

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
FINANCIAL LIST (QBD)

Claim No. FL-2017-000004

BEFORE: THE HONOURABLE MR JUSTICE LEGGATT

IN PUBLIC

1 February 2018

B E T W E E N:

DANA GAS PJSC
(a company incorporated under the laws
of the United Arab Emirates)

Claimant

- and -

(1) DANA GAS SUKUK LIMITED
(2) DEUTSCHE TRUSTEE COMPANY LIMITED
(3) DEUTSCHE BANK AG
(4) COMMERCIAL INTERNATIONAL BANK (EGYPT) SAE
(5) BLACKROCK GLOBAL ALLOCATION FUND, INC.

Defendants

ORDER

UPON the trial of preliminary issues in the proceedings

AND UPON the Claimant's application, dated 8 December 2017, to set aside the preliminary issues judgment dated 17 November 2017 pursuant to CPR 39.3 (the "39.3 Application")

AND UPON the Fifth Defendant's application, dated 19 December 2017, for summary judgment (the "Summary Judgment Application")

AND UPON the Claimant's application, dated 19 December 2017, to continue the injunction granted by paragraph 5 of the Injunction Order of HHJ Waksman QC dated 5 July 2017 (the "Injunction Continuation Application")



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AND UPON the Fifth Defendant's application, dated 21 November 2017, to discharge the injunction granted by paragraph 5 of the Injunction Order of HHJ Waksman QC dated 5 July 2017 (the "**Injunction Discharge Application**")

AND UPON the Claimant's application, dated 19 December 2017, to vary paragraph 4 of the Directions Order of HHJ Waksman QC dated 5 July 2017 and to delete paragraph 6 of the Injunction Order of HHJ Waksman QC dated 5 July 2017 (the "**Variation Application**")

AND UPON the Fifth Defendant's application, dated 21 November 2017, for an anti-suit injunction (the "**Anti-Suit Injunction Application**")

AND UPON hearing Leading Counsel for the Claimant, Leading Counsel for each of the Second and Fifth Defendants and Counsel for the First Defendant

IT IS ORDERED THAT

1. Capitalised terms used in this Order have the meanings ascribed to them in the Amended and Restated Purchase Undertaking dated 8 May 2013 entered into by the Claimant in favour of the First and Second Defendants (the "**Purchase Undertaking**") and in the Amended and Restated Declaration of Trust dated 8 May 2013 entered into by the Claimant, the First and Second Defendants and HSBC Trustee (C.I.) Limited (the "**Declaration of Trust**").

THE 39.3 APPLICATION

2. The 39.3 Application is dismissed.

THE SUMMARY JUDGMENT APPLICATION

IT IS DECLARED THAT

3. Each of the following is valid and binding and enforceable in accordance with its terms:
 - 3.1. The Declaration of Trust;
 - 3.2. The Amended and Restated Security Agency Agreement relating to Dana Gas Sukuk Limited, dated 8 May 2013, entered into by the Claimant, the First, Third and Fourth Defendants and HSBC Trustee (C.I.) Limited;

- 3.3. The Security Agreement relating to a charge over registered shares of Dana LNG Ventures Ltd, dated 8 May 2013, entered into by the Claimant, the First and Third Defendants and Dana LNG Ventures Ltd;
4. On or around 3 August 2017, a Dissolution Event, within the meaning of condition 13.1(a) of each of the Ordinary and Exchangeable Terms and Conditions at Schedule 2 to the Declaration of Trust, occurred by reason of a default in the payment of the Periodic Distribution Amount that was due for payment on 31 July 2017, which default continued unremedied for a period of three days.

IT IS FURTHER ORDERED THAT

THE INJUNCTION CONTINUATION APPLICATION AND THE INJUNCTION DISCHARGE APPLICATION

5. The Injunction granted by paragraph 5 of the Order of HHJ Waksman QC dated 5 July 2017 is hereby discharged prospectively, with effect from 4pm on 29 March 2018, without prejudice to the following:
- 5.1. The Claimant's cross-undertaking in damages at paragraph 1 of Schedule B to the Order of HHJ Waksman QC dated 5 July 2017 shall be enforced and the First to Fourth Defendants have liberty to apply for directions in respect of an inquiry into damages.
- 5.2. The Claimant's cross-undertaking in damages at paragraph 5 of Schedule B to the Order of HHJ Waksman QC dated 5 July 2017 shall be enforced and the Fifth Defendant shall have liberty to apply for directions in respect of an inquiry into damages.
6. Until the resolution of the remaining issues in dispute in these proceedings or further order, upon receipt of the Exercise Price or part thereof in accordance with the provisions of the Purchase Undertaking the First Defendant (whether in person or acting through any other person, including its delegate, the Second Defendant) may not make or cause to be made payment of that sum, or any part of that sum, to any Certificateholder in accordance with the terms of the Declaration of Trust or other Transaction Documents; but for the avoidance of

doubt the First Defendant shall be otherwise entitled to apply such sum in the manner provided for by the Declaration of Trust and nothing in this Order prevents any funds from being applied towards the payment of the costs and expenses of the First and Second Defendants to the extent permitted in the Transaction Documents.

THE VARIATION APPLICATION

7. The Variation Application is dismissed.

DIRECTIONS

8. The stay of proceedings in respect of the First Defendant, by Order of Mr Justice Leggatt dated 31 July 2017, is hereby lifted.

9. The Claimant shall file and serve Re-Amended Particulars of Claim by 4pm on 1 March 2018.

10. The Defendants shall each, if so advised, file and serve a Defence or Amended Defence or Re-Amended Defence and Counterclaim (as the case may be) by 4pm on 29 March 2018.

11. The Claimant shall, if so advised, file and serve any Reply and/or Amended Reply by 4pm on 12 April 2018.

12. A case management conference, with a time estimate of half a day shall be listed for the first available date from 16 April 2018.

PERMISSION TO APPEAL

13. Permission to appeal is refused in respect of:

13.1. The Preliminary Issues Judgment dated 17 November 2017;

13.2. The dismissal of the 39.3 Application;

13.3. The dismissal of the Injunction Continuation Application;

13.4. The grant of the Anti-Suit Injunction Application.

COSTS

14. The Claimant shall pay the Second Defendant's costs of the proceedings down to 19 September 2017 on the standard basis, to be assessed by detailed assessment if not agreed.
15. The Claimant shall, by no later than 4pm on 15 February 2018, pay to the Second Defendant the sum of USD 800,000 by way of a payment on account of the costs referred to in paragraph 14 above.
16. The Claimant shall pay the Second Defendant's costs of each of (i) the 39.3 Application, (ii) the Summary Judgment Application, (iii) the Variation Application, (iv) the Injunction Continuation Application, (v) the Injunction Discharge Application and (vi) the Anti-Suit Injunction Application (together, the "**Applications**"), on the standard basis, to be assessed if not agreed.
17. Nothing in this Order shall waive, release, affect or prejudice in any way any contractual rights of the Second Defendant under the Declaration of Trust to recover or receive payment of any costs (including the costs referred to in paragraphs 14 and 16 above).
18. The Claimant shall pay the Fifth Defendant's costs of each of (i) the Preliminary Issues Trial (including, for the avoidance of doubt, the costs reserved by Orders of Mr Justice Leggatt dated 18 and 22 September but not including the costs reserved by Order of Mr Justice Leggatt dated 6 October 2017); and (ii) the Applications, on the standard basis, to be assessed if not agreed.
19. The Claimant shall, on 6 February 2018, file and serve written submissions in response to the Fifth Defendant's application for a payment on account of the costs referred to in paragraph 18 above.
20. The Fifth Defendant shall, by 4pm on 7 February 2018, file and serve any written submissions in response to the Claimant's written submissions referred to at paragraph 19 above.

21. The First Defendant shall have liberty to apply in respect of its costs of the Preliminary Issues Trial and the Applications.