

7KBW



Michael Holmes QC and Ralph Morley succeed in jurisdiction challenge on multi-million-dollar Libyan Investment Authority fraud claim

Monday, 6th December 2021

[Libyan Investment Authority v Credit Suisse and Others \[2021\] EWHC 2684 \(Comm\)](#)

In a judgment handed down by HHJ Pelling QC, Michael Holmes QC and Ralph Morley have succeeded in a jurisdiction challenge in the High Court to a multi-million-dollar claim brought by Libya's sovereign wealth fund, the Libyan Investment Authority ("the LIA").

This was the latest in a long-running series of high-value claims brought by the LIA concerning investments it executed in the years prior to the Libyan Revolution in 2011. The LIA issued this claim in November 2019. It concerned an investment of US\$200 million the LIA made in credit notes issued by Credit Suisse in 2008 and restructured in 2009. The credit notes were linked to the performance of external funds. The LIA alleged that, to the knowledge of Credit Suisse and the external fund managers, a Libyan national named Mr Giahmi had paid bribes and made threats to officers of the LIA to gain influence with the LIA and had used that influence to procure the LIA's purchase of the

credit notes and restructuring of the credit notes. The defendants strongly denied those allegations.

The LIA claimed against Credit Suisse and the fund managers. It also claimed against Mr Giahmi and the Cayman company through which he offered his services, Lands Company Ltd (“Lands”), for monies had and received, dishonest assistance, knowing receipt and damages. The sums claimed by the LIA were the commissions earned by Lands on completion of the original credit note transaction. The primary limitation period under English law of six years from the LIA purchasing the credit notes had expired. The LIA argued that it was entitled to rely on section 32(1)(a) and/or (b) of the Limitation Act 1980 to postpone the date from which the limitation period began to run – in particular, because it alleged it did not know and could not have discovered that Mr Giahmi, via Lands, had provided intermediary services.

After the LIA obtained permission without notice to serve Lands out of the jurisdiction, Lands disputed the jurisdiction of the Court and applied to set aside the order on the basis that (among other things) the LIA’s claims had no real prospect of success as a matter of English law because they were time-barred.

Michael Holmes QC, who previously appeared for Lands in its successful challenge of a similar claim brought by the LIA (***Libyan Investment Authority v JP Morgan Markets Limited*** [2019] EWHC 1452), appeared with Ralph Morley at a six-day hearing in June and July of 2021.

In his judgment, HHJ Pelling QC found that the LIA’s claims against the Defendants were time-barred. The LIA could have discovered with reasonable diligence more than six years before the issue of proceedings the alleged fraud, or the allegedly concealed facts, and could have pleaded its claim. The Judge also held that certain claims made against the second and third defendants, namely a claim in knowing receipt and a proprietary claim to tracing, had no realistic prospect of success as a matter of law.

Of broader interest to practitioners dealing with limitation, the Judge held (contrary to a submission by the LIA) that facts known by a person whose knowledge is attributable to an entity continue to be known by that entity for the purpose of limitation even if the relevant natural person forgets or leaves the entity. This issue, which is likely to recur frequently when companies and other entities seek to rely on section 32 of the Limitation Act, had not previously been determined.

Michael and Ralph were instructed by Ian Gatt QC and James Price of Stewarts Law LLP.

Please view the judgment [here](#).

Expertise

[Civil fraud](#)

[Commercial litigation](#)

[Jurisdiction / conflict of laws](#)



[Mr Michael Denzil Holmes Q.C](#)

[Online Profile](#)



[Mr Ralph Morley](#)

[Online Profile](#)



7 King's Bench Walk
Set of the Year



7 King's Bench Walk
Insurance Set of the Year

7 King's Bench Walk

7KBW, London, EC4Y 7DS
United Kingdom

7KBW has a reputation for excellence and intellectual rigour, combined with a practical and commercial approach to delivering advice and conducting litigation.

7KBW offers separate mailing lists for news, events and talks & seminars.

Follow us:



7kbw.co.uk