

29/82

IN THE PRIVY COUNCIL

No. 39 of 1980

ON APPEAL
FROM THE COURT OF APPEAL OF THE GAMBIA

BETWEEN :

BRITISH PETROLEUM LIMITED

Appellants

-- and --

EMILE ABOURITZ

Respondent

APPENDIX 'A'
TO RESPONDENT'S CASE

Messrs Philip Conway Thomas & Co.
61 Catherine Place,
Westminster,
London. SW1E 6HB

Appellants Solicitors

Messrs Charles Russell & Co.
Hale Court,
Lincolns Inn,
London. WC2A 3UL

Respondents Solicitors

BETWEEN:

EMILS ABOURITX

APPELLANT

5

AND

BRITISH PETROLEUM LTD.

RESPONDENT

P.C.C. Secka for Appellant

A. M. Drazneh for Respondent.

NOTES ON INQUIRY BY MASTER

10 6th February, 1979

Parties present.

15 SECKA: This case is not a case that can go to a referee. We have to deal with what the Court of Appeal asked of the parties. What did the parties do in response to the order of the Court of Appeal? If the parties did what the Court of Appeal asked them to do, detailed account would have been filed.

20 We filed our accounts in which we showed that Exhibit 'L' - a bundle of delivery notes - add up to so much; we showed Exhibit 'L' which is payment by cheques. We filed issues raised in the pleadings. What the Respondent filed is a flouting of the Court of Appeal's Order. There must be some legal effect if you flout a legal order. What is the effect of
25 this document dated 6/12/78? The effect is the Master must note the fact that the order has not been complied with by Respondent and to the extent that Respondent did not file Statement of Account (they are Plaintiff's in the main suit). They did not file any issues, the
30 Court can only proceed on the accounts and issues filed by the Appellant. The order of the Court of Appeal must be observed most strictly. The Master is seized of this case. The parties must put on detail accounts to Master.

That is my objection to this matter being referred to a referee.

What was the order of the Court of Appeal? To what extent have the parties complied with the order? The effect of non-compliance?

5

DRAMEH: I am also objecting that this matter goes to an Accountant. It is within the ability and knowledge of the Master to deal with it.

The order of the Court is clear. What I have done is complying with the order. I said those in the record of proceedings be deemed as what I want to file. The ones in the record of proceedings are enough. These are my instructions. This is complying with the order. That is another way of complying with the order. I have done something within the time prescribed: I do not intend to file anything else other than those that I filed in the record of proceedings including the pleadings.

10

15

SECKA: The Court of Appeal had seen the record of proceedings before they made the order. It is being adjourned time and again. I am glad we have agreed to inquire into the matter here now.

20

DRAMEH: The Court of Appeal cannot compel me to bring more materials - further materials.

25

SECKA: How are we going to proceed? The whole issue is to file detailed issues.

DRAMEH: I don't want to file any accounts or relevant documents. They are all in the record of proceedings.

COURT: As far as my suggestions to get an Accountant as a referee is not specifically an order by the Court of Appeal, I can get an Accountant to sit by my side and help me to thrash out the issues.

30

Secondly, I agree with Mr. Drameh on that what he has already filed is sufficient. That was before the Court of Appeal and that is before me now.

35

SECKA: I wish to start with issue, paragraph A of Appellant's.

5 Page 78 of the record of proceedings lines 12 to 23 (whole paragraph). We refer to the Lands (Provinces) Act, Cap. 103 of Vol. V Section 7. I Refer to Judgment of Sir Phillip (P. 58, lines 32 to 34). If it were a Gambia Company it would occupy land as a Gambian; but for foreigner as a foreigner ?

10 Where an agreement offends specific statutory provisions, a court of equity will not grant relief because equity follows the law. Since a court of equity will not grant relief, there could not be a tenancy.

15 Section 7(2) (reads) - Tenant at will Section 7(1) (reads) - non indigene. Lets look at Exhibit 'C' page 82. The condition has not been complied with in so far as the execution of the lease is concerned. Section 13 of Cap. 103. (Page 84 record of proceedings). No such two witnesses. Section 14 (reads) 20 If you don't do what you ought to, you have a year to year tenancy.

25 Another point: Section 18 of Cap. 103; Sub-Section 1 (pages 82 to 84) nowhere is it stated that the consent of the minister is obtained. Section 16 says it is void. No mention of Minister's consent. No exhibit in the case. Say "Although we did not put it on the document but here it is".

30 Law: The law is that where a covenant is void at law, a court of equity will not force to it by injunction: duty of equity to follow the law; then no need for specific statutory provision. Halsbury Law of England Third Edition Vol. 14 para. 995 at page 2526. He referred to NOBLEMAN v. MAXIM NOBLEMAN (Buns and Arms Co.) 1894. Appeal case decision of the House of Lords 523 at page 563. The C.J. gave specific performance of an agreement. Specific performance cannot be granted if plaintiff is in breach of his own obligation. Halsbury's Modern Equity, 9th Edition page 37.

40 (Page 63 of record of proceedings para. 3 lines 22 - 23). Duty to ensure; to obtain minister's consent. If he breaches that condition, he is not qualified for the relief. There will be no relief.

Issues B, C and F argued together:

I refer to Exhibit D (page 85 lines 30 - 35).
 There is a specific provision for termination.
 Exhibit J (page 101). Only document that goes
 close to termination. Was Exhibit J noted to
 termination or notice to quit? Exhibit J should
 have been delivered after a notice was served.
 (Page 92 Clause 6). It is reasonable than to give
 him three months' notice. There was no notice to
 terminate!! Clause 7: Before notice to quit there
 must be notice to terminate - 3 months. Exhibit J
 did not comply with Clause 6 and the invocation of
 Clause 6 is a condition precedent to the operation
 of Clause 7. It was not properly terminated: Were
 they entitled to cut off supplies? We have to find
 out. Did the Appellant do anything wrong? I refer
 to (page 78 lines 24 to 29) of the judgment.

Para. 324 at page 72. There was no evidence
 that my client didn't keep books. There were no
 such findings or evidence. Appellants were not in
 any breach of the agreement. Amended Statement of
 Claim - (page 22 lines 18 - 19) para. 2 of amended
 Statement of Claim. (Page 24 of records of proceed-
 ings) - our request further and better particulars.
 (Page 28) The reply of respondents to those further
 and better particulars. Two months preceding the
 the filing of the writ at page 23. The station was
 closed on 24th November, 1975. Look at exhibit A and
 B, pages 80 and 81. Bills sent for dates in November
 At page 21 which of the said Clauses - reply answer
 Clause 6 - page 93; record of proceedings.

Inquiry adjourned to tomorrow 7/2/79

7/2/79

Resured

Appellant present

F.O.O. Stock spacer for Appellant (Abouritz)

A. K. Dransok for respondents (S. P.)

(Continuing his argument);

This clause is similar to that with the Appellant
 clause of S.P.'s lease etc.

B.P. has the right to act. Clause 6 irrelevant
Clause 5 (page 86) - responsibility of the dealer.
(Page 87) Responsibility etc.; Clause 3 (1) is what
he says on page 28. It cannot be denied that one is
5 bound by the replies one gives to request for further
and better particulars. When have they been in breach
of this ? 2 months before the writ was filed. Clause
3 (3) (page 87) - Dealer shall pay etc. We are saying
that no evidence as to terms of payment agreed between
10 the dealer and Respondent - all we know they supply
and he pays later - no specific agreement as to, say,
time of payment. There could be no evidence that 3 (3)
was breached by Appellant. Clause 3 (19) (at page 90)
Question of dealing with sufficient stuff. No evidence
15 that Appellant failed to pay stocks he received. That
is the action against him - for failing to pay stock !
No evidence in pleadings about that. Evidence of Mr.
N'Jie says nothing about that Clause 3 (24) (page 91).
No evidence that this was not done. No proof. Clause
20 3 (2) (pages 86 - 87). B.P. exclusive sellers and suppliers
to Appellant. We refer to the pleadings (on page 22)
paragraph 4 of amended Statement of Claim. If Appellant
should not sell any product other than B.P.'s and they
refuse to supply him any supplies could there be a
25 better reason for closing the station than that ? I
submit No. They admitted in their pleadings that the
Appellant could not get supplies from elsewhere. We
are not in breach of any of the Clauses which they have
referred to in their answer to our request for further
30 and better particulars. Evidence does not disclose any
breach of contract by Appellant. The closure: as to
what amounts to our breach is in the evidence of P.7.
(page 44. Lines 1 & 2 of page 44). This is the reason
given by the Local Manager of Plaintiff Company. What
35 does it say in the contract that being a debtor is a
breach ? In fact I will go further to say that the
contract contemplates a debtor and creditor relationship
that could not be a breach ! 2nd point as to whether
Appellant was a debtor, he contacted it and asked for
40 a Statement of Account. (Page 245 at lines 12 lines 13
lines 5 of page of exhibits P to P7. Line 13 on page
to line 13 of page 45). This is before the closure.
This not a breach ?

They did not agree with that.

- (1) The free management/seller contract was not properly terminated by Respondent.
- (2) The Respondent were not entitled to stop supply of petrol and other petroleum product Appellant when they did in November, 1974.
- (3) The evidence does not disclose that the Appellant were in breach of any of the Clauses alleged by the Respondent.
- (4) Even if the Appellant were in breach of some minor Clause in the agreement the breach was not serious enough to entitle the Respondent to stop without notice the supply of petrol and other products.

15 The question is whether the Appellant are not entitled to damages on their counter claim.

I have a right to address you on the measure of damages.

20 You can measure by the loss of profit. The damages would be the loss of profit from November, '74 to February '79 and your Lordship DEBRO VAL INTERNATIONAL Vs. FRANK TIGHER IN MARKETING LTD 1974 2 (All England Report). Case of distribution agreement. "Judgment be entered for Defendant on their counter-claim for an amount to be ascertained by an official referee of the Supreme Court for damages for breach of agreement". Rules are clear. Profit for how many months? You could also ask us to supply the details for scrutiny!

25 The Respondent repudiated the contract. The law on Repudiation in Chastina and Fifoot 8th Edition pages 562 - 563 (Head). That has been clear in the evidence of P.W. 1. I refer to page 22. I now refer to page 52 paragraph 4 lines 17 - to 21. If we cannot get petrol from those we entered the contract with; we closed it due to circumstances beyond our control; we are tied to B.P. They refused to supply. It closed. There is no dispute on the circumstances surrounding the closure of the contract.

30 I refer to P.W. 1 - 20, 21 - 23, 25 - 27 the notes!
 35 P.W. 2 - 20, 21 - 23 the notes!

3rd issue: (D & B argued together)

If yes to D on who does the burden of producing a Statement of account lies? The burden to produce a correct statement of account bearing the relevant period of the relationship of the parties giving detail of total supplies and total payments lies with the Respondant (Plaintiff - B.F.). They are the ones who said persistently: 'You are owing me'. He who alleges must prove. They have not done this in the Supreme Court and in the Court of Appeal to the extent that we have Counter Claim we are going to prove our Counter Claim by referring to the account we have submitted. The account for period 12/1/74 to 13/12/74. The account refers to certain exhibits. Debit Exh. L & A, Credit, Exh. H. Exh. I is their monthly summary - page 5 in the Record of Proceedings. Monthly statement of B.F. deliveries. Delivery notes. Period up to August. You can go through the same exhibit against what our Accountant had found. Our Accountant referred to Exh. A. Everything he claimed, Appellant; gave them. We have been paying by cheques - 2 of which bounced - we have not included these in our statements. We have the counter-foils of the honoured cheques. They are in evidence as Exh. VI to 15 on page 6. All cheques. All cashed by B.F. D107,846.83 has been paid by Appellant to B.F. in the final year of agreement. It is for B.F. to show invoices and delivery notes or else we are bound to set the difference of D96,544.25 which gives a credit balance of D11,305.58.

We ask: For somebody who has paid D107,346.00 in 1974 and in 1973 he paid on page 116 D125,929.61. In 1972, D105,722.13; in 1971, D84,344.64 in 1970, D11,377.75, if this man tells you give me supply against cash, is this not reasonable? Date of payments: Regularity. Regular customer. It is unreasonable for B.F. to have behaved like that to Appellant.

The master should find that it should have been B.F. who should produce accounts: that the accounts produced by Appellant are sufficient to guide the court to determine the state of differences between the parties because they explicitly referred to his documents at the trial.

I invite the court to accept the accounts submitted by Appellant.

Final issue: (6)

5 The Respondent are a Limited Company. According to
 the judgment of Chief Justice on page 58 at p. 33.,
 it is not disclose where the Company was incorporated.
 I refer to the statement of claim on page 2 line 9 of
 record of proceedings. B.P. a businessman? Page 17
 - P4. Distributors of Petroleum products in The Gambia.
 Evidence of the Manager page 42. Nothing about incorp-
 10 tice. It is clearly stated in Court of Appeal that a
 Company must sue by its corporate name especially if it
 is not incorporated in The Gambia. A company can only
 recover a debt if the debit is Ultra Vires. No evidence
 B.P. have not properly been scrutinized. That is all.

Inquiry adjourned to 8/2/79 at 9 a.m.

15 12/2/79

Resumed

P.C.O. Secka for Appellant (Abouritz)

A. N. Drammah for Respondent (B.P.)

DEAFEN - Addresses the Inquiry:

20 There were two suits consolidated in Supreme Court
 one claiming D21,129 and the other relating to the
 possession of premises.

25 First suit relating to the claim of D21,129; evidence
 is clear in the same way as the Judgment is. I covered
 the C.J.'s findings. This is summed up in page 77 of
 recording of proceedings from line 4 to line 26. The
 invoices were clear. Needs no elaboration. Before ad-
 30 ding that matter, I'll draw your attention to Mr. Thomas
 who signed the account in the same and who gave evidence
 on page 51 of record of proceedings. The Chief Justice
 heard him with the figures. And now he produces separate
 figures. The only reference advanced by Appellant is that
 he asked for a statement of account. Page 77 lines 24
 to 27 (record of proceedings) Appellant exact change of
 35 system. That system prevailed throughout. That is the
 word of the Chief Justice - verbatim statement. Certain
 it is this was the system used: payment by cash. Involvement
 of a distributor; i.e. come and take to it.
 The Appellant. Appellant blind with the contract.
 40 The Appellant. Appellant blind with the contract.
 The Appellant. Appellant blind with the contract.

The account that is filed has no merit.

I suggest that you adopt the Chief Justice's findings,

Question of Lease:

5

The lease that was not registered is void. Not void but voidable. Lot of difference between void and voidable. Voidable is defined in STROUD'S JUDICIAL DICTIONARY OF WORDS AND PHRASES 4th EDITION VOL. V PAGE 2956. I refer you to Statute of fraud. Definition of void at page 2955. Wells Vs. Landsanlay. In this case it is not registered - leases of 3 or more years to be in writing. Section 49 of Law of Property Act Section 4 of the statute fraud.

10

15

20

25

30

The documents are valid, though not registered. It is still a valid agreement. Equitable interest. Parties entered into an agreement. B.P. allowed to build a station Equitable remedy of part performance. As good as a contract. Wherever in English Law the court can give the defendant available equity. Relying on all that the Chief Justice found that there was a tenancy (page line 13). The court found that they are to blame. That swayed the court. The Chief Justice was right in giving the equitable remedy to my client. B.P. relied on the agreement and built a station. The court was wrong to make the finding it did. (Page 76 from line 12). Statutory provision that you can use equity, statutory fraud, part performance are applicable here. The courts were not illegal if used properly, they can be brought on but the same findings. That is what the chief justice said. Look at the whole definition of void (page 2955 from line 9). The head lease was good but the sub-lease was voidable. The Local Authority did approve of the sub-lease.

35

40

Damage awarded by the court was supported by evidence. Pre-arrangement contract involved. The court may still have that position - as B.P. - they infringed the contract.

Clause 3 (1) (page 67). They could do it when they were left and did not have any other supplies; Exhibit B (1) of the agreement.

Clause 3(3). Lease not lawfully made. It is...

Clause 3(24) - indebted could not get anything from B.P. infringed. B.F. want to supply them.

Clause 3 (2). They couldn't. Had no money. Infringed.

5

Clause 6 (page 73).

Having infringed the contract in these ways - above - it was then an obligation if B.F. selected to terminate the contract. I submit contract was terminated forthwith.

10

(Page 74). B.F. was dissatisfied with the operation.

SECKA: Where is the letter ?

BRANCO: It was produced in court.

I have not seen the letter on record!

15

You can see there infringement that is why the Chief Justice was right in the award as to damages. Parties agreed on the measure of damages. Not imposed by the Court. Clause 7 page 74.

20

Notice was received within 48 hours he did not pay Penalty imposed. Notice is in record at page 101. When they failed the court was entitled to award damages.

Appellant did not keep books. Admitted page 19 11 13. "I kept no books - only have cheques". B.F. keeps books and monthly statement of accounts.

25

SECKA: Monthly statement of accounts or invoices ?

BRANCO: I quote the judgment of the Chief Justice at page 74 - monthly statement.

SECKA: Not monthly statement of accounts.

30

BRANCO: Monthly statement of deliveries and billing. B.F. does not operate on that system not on monthly statement of accounts.

BRANCO: I wish to call in an authority.

Inquiry on 12/2/79.

12/2/79

35

Enclosed

M. J. J. Seck for Appellant (Objections)

A. V. Branco for Respondent (B. F.)

DRAZDICH: (Continues)

5 At page 78 lines 3 to 11 this statement is made (reads out a statement). That is a mistake. It is not the district authority but the Ag. Permanent Secretary Ministry of Local Government by virtue of letter No. PA/32/D1/(245) dated 6/4/70.

SECKA: - objects that counsel for Respondent is referring to a document not exhibited at the hearing in the Supreme Court and no leave has either been sought or given by the Court of Appeal for the introduction of new evidence. No reference can be made about that letter.

DRAZDICH: Can you read the instructions made by the Court of Appeal. ?

15 SECKA: H or can you ask the court a question. Just make your submission and not interrogate the court. It is too late for counsel to introduce a document. In his letter to the court he stated that he shall submit no document at this Inquiry. It is too late.

20 DRAZDICH: (Reads out the order of the Court of Appeal). I said I did not want to file any pleading or accounts etc. Parties don't attend only to sit down. This is an Inquiry and I can produce any document relevant to it. If counsel does not want it this way, I can call the E.P. to come and produce it. This was a mistake and I can bring it.

25 MEDIA: I just want a ruling on this.

DRAZDICH: I can't bring E.P. to give evidence. We are allowed to bring parties to this Inquiry.

JUDGE: Address me on mistake, Mr. Drazdich.

30 DRAZDICH: As you can see in "SMELL'S principle of EQUITY" 27th Edition from page 611 to 617. "Mistake" (he reads out the paragraph) when the Lordship said the District Authority and it is the Permanent Secretary that is a mistake. (Reads up to the words "...common to all parties").

35 JUDGE: I refer to all parties.

DRAZDICH: I can't bring E.P. to give evidence (reads out the paragraph).

When the Chief Justice made the statement at page 75, he made "mistake". The law wants the Minister and not the Commissioner and in writing !

5 Justice to be administered ! If this document is alluded to, it should be brought in. Right to bring witnesses and parties. I have this right. Pleadings to be filed not exhibits. They are not filed in advance through parties and witnesses. Master's right.

SECKA: I have to refer to the fact that Mr. Drarnch is playing with the court. On the 6th December, Mr. Drarnch wrote to the Master in these words (letter read out fully). This is an iron-cast from the Respondent. There is no mistake involved. Exh. C page 82 lines 22 to 26. He was referring to this Exh. C when making the judgment (Chief Justice). What he referred to was correct or wrong. Difference between right and wrong and mistake. What the Chief Justice said was not a mistake but wrong. No mistake. Mistake must be common to both parties. Unilateral mistakes are never corrected. Don't be misled !

20 Mr. Drarnch told you that no document will be brought by him (in his letter dated 6/12/76) you had instruction not to accept document after 14 days. See the order of Court of Appeal.

Ruling tomorrow at 9 a.m.

25 17/2/79

Resmed

P.C.O. Secka for Appellant (Abouritz)

A. M. Drarnch for Respondent (L.P.)

REMARKS:

30 Consideration has been given to all aspect of the arguments by both counsel, and the only conclusion that can be arrived at is to accept the argument of Secka.

Y order that the agreement in question not be allowed to be an exhibit in this inquiry.

(Sgd.) C. S. Itchilly

17/2/79

25/2/79

Resumed

F.C.C. Secka for Appellant (Abouritz)

A. H. Branch for Respondent (B. P.)

5 DRAWN: I intend to call Mr. N'Jie of B.P. to tender in
the document. I want a piece of evidence put in before
I continue with my address:

COURT: Alright, Mr. N'Jie may give his evidence.

Sworn on the Koran and speaking in English states:-

10 My name is MONDGOU BARTHELEMY N'DIATE. I live at
74 Gloucester Street. I am the Manager of B.P. responsi-
ble for our business in this country. There was a lease
between Abouritz and B.P. in relation to a Petrol Station
at Barra. We tried to obtain the permission, first of
15 all, of a sub-lease. We got that. From the approving
Authority, Permanent Secretary Ministry of Local
Government Lands and Mines in the form of a letter
written and signed by the Permanent Secretary from the
Minister Ref: PA/32/D1/(215) dated 6/4/70. The letter
20 is here.

DRAWN: I want to put in the letter - If your Lordship
looks at the order - parties and witnesses.

SECKA: No objection.

25 (Letter Ref: No. PA/32/D1/(215) dated 6/4/70 addressed
to Messrs B.P., Barra from the Permanent Secretary Mini-
of Local Government Lands and Mines tendered and admitted
and marked Exh. "A").

SECKA: I have no question for Mr. N'Jie

DRAWN: That is all I have to say about this matter.

30 SECKA: I have nothing more to say.

Inquiry: Close.

BETWEEN:

EMILE ABOURITZ APPELLANT

5

AND

BRITISH PETROLEUM LTD. RESPONDENT

P.C.O. Seoka for Appellant

A. M. Drammah for Respondent

R U L I N G:

10

The order from the Court of Appeal to me re - this matter is borne in mind. To this end, the relevant accounts have been gone into and commented upon (see attachment) Drammah's contention that he relies on the accounts and document already submitted cannot to my mind be faulted.

15

Mr. Seoka did file some fresh accounts and pleadings and these, together with the old accounts of B.P. are the subject of this inquiry.

20

There is no dispute regarding the fact that both parties entered into contract viz - B.P. to build the station, and Abouritz to run it. That all supplies to the station must come from B.P. and no where else, is also not in dispute.

25

The dispute arises as to whether B.P. had any rights to cease supplying Abouritz with fuel and other relevant items, and as to whether B.P. can continue to be a tenant of the station after the original contract comes to an end.

30

The Chief Justice in his judgment at page 78 of the records of proceedings gave to my mind help with the aspect of the law in an adequate manner. I cannot fault his judgment in this regard with any ally.

The only issue to point out regarding this matter is that, in my view, the facts and law alleged to be by the Respondent and the Appellant are not put in evidence.

It is clear from this, that there was approval and from the proper authorities. The letter is designated Exh. A. The letter was not exhibited in the Supreme Court hearing.

5 There is no doubt that B.F. by its letter of 16th
January, 1975 addressed to Shlomo Abouritz did terminate the
contract as existed between the parties. That they have the
right to do so is also plain to us. Abouritz did fail to
abide by the terms of the contract - i.e. that when supplies
are delivered they must be paid for. Reasonableness must be
10 applied here, i.e., some days grace or even some weeks would
not have mattered, but it is found that longer periods than
these were involved. It is apparent that Abouritz had fallen
upon hard times and could not meet his commitments to B.F.
B.F. was not having any of this and thereby gave notice.
15 (- see page 101 of the record of proceedings) in the Supreme
Court.

(1) It is observed that Abouritz in his submission
tried to isolate the year 1974 transactions from
those of previous years. Since a relationship
20 existed between the two in the years before 1974,
any transactions during those years remaining out-
standing in 1974 must necessarily form part of the
total outstandings for that year.

(2) The payments made by Abouritz in 1974, include
25 settlements of previous invoices carrying various
dates in 1973. A complete list is attached as
~~annexure 1~~. The implication is that supplies were
delivered to Abouritz before 1974, but only paid
for those supplies during the year 1974.

(3) At annexure 2 is a list of invoices for supplies
30 delivered and paid for in 1974, but omitted from
Exh. 'A'. The result is that the total value of
deliveries to Abouritz during 1974 is understated
by the value of the 12 invoices listed in the
annexure.
35

It should be noted that in every year in 1974
there were invoices issued, which are...

It is also noted that any supplies before 1974
which were not paid for are included in his...

He can only rely on not receiving deliveries, or evidence of settlement of invoices in Exh. 'A'.

The conclusion that must be arrived at therefore, is that the claim of B.P. for £21,129.00 must stand.

5

There is no basis or justification for the counter-claim.

As far as the damages are concerned, this was agreed upon in the case of breach. Amount being liquidated damages of £2500.00.

10

Abouritz therefore ought to pay to B.P. the total sum of £23,629.00



23rd February, 1977.

STATEMENT OF ACCOUNTS - ABOKRITA with D.F.
(Period 12th January 1974/13th December, 1974)

<u>DEBIT (EXH. 'L')</u>				<u>CREDIT (EXH. 'H')</u>		
<u>DATE</u>	<u>DELIVERY NOTE NO.</u>	<u>INVOICE NO</u>	<u>AMOUNT</u>	<u>DATE</u>	<u>CHEQUE NO.</u>	<u>AMOUNT</u>
Jan/ 12	224452	000162	2502.00	Jan/ 14	156780	9015.60
14	224464	000172	2502.00	29	781	8038.70
17	224499	000190	2358.00	20	781	2297.70
21	239786	000214	2358.00			
31	239866	000339	70.65			
Feb/ 2	239906	000367	2808.00	Feb/ 14	783	3875.53
8	239947	000412	70.65	25	784	9720.00
12	239979	000430	2838.00			
18	241293	000490	2808.00			
25	241324	301055	2808.00			
March 5	241370	301038	2826.00	March 30	785	8600.70
6	241376	301074	2378.00			
20	241448	301157	3166.00			
21	241492	301171	3078.00			
April 2	241559	301223	3078.00	April 29	786	1094.00
5	241583	301236	70.65	30	787	38941.53
12	241633	301304	3078.00			
29	241717	301422	3133.00			
30	241516	301197	70.65			
May 6	244509	301447	3111.00	May 31	788	6367.95
8	244518	301454	70.65			
16	244558	301483	3133.00			
27	244608	301539	3111.00			
31	244630	301550	3111.00			
June 4	244667	301628	81.00	June 29	789	9447.65
4	244668	301629	160.00			
13	244709	301651	711.60			
14	244716	301652	198.10			
17	244725	301646	3111.00			
18	244743	301691	855.50			
28	267776	301751	3133.00			
July 5	267801	301771	3078.00			
25	267841	301795	3111.00			
30	267916	301886	215.80			

STATEMENT OF ACCOUNT (CONT.)

<u>DEBIT (EXH. 'L')</u>				<u>CREDIT (EXH. 'H')</u>		
<u>DATE</u>	<u>DELIVERY NOTE NO.</u>	<u>INVOICE NO</u>	<u>AMOUNT</u>	<u>DATE</u>	<u>CHEQUE NO.</u>	<u>AMOUNT</u>
Aug. 8	267956	301874	3078.00	Aug. 1	790	12815.85
26	268034	301991	61.20			
31	268052	302003	3078.00			
Sept. 5	268073	302014	61.20	Sept. 25	793	6488.00
9	268087	302024	3111.00			
13	268103	302036	61.20			
23	268155	302064	3111.00			
Oct. 11	268237	302195	61.20	Oct. 24	794	3111.00
16	268250	302205	3078.00			
16	268259	302213	61.20			
Nov. 11	268358	302301	2011.20	Nov. 9	795	2381.00
11	268369	302350	61.20	June 73		3.00
13	268376	302353	3111.00			2378.00
18	268403	302364	3078.00			
19	268423	302555	61.20			
Dec. 6	268584	302537	61.20	Dec. 30	796	3130.00
13	268683	302648	61.20			
			<u>96511.25</u>			
			11305.58			
			<u>D. 107816.83</u>			
						<u>D. 107816.83</u>

CREDIT BALANCE E. ABOURITZ

22/6/1976