the notarised acknowledgments of debt. In the English proceedings the object is D primarily to nullify the registration of the partnerships in England, relief which one would have thought could only be obtained in England. I see nothing objectionable in the Banks proceeding in this way.

(6) In his second notices the Prince refers extensively to the fact that certificates from Companies House are conclusive evidence, relying on the certificates which purport to certify that he is the Irrevocable General Attorney-in-fact of each Bank. There is nothing in this point. Leaving aside E the very strong likelihood that certificates in this form are not genuine, the only conclusive evidence provision in the 1907 Act is section 8C which provides that a certificate of registration is conclusive evidence that a limited partnership came into existence on the date of registration. I consider the effect of this provision in more detail below, but it says nothing about the effect of a certificate of good standing (which as explained above is F non-statutory); in any event even if the effect of a certificate of registration is to preclude any challenge to the existence of the limited partnership, it does not preclude the court finding that that partnership has been brought into existence by means of false statements and granting relief accordingly.

(7) A number of other matters are referred to in the Prince's notices but none of them require to be dealt with separately. None of them alters my G conclusion that each Bank has shown that the Prince has no real prospect of success.

Relief sought against the Prince

64 The Banks sought relief against the Prince under a number of heads. I granted the relief set out below at the hearing, and I here give my reasons for doing so.

H **65** The primary relief sought is a series of declarations. Under CPR r 40.20 the court has an unfettered power to make declarations, but the practice is not to grant declarations by default but only if the court is satisfied by evidence. Thus although the Prince is in default of acknowledgment of service, the Banks have not sought default judgment

under CPR Pt 12 but summary judgment under CPR Pt 24. CPR r 24.4(1) provides that a claimant may not apply for summary judgment until the defendant has filed an acknowledgment of service or defence unless the court gives permission: in the circumstances of this case I am satisfied that it is appropriate to give permission. A

66 I have already found for the purposes of CPR r 24.2(a)(ii) that the Banks have established that the Prince has no real prospect of successfully defending their claims. B

67 I am also satisfied that it is appropriate to make declarations. In *Financial Services Authority v Rourke (trading as J E Rourke & Co)* [2002] CP Rep 14 Neuberger J said (in a case where declarations were sought on an application for summary judgment) that in considering whether to grant a declaration or not, the court should take into account "justice to the claimant, justice to the defendant, whether the declaration would serve a useful purpose and whether there are any other special reasons why or why not the court should grant the declaration". C

68 The Banks sought a number of declarations at the hearing. One of them was that the limited partnerships do not exist. That raises the question of the effect of the conclusive evidence provision in section 8C of the 1907 Act and I declined to make that declaration at the hearing. The other declarations sought by the Banks were as follows. (a) The limited partnership agreements purported to be made by the Banks and the Prince are not the deed of the Banks and are void. (b) The Prince holds no power of attorney on behalf of the Banks. (c) The applications in form LP5 filed by the Prince for the limited partnerships were false, fraudulent and made without authority. (d) The documents in relation to the limited partnerships on the Registrar's public register only exist as a result of false representations by, and the fraud of, the Prince. (e) The Banks are to be indemnified by the Prince in respect of any debts and liabilities arising in relation to the limited partnerships. D E

69 The Banks say that declarations (a) to (d) serve a useful purpose as they establish the true position which may be publicised in order to protect third parties and the Banks from further frauds. I agree. F

70 So far as declaration (e) is concerned, the Banks rely on section 6 of the 1907 Act which provides that if a limited partner takes part in the management of the partnership business he shall be liable for all debts and obligations of the firm incurred while he so takes part in the management as if he were a general partner. I do not think that section 6 by itself justifies the declaration, as what it does is make a limited partner liable to persons dealing with the firm for debts and obligations of the firm—in other words it removes the limitation on liability which the limited partner would otherwise enjoy. It says nothing about liability as between the limited partner whose cap on liability has thus been removed and the general partner of the firm. G

71 However I consider that there is a much simpler route which justifies the indemnity sought. Where A purports to act as agent for B but in fact has no authority from B to do so, it must be the case that any debt or liability incurred is properly A's liability not B's. I see no reason why B should not be entitled to an indemnity from A against any such liability. In my judgment therefore the Banks are entitled to be indemnified by the Prince (who by H

A acting on behalf of the partnerships has purported, without authority, to act on behalf the Banks) against any debt or liability so incurred. The Banks say that a declaration to this effect would serve a useful purpose in allowing for speedier recourse if any liabilities come to light: I agree.

72 I am satisfied therefore that each of the declarations serves a useful purpose and that justice to the Banks is a reason for making them; I see no B injustice to the Prince and no special reason not to make them. In those circumstances I agreed at the hearing to make the declarations I have set out above.

73 The next head of relief sought is judgment in default of acknowledgment of service for damages to be assessed for the tort of unlawful interference with business interests. Under CPR r 12.11(1) where the claimant makes an application for a default judgment, the judgment C shall be such judgment as it appears to the court that the claimant is entitled to on his statement of case. The Banks' particulars of claim in each case allege that the creation of the purported limited partnerships constituted an unlawful interference with the Banks' businesses; that it was unlawful because the registration was induced by false statements; that the Prince did so in order to convince third parties that the partnerships existed and thereby D secure financial gain for himself (or related companies) to the financial and reputational detriment of the Banks; that the Prince has used the registrations to obtain registrations in Germany and (in the case of BoB) to obtain notarial acknowledgments of debt; and that the Banks have suffered loss and damage in the shape of the costs incurred here to have the partnerships removed from the register, and incurred in Germany. I am satisfied that these allegations sufficiently allege the tort of unlawful E interference, the ingredients of which are (i) an interference with the claimant's business; (ii) the use of unlawful means; (iii) the intention to injure the claimant; and (iv) damage. I have some doubt whether the costs of these proceedings can be relied on as damage, as the general principle is that costs of the instant proceedings can only be recovered as costs not damages; but I see no reason why the costs incurred in Germany do not count as F damage for this purpose. It is for this reason that I gave judgment at the hearing in favour of the Banks against the Prince for damages, to be assessed, for unlawful interference.

74 The third head of relief sought against the Prince is an injunction. I am satisfied that the Banks have a well founded fear that the Prince will continue in his activities unless restrained. The injunction sought was one G restraining him from taking any steps (a) to register any entities or limited partnerships that involve the Banks with Companies House or the Registrar, or (b) to enforce any financial instruments purportedly issued by the Banks. I accept that this is an appropriate case for such an injunction.

75 I also ordered the Prince to pay the Banks' costs up to and including the hearing to be assessed on an indemnity basis with payments to be made on account.

H

The claim against the Registrar

76 That leaves the relief sought against the Registrar. The Banks seek an order in the following terms: "The [Registrar] shall as soon as practicable remove from the records held at the Registry at Companies House all

documents and information relating to [each of the limited partnerships] excluding any note explaining the reasons for the documents' removal." A

77 The Banks say that the Prince, who has procured the registration of the partnerships by fraud, uses the fact of such registration to lend credibility to his claims. They point to the documents produced by the Prince which make frequent reference to the registration of the partnerships at Companies House. One example will suffice: included in the Prince's first notice of discontinuance of BoB's claim is a document headed "Certificate of Attestation" signed by the Prince on 25 July 2014 (and notarised in Frankfurt) which certifies that the Prince is: B

> "the Chief Executive Officer of the Bank of Beirut SAL Debenture Deed Limited Partnership, registered number: LP015722 at Companies House—Cardiff UK; and HRH Prince Adel El-Hashemite being 'Bank of Beirut SAL Irrevocable General Attorney-in-fact' pursuant to the terms of this registered Limited Partnership and HRH Prince Adel El-Hashemite is authorised at all times to execute without limitation and to sign at any time and at any place whatsoever any type of documents, contracts, agreements, instruments . . . in the name and under the common seal and on behalf of Bank of Beirut SAL (the General Partner of Bank of Beirut SAL Debenture Deed Limited Partnership), evidenced by the Registrar's Certificate." C D

This is typical of the documents produced by the Prince. The Banks say that any third party presented with such documents can confirm, by a simple internet search, that the BoB partnership is indeed registered at Companies House under number LP015722; and that in this way the fact of registration may assist the Prince in his fraudulent schemes. They suggest that this was presumably how the Prince obtained the notarised acknowledgments of debt. E

78 In fact as a result of the order that I made at the conclusion of the hearing, the position has somewhat changed as the Registrar has annotated the register with a view to alerting third parties as to the position. I give the details of the current state of the register below, but it is sufficient at this stage to note that the Banks regard what the Registrar has done as insufficient to protect them, and continue to seek an order for what they call full rectification, that is requiring the Registrar to remove any reference to the partnerships from the register. It is therefore necessary for me to decide the point of principle. F

The Limited Partnerships Act 1907 G

79 I start with the relevant provisions of the 1907 Act. The background is that in an ordinary partnership (as governed by the Partnership Act 1890 (53 & 54 Vict, c 39)—which I will call "an 1890 Act partnership"—each partner has unlimited personal liability for the debts and liabilities of the partnership. The 1907 Act was passed to enable persons to join a partnership as passive investors with limited liability. Like an 1890 Act partnership (and unlike the limited liability partnerships ("LLPs") introduced much later) a limited partnership under the 1907 Act is not a separate legal entity from its partners: indeed section 7 provides that subject to the express provisions of the 1907 Act, the 1890 Act and the rules of H

A equity and common law applicable to partnerships apply to limited partnerships.

80 The central provision of the Act is section 4(2) under which a limited partnership must consist of one or more general partners whose liability is unlimited, and one or more limited partners who, on entering the partnership, have to contribute sums of money or property valued at a stated
B amount and who are not liable for the debts and obligations of the firm beyond that amount. This is supplemented by section 4(3) under which a limited partner cannot withdraw any part of his contribution while he remains a partner (and if he does so, he loses limited liability); and by section 6(1) under which a limited partner shall not take any part in the management of the firm (and has no power to bind the firm) and again if he
C does so he loses limited liability.

81 By section 5 every limited partnership must be registered as such in accordance with the provisions of the Act. By section 15 the registrar of companies is the registrar of limited partnerships, and by section 8 (s amended by article 4 of the 2009 Order) the Registrar "shall register a limited partnership if an application is made to the registrar in accordance with section 8A". Section 8A specifies the requirements for an application
D for registration, including a requirement (by section 8A(1)(c)) that the application be signed by or on behalf of each partner.

82 The most significant provision for present purposes is section 8C. This provides as follows:

> "(1) On registering a limited partnership the registrar shall issue a certificate of registration.
E
> "(2) The certificate must be— (a) signed by the registrar, or (b) authenticated with the registrar's seal.
>
> "(3) The certificate must state— (a) the firm name of the limited partnership given in the application for registration, (b) the limited partnership's registration number, (c) the date of registration, and (d) that the limited partnership is registered as a limited partnership under this
F Act.
>
> "(4) The certificate is conclusive evidence that a limited partnership came into existence on the date of registration."

83 Section 9 provides that if during the continuance of the partnership any change is made or occurs in various matters (including the general
G nature of the business, the partners, the term or character of the partnership), a statement signed by the partnership shall be sent or delivered to the Registrar; section 13 requires the Registrar to cause any such statement to be filed; section 14 requires the Registrar to keep a register and index of all registered limited partnerships and of such statements; section 16(1) provides that any person may inspect the statements filed by the Registrar, and may require a certificate of the registration of any limited
H partnership, or a copy of extract of any registered statement, to be certified by the Registrar; and section 16(2) provides that any such certificate shall be admissible in evidence. Finally section 17 confers power on the Board of Trade to make rules for various matters including (b) the duties or additional duties to be performed by the Registrar and (e) generally the conduct and

regulation of registration under this Act and any matters incidental thereto. It has not however been suggested to me that any such rules have been made. A

84 Before coming to the arguments or any authority I will give my own understanding of how these provisions apply to the limited partnerships in the present case. On the basis of my decision above, the Prince had no authority to act for the Banks. He therefore had no authority to constitute the Banks as general partners of the partnerships or to sign the application forms for registration on behalf of the Banks. That means the applications were not in accordance with section 8A, as inserted by article 5 of the Legislative Reform (Limited Partnerships) Order 2009, as they were not signed by or on behalf of each partner, and the Registrar was in fact under no duty to register them under section 8; indeed more fundamentally the partnerships did not exist so there were no partners and no partnerships and in truth nothing to register. I conclude therefore that they should not have been registered; and if the true facts had been known there is no reason to think that they would have been. However I accept the evidence of Ms Jones that the examination of applications carried out by the registrations team at Companies House does not include any validation or verification of the information received. Ms Jones says that this is because the Registrar has no statutory power to verify the information sent to him: his statutory function is to register the information sent to him (and make it available to third parties) not to gather information for himself. I do not propose to decide whether strictly speaking the Registrar has any *power* to verify information sent to him—it might be arguable that such a power was impliedly conferred on him as incidental to his functions—but I certainly accept that it would be quite impractical and wholly unreal to expect him to do more than check that the information that has been lodged is in the correct form. So although it can now be seen that the partnerships here should not have been registered, it is no criticism of the Registrar that they were. B C D E

85 Once a partnership has been registered, the plain effect of section 8C(1) is that the Registrar is under a duty to issue a certificate of registration; and the plain effect of section 8C(4) is that that certificate is conclusive evidence that a limited partnership came into existence on the date of registration. If that means what it says, it would appear to follow that whatever the circumstances which led to the registration, once the certificate has been issued the partnership must be regarded as having come into existence. F

86 In these circumstances the principal concern of the Registrar is that any order of the court which sought to go behind the conclusive nature of the certificate (for example by declaring that the partnerships never existed, or that the registration could be set aside) would have wider implications. A certificate under the 1907 Act is as already said but one example of various certificates issued by the Registrar which are expressed to be conclusive evidence by statute, and, the Registrar says, the world of commerce depends on faith in the register and any decision which suggests registration might subsequently be declared to be a nullity might undermine such faith. G H

87 It is not suggested that there are any relevant statutory provisions conferring power to remove registrations of limited partnerships from the register. The Companies Act 2006 by section 1095 confers power on the Secretary of State to make provision by regulations requiring the Registrar

A to remove from the register material that derives from anything invalid or ineffective or that was done without the authority of the company or is factually inaccurate or derived from something that is factually inaccurate or forged. But this section is in a group of sections which by section 1059A(3), as inserted by article 3 of the Companies Act 2006 (Part 35) (Consequential Amendments, Transitional Provisions and Savings) Order
B 2009 (SI 2009/1802), only apply to companies, and it is not suggested that a limited partnership is a company for these purposes (see section 1 of the Companies Act 2006). Regulations have duly been made both under this section (the Registrar of Companies and Applications for Striking Off Regulations 2009 (SI 2009/1803)), and extending the provisions to LLPs (the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009 (SI 2009/1804)) but these apply to companies and LLPs
C respectively. Similarly section 1096 of the 2006 Act, which confers on the court what at first sight looks quite a promising power to order removal of material from the register, is in the same group of sections and is limited in its application to companies.

In re Calmex Ltd

D **88** Even in the absence of statutory powers however the court has some control over the Registrar. In *In re Calmex Ltd* [1989] 1 All ER 485, the Registrar had registered a winding up order which had been made against a company called Calmex Ltd. The order was made by mistake (the petitioner had intended to wind up an unconnected company called Calmex Fashions Ltd) and the court later rescinded it. The question then arose whether the
E court could make an order that the winding up order be removed from the register. Hoffmann J held that it could, on the basis that the purpose of the register was not simply to chronicle events but to record information which might be useful to persons dealing with the company, and that he could see no purpose in recording that the company had been the victim of mistaken identity; indeed the existence of the record was a potential source of serious injustice to the company. In response to a submission that the
F court had no jurisdiction to tell the Registrar to remove documents, he said, at p 488:

> "In my judgment the court does in principle have jurisdiction according to ordinary public law principles to control the way in which the registrar carries out his statutory duties, subject to any specific exclusions of that jurisdiction or the evidence on which it could be
G founded . . ."

89 *In re Calmex Ltd* has been distinguished in other cases. In *igroup Ltd v Ocwen* [2004] 1 WLR 451 mortgage companies had delivered for registration forms containing particulars of charges granted or released, to which were scheduled details (accurate but not required) of their customers' personal information. Lightman J refused to make an order requiring the
H Registrar to remove or replace the schedules: the case was not like *In re Calmex Ltd* where Hoffmann J held that the Registrar had a duty to remove what had turned out to be a nullity from the records and the court in exercise of its supervisory jurisdiction could enforce that duty, but was one where the documents delivered were valid and the Registrar was under no duty to

rectify them. Similarly in *In re A Company (No 007466 of 2003)* [2004] 1 WLR 1357, the company had delivered annual accounts for registration which contained reference to an offer made under CPR Pt 36 in relation to ongoing litigation. Peter Leaver QC sitting as a deputy High Court judge refused to make an order permitting the filing of revised accounts, holding that the accounts filed were not a nullity and could not be said to be improperly filed.

90 These cases therefore draw a line between the *In re Calmex Ltd* type of case where the document registered turns out to have been a nullity, and cases where the document registered was perfectly valid, and duly registered, and the applicant merely wished to substitute a different version. But even accepting these limitations on the *In re Calmex Ltd* jurisdiction, I do not think there would have been any difficulty in invoking the court's jurisdiction in the present case were it not for the conclusive evidence provision in section 8C of the 1907 Act. Absent that provision, the case would have been indistinguishable from *In re Calmex Ltd*: the applications for registration in the forms LP5 can now be seen to be nullities in that they were not in fact signed by or on behalf of the Banks; although the Registrar cannot be blamed for registering them (any more than the Registrar could be blamed in *In re Calmex Ltd* for registering what appeared to be a regular winding up order) had the true facts been known they should never have been registered; they ought therefore to be removed from the register; and the court in exercise of its ordinary public law jurisdiction would order the Registrar to do so. But in *In re Calmex Ltd* there was no conclusive evidence provision and the question is whether the fact that there is one here makes all the difference.

Conclusive evidence provisions

91 There is no doubt that in general a conclusive evidence provision means what it says. The most authoritative statements to that effect are found in *Bowman v Secular Society Ltd* [1917] AC 406, which was concerned with the provision in section 1 of the Companies Act 1900 that a certificate of incorporation given by the Registrar in respect of any association should be conclusive evidence that all the requirements of the Act in respect of registration and of matters precedent and incidental thereto had been complied with, and that the association was a company authorised to be registered and duly registered under the Act. (This replaced a less extensive provision in section 18 of the Companies Act 1862 (25 & 26 Vict c 89) which had merely provided that the certificate should be conclusive evidence that all the requisitions of the Act had been complied with, and was passed to clear up doubts caused inter alia by the decision of Kekewich J in *In re National Debenture and Assets Corpn* [1891] 2 Ch 505 where he found that a company had not been duly incorporated where there had only been six subscribers to the memorandum instead of seven: see the history set out in *Palmer's Company Law* looseleaf ed, vol 1, para 2.1304ff). In the *Bowman* case, the question was whether the objects of the Secular Society Ltd, which had been registered under the Companies Acts, were unlawful and one argument was that the certificate of incorporation was conclusive to show that the objects of the society were not unlawful. This was held to be going too far but their Lordships said that the certificate was conclusive as to

A the existence of the society as a duly incorporated company: see per Lord Finlay LC, at p 421 ("What the Legislature was dealing with was the validity of the incorporation, and it is for the purpose of incorporation, and for this purpose only, that the certificate is made conclusive"); per Lord Dunedin, at p 435 ("The certificate of incorporation in terms of the section quoted of the Companies Act 1900, prevents any one alleging that the company does not exist"); per Lord Parker of Waddington, at p 439 ("The section does, however, preclude all His Majesty's lieges from going behind the certificate or from alleging that the society is not a corporate body with the status and capacity conferred by the Acts"); and per Lord Sumner, at p 452 ("The certificate proves . . . that the respondent society is a complete person in law").

92 The objects of the Secular Society were not in the event found to be unlawful but Lord Parker, at p 439F, considered what the position would be if a company with wholly illegal objects had managed to obtain registration. He pointed out that the Companies Acts were not expressed to bind the Crown and continued, at p 440: "the Attorney General, on behalf of the Crown, could institute proceedings by way of certiorari to cancel a registration which the registrar in affected discharge of his quasi-judicial duties had improperly or erroneously allowed." An example where this course was indeed taken is provided by *R v Registrar of Companies, Ex p Attorney General* [1991] BCLC 476 where a company was incorporated for the purpose of carrying on the business of prostitution under the name of Lindi St Claire (Personal Services) Ltd (the Registrar having declined to accept the first two names offered, Prostitute Ltd and Hookers Ltd), and the court had no difficulty in quashing the registration at the instance of the Attorney General on the ground that the company had been formed for unlawful purposes.

93 A further example of the effect of a conclusive evidence provision is the decision of the Court of Appeal in *Exeter Trust Ltd v Screenways Ltd* [1991] BCLC 888. Screenways Ltd had granted a charge to Exeter Trust Ltd which was not registered within the 21-day period required by section 395 of the Companies Act 1985. Exeter Trust obtained an order extending the time for registration, delivered particulars of the charge within the time so extended, and secured a certificate from the Registrar that the charge was duly registered. Screenways (which had gone into liquidation) successfully appealed the order extending time to a circuit judge, and sought an order that the register of charges be rectified, which was granted by the circuit judge. The Court of Appeal held that he had been wrong to rectify the register as section 401 of the Companies Act 1985 made the registrar's certificate conclusive evidence that the requirements as to registration had been satisfied. Nourse LJ, who gave the only reasoned judgment, referred to the earlier case *In re CL Nye Ltd* [1971] Ch 442, in which Harman LJ had said that he saw no reason "why the word 'conclusive' should not mean what it says" and Russell LJ that the certificate of the Registrar should be regarded as "in every respect conclusive and unassailable"; and said that it was not possible to go behind the certificate. He rejected a submission that the court had an inherent power to rectify the register; and expressly distinguished *In re Calmex Ltd* [1989] 1 All ER 485 on the basis that in that case the court was not confronted with legislation which made provision

both for a limited power of rectification and for the conclusiveness of the Registrar's certificate.

94 Mr Munro, who appears for the Banks, submits that in this case the position is different because this is not a case of mere mistake but of fraud, and "fraud unravels all". The general principle that fraud unravels all is well known: I was referred, by way of example, to the speech of Lord Bingham of Cornhill in *HIH Casualty and General Insurance Ltd v Chase Manhattan Bank* [2003] 1 All ER (Comm) 349. Here insurers sought to avoid liability under a policy on the grounds, among other things, of fraudulent non-disclosure by the insured's agent. The insured relied on a clause in the policy providing that the insured "should have no liability of any nature" to the insurers for information provided by others. The House of Lords held that this clause did not relieve the insured of the consequences of fraud by its agent. Lord Bingham said, at para 15:

> "fraud is a thing apart. This is not a mere slogan. It reflects an old legal rule that fraud unravels all: fraus omnia corrumpit. It also reflects the practical basis of commercial intercourse. Once fraud is proved, 'it vitiates judgments, contracts and all transactions whatsoever': *Lazarus Estates Ltd v Beasley* [1956] 1 QB 702, 712, per Denning LJ. Parties entering into a commercial contract will no doubt recognise and accept the risk of errors and omissions in the preceding negotiations, even negligent errors and omissions. But each party will assume the honesty and good faith of the other; absent such an assumption they would not deal."

He went on to hold that even if it were in theory possible for a party to a contract to exclude liability for the fraud of his agents, such intention must be expressed in clear and unmistakable terms, at para 16:

> "General words, however comprehensive the legal analyst might find them to be, will not serve: the language used must be such as will alert a commercial party to the extraordinary bargain he is invited to make. It is no doubt unattractive for a contracting party to propose a term clearly having such effect, because of its predictable effect on the mind of the other contracting party . . ."

As this makes clear, the principle in the *HIH* case is a principle of contractual interpretation: words in a contract relieving a party of liability will not extend to a case of fraud unless fraud is expressly mentioned.

95 Mr Munro says that the unravelling effect of fraud also applies where there is a conclusive evidence provision. On analysis this seems to me to amount to a submission that there is another principle of interpretation, namely that a conclusive evidence provision should be interpreted as not applying in the case of fraud. He was able to find support for this submission in a statement in *Halsbury's Laws of England* 5th ed, vol 11 (2009), para 767, that: " 'Conclusive evidence' means that no contrary evidence will be effective to displace it, unless the so-called conclusive evidence is inaccurate on its face, or fraud can be shown."

96 Three cases are cited in support. The first is *In re Caratal (New) Mines Ltd* [1902] 2 Ch 498. This was not a case of fraud, but a case where the chairman of a meeting stated that a resolution had been carried by

A the requisite majority but also gave the numbers voting which showed that he was demonstrably wrong, and it is no doubt cited only for the first proposition in the text, that so-called conclusive evidence can be displaced if it is inaccurate on its face.

97 The second case cited is *Wall v London and Northern Assets Corpn (No 2)* [1899] 1 Ch 550. Here the articles of a company provided that
B objections to a vote had to be taken at the meeting in question, and every vote not disallowed at such meeting "shall be deemed valid for all purposes whatsoever". The chairman allowed certain proxies and North J held that that was final. There was again no suggestion of fraud but he said that he did not agree with the suggestion that such a provision would apply in the case of fraud: "Any fraudulent ruling would, I have no doubt, be vacated by a competent court." This too seems to me on analysis to be in the end a
C question of construction: North J construed the articles as not extending to the chairman's decision being deemed to be valid in the case of a fraudulent ruling (by which I assume he meant a case where the chairman was acting dishonestly not where he had been deceived by the fraud of someone else). This is readily explicable on the same principle as *HIH Casualty and General Insurance Ltd v Chase Manhattan Bank* [2003] 1 All ER (Comm)
D 349: a person becoming a shareholder in a company on the basis of the articles is to be taken as agreeing to abide by the ruling of the chairman if he is merely wrong, but not if he is acting dishonestly.

98 The third case cited, and the one on which Mr Munro placed most reliance, was *Lazarus Estates Ltd v Beasley* [1956] 1 QB 702. This concerned statutory provisions in the Housing Repairs and Rents Act 1954 under which the landlord of a house subject to rent control could obtain an
E increase in rent if he produced satisfactory evidence that repair work had been carried out to the value specified in a schedule. The landlord could serve a declaration as to the value of work carried out and, unless the tenant applied to the county court within 28 days to challenge the declaration, that declaration would be treated as satisfactory evidence that the work had been carried out and "subject as aforesaid the validity of a declaration shall not be
F questioned on the ground that the value of the work of repair stated in the declaration . . . is less than that required" by the schedule. The landlord served a declaration claiming to have carried out work to the value of £566 of which £300 was for "other repairs". The tenant did not apply to the county court within 28 days but when sued for the increased rent asserted that no works at all had been carried out to justify the figure of £300.

99 The majority of the Court of Appeal held that she could challenge
G the landlord's declaration on the basis that it was fraudulent. Denning LJ said, at pp 712–713:

> "No court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The court is careful not to find fraud unless it is distinctly
H pleaded and proved; but once it is proved, it vitiates judgments, contracts and all transactions whatsoever: see as to deeds, *Collins v Blantern* (1767) 1 Smith's LC, 13th ed, p 406; as to judgments, *Duchess of Kingston's case* (1776) 2 Smith's LC, 13th ed, pp 644, 646, 651; and as to contracts, *Master v Miller* (1791) 1 Smith's LC, 13th ed, pp 780, 799. So here I am

of opinion that if this declaration is proved to have been false and fraudulent, it is a nullity and void and the landlords cannot recover any increase of rent by virtue of it." A

100 Parker LJ agreed: he said that the tenant was seeking to do more than challenge the validity of the declaration on the ground that repairs had not been done to the value specified; she was seeking to establish that the declaration was a nullity. Fraud, if proved, "vitiates all transactions known to the law of however high a degree of solemnity": see p 722. Morris LJ dissented on the grounds that the language of the statute was compelling. B

101 Despite the typically ringing tones in which Denning LJ's judgment is expressed, I think one needs to be careful as to what this case actually decides. It says little, if anything, about the general effect of a conclusive evidence provision in a statute. The basis of the decision was that a fraudulent declaration by the landlord was a nullity and hence not a declaration within the meaning of the Act at all, so the statutory consequences did not follow. In other words although the statute provided that "a declaration" should not be questioned on the grounds that the value of the work was less than required, this did not apply where there was no valid declaration at all. C D

102 Mr Munro also relied on the decision of Lawrence Collins J in the action brought by ANB against Mr El-Abdali in 2005: *Arab National Bank v Registrar of Companies* [2005] EWHC 3047 (Ch). Here Lawrence Collins J referred to *In re Calmex Ltd* [1989] 1 All ER 485; said that the purported mortgage was an instrument of fraud and was never a charge that could properly have been registered under section 396 of the Companies Act 1985; said that the Registrar was under a duty to remove the charge from the register; and held that in those circumstances the court has an inherent jurisdiction to ensure that the Registrar complied with her statutory duty and did not allow the purported mortgage to continue to be registered as a charge. He added, at para 12: E

> "I am satisfied that I should make the order in accordance with the fundamental principle that 'fraud unravels all' and in view of the fact the Registrar has public duties, one of which must be not to allow the continuance of a state of affairs in breach of an order of the High Court declaring that a document which was subsequently registered in the public records was a fraud and a forgery." F

However this was an ex tempore judgment given in a case where there was no appearance on behalf of the Registrar (or Mr El-Abdali), and nothing in Lawrence Collins J's judgment to indicate that his attention was drawn to the "conclusive evidence" provision in what was then section 401(2)(b) of the Companies Act 1985, or the decision of the Court of Appeal in *Exeter Trust Ltd v Screenways Ltd* [1991] BCLC 888. I do not think I can regard it as an authority deciding that the *In re Calmex Ltd* jurisdiction can be used to override the effect of a conclusive evidence provision in the case of fraud. Mr Mullen pointed out that in an earlier case on the same conclusive evidence provision (then found in section 98(2) of the Companies Act 1948), *In re Eric Holmes (Property) Ltd* [1965] Ch 1052, Pennycuick J had held that its effect was that once the Registrar's certificate had been granted it was G H

A impossible to go behind it even though the particulars of charge lodged for registration had misstated the date of the charge, adding, at p 1072:

> "It is, I think, possible that there is some lacuna in the Act here, in as much as the Act gives, apparently, protection where the certificate is made on the basis of particulars which are incorrect and might even be fraudulent."

B This was clearly obiter but shows that Pennycuick J at any rate thought that the certificate might be conclusive even in a case of fraud.

103 Those being the authorities to which I was referred, I can now give my conclusion. I do not accept Mr Munro's submission that the principle that fraud unravels all is a sufficient basis to go behind the conclusive evidence provision in section 8C of the 1907 Act. I do not think that C section 8C can in effect be interpreted as if it read "the certificate is conclusive evidence that a limited partnership came into existence on the date of registration, save where the certificate has been procured by fraud". I do not think *Lazarus Estates Ltd v Beasley* [1956] 1 QB 702 establishes any such general principle: in that case it was the landlord who had made the declaration who was said to have acted fraudulently, and (if this was the D case) this precluded him from relying on his own fraudulent declaration as conclusive. But in this case the conclusive certificate was given by the Registrar and it is of course not suggested that the Registrar has himself given a fraudulent certificate. I need not consider what the position would be if the Registrar were said to have himself acted fraudulently—no doubt an unlikely scenario; in circumstances where the Registrar has acted entirely bona fide, although mistakenly, in registering the partnerships and giving E certificates, it seems to me that the plain wording of section 8C of the 1907 Act requires those certificates to have conclusive effect even though the mistake was procured by the fraud of the applicant.

104 Mr Munro referred me to the Explanatory Document, issued by what was then the Department for Business Enterprise and Regulatory Reform, to accompany the Legislative Reform (Limited Partnerships) Order F 2009 which introduced amendments into the 1907 Act, including the conclusive evidence provision in section 8C. This shows that limited partnerships are still very much in use and have become one of the most important vehicles for venture capital investment across Europe, and that the impetus for the introduction of the conclusive evidence provision was that potential investors in a limited partnership wished to be certain that G they could not be exposed to unlimited liability. This required their lawyers to check if the registration of a limited partnership could be defective to cater for the risk that the limit on their liability might be lost if there were some irregularity in the application. The essential requirement was that an innocent investor who agrees in good faith to become a limited partner should not be put at risk, and the Department believed that this is what the draft achieved.

H **105** I accept that this material is admissible to explain the mischief at which the conclusive evidence provision in section 8C was aimed; and I accept Mr Munro's submission that the concern was for participants in a limited partnership rather than (as with the registration of company charges) outsiders dealing with them. But the explanation given in this document to

my mind illustrates the disadvantages of any decision that the court can go behind the Registrar's certificate in the case where it had been procured by fraud. It seems from the department's explanation that it is common for investors to be invited to join an existing limited partnership, and that the purpose of section 8C is to assure them, without extensive and expensive legal research, that the partnership exists so that their liability will be limited. If the court retained a power, however seldom used in practice, to strike down the existing registration on the ground that it had been procured by fraud, it would cut across this policy objective. It would mean that any investor joining an existing partnership would be at risk of an allegation that the partnership had not been duly registered after all and should be removed, thereby raising the spectre of unlimited liability. In my view therefore a consideration of the mischief at which this provision was aimed tends to reinforce the conclusion I have come to rather than undermine it.

106 I conclude therefore that the certificates of registration of each partnership issued by the Registrar are indeed conclusive evidence that each partnership came into existence on the date of registration as section 8C(4) of the 1907 Act provides; and the fact that the registration of each partnership was procured by fraud and forgery does not make any difference to this.

What should be done?

107 That leaves the question as to what should be done with the register. It is obviously unsatisfactory that the register should simply record the partnerships as if they were bona fide valid existing partnerships. This would simply be misleading. However it is to be noted that although the 1907 Act requires partnerships to be registered, it does not contain any provision for de-registration. Indeed it is not obvious that there is any statutory requirement even to notify the Registrar that a limited partnership has been dissolved: section 9(1) requires various changes to the partnership to be notified but it does not expressly include the dissolution or termination of the partnership, and although it could be said that a termination was within section 9(1)(e) as being a change in the "term" or "character" of the partnership, there is the added difficulty that section 9(1) applies to changes "during the continuance of a limited partnership" and it is not obvious that a termination of a partnership, by dissolution or otherwise, is a change that takes place during its continuance.

108 That means that the register is not simply a register of existing partnerships. It is a register of partnerships that have come into existence. I asked at the hearing to be told what information a person searching the register is given, and after the hearing was over I was sent agreed examples of screenshots showing what someone sees who searches the register through the Companies House online search facility, called WebCHeck. (I was also told that as far as is known there is no physical register or paper ledger, and searchers who turn up in person at the offices of Companies House are given access to electronic terminals.) It is apparent from this material that a person searching WebCHeck for "Bank of Beirut" will be taken to a screen where "Bank of Beirut SAL Debenture Deed Limited Partnership" is listed, in an alphabetical list, with its registration number (LP015722), and a column indicating "Converted/closed". A rubric at the top says: "To obtain further

details, click on the appropriate company number below" and if one clicks on the number, it brings up a screen showing the partnership's status as "Converted/closed 17/04/2015". There is a clickable link for "Order information on this company" which takes one to another screen which lists the available information which can be ordered with a date and a brief description. This list shows the following:

LP5	30/9/2013	1 General Partner(s) appointed, 1 Limited Partner(s) appointed and the contributed amount is 1000 USD
Annotation	20/4/2015	Clarification Order declaring the application for registration to be false, fraudulent and made without the authority of the Bank of Beirut SAL
Cert12	30/9/13	Limited Partnership

A user who registers and pays a fee of £1 can download this information and will retrieve a copy of the order I made on 30 March 2015.

109 Mr Munro says that this is not ideal from the point of view of the Banks. The label "converted/closed" is an ambiguous label that is potentially confusing; and the searcher does not see a copy of the order unless he clicks through a series of webpages via counterintuitive steps. It seems to me however that these criticisms do not affect the substance of the matter which is that anyone searching for the partnership on WebCHeck will be alerted to the fact that there is something unusual about the partnership (even if it is not immediately obvious what the label "converted/closed" means) and that it is not too difficult to discover how to find further information about it. Having done so, even without registering and paying to download information the words "false" and "fraudulent" are a clear indication that all is far from well.

110 Mr Munro also expresses concerns about the suggested procedure if a customer asks for a copy of the certificate of registration. The Registrar suggests that in such a case given the filing history the request would be referred to the Companies House legal team and it is anticipated that the certificate would be annotated in manuscript. Mr Munro says that the Banks do not know what the annotations will say or how long this procedure will last and that it is liable to human error.

111 At this point I remind myself that it is not the function of the court to micromanage the processes of Companies House. The *In re Calmex Ltd* [1989] 1 All ER 485 jurisdiction under which the court can order the Registrar to remove a document from a register is based on the Registrar being in breach of his public law duties. But in the present case I have held that the effect of the certificates being issued is that the partnerships did come into existence; and I do not think that the Registrar is in breach of any public law duty in declining to remove the partnerships as if they had never existed. To do so might actually cause more confusion than the course adopted by the Registrar of leaving the partnerships on the register but

marking them so that anyone searching is reasonably alerted to the position. It does not seem to me that in so acting the Registrar is shown to be in breach of duty, and I am not in those circumstances going to investigate or form any view as to how robust or longlasting the Registrar's processes for dealing with possible future applications for paper certificates might be.

112 Mr Munro also says that a person performing a Google search for "Bank of Beirut SAL Debenture Deed Limited Partnership" does not immediately retrieve a Companies House website but is first pointed to a number of commercial providers of information who are bulk customers of Companies House. Searches of such bulk customer websites do not necessarily indicate any particular status for the partnerships. The Registrar says that the bulk product manager at Companies House has written to the bulk customers to inform them of the change and that some at least have implemented the change. The short answer to this submission is that the Registrar is not responsible for the content of external websites and I am not persuaded that the Registrar is under any duty to do more than has been done.

Conclusion

113 In these circumstances I do not think it is open to me to order the Registrar to remove the entries relating to the partnerships from the register. I will therefore make no order against the Registrar. I will hear counsel on whether any further declarations are appropriate, and any other consequential matters.

Applications as against first defendant granted.
Applications as against registrar refused.

ISABELLA CHEEVERS, Barrister