

Neutral Citation Number: [2013] EWHC 3538 (Com)

Claim No: 2013 Folio 138

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**COMMERCIAL COURT**

Royal Courts of Justice  
Strand,  
London WC2A 2LL

Friday, 25 October 2013

BEFORE:

**MR JUSTICE LEGGATT**

BETWEEN:

**OJSC VTB BANK**

Claimant

- and -

**(1) PARLINE LIMITED**  
**(2) RAISA NIKOLAYEVNA PARSHINE**  
**(3) EVGENY VITALJEVICH BULGAKOV**

Defendants

MR D ALEXANDER QC and MR S ROBINS (instructed by SC Andrew LLP) appeared on behalf of the Claimant.

MR S MOVERLEY SMITH QC and MR S THOMPSON (instructed by Bird & Bird LLP) appeared on behalf of the Defendants.

**Approved Judgment**  
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(Official Shorthand Writers to the Court)

No of Folios: 55  
No of Words: 3922

J U D G M E N T

MR JUSTICE LEGGATT:

1. This is an application by the second defendant to set aside service on her out of the jurisdiction in Russia. The basic form of the proceedings is that there are three defendants. The first defendant is an English company. The third defendant is a director of that company, who is domiciled in England. The second defendant is a Russian individual, and it is the claimant's case that she is the party under whose direction and control the first and third defendants have acted in relation to the affairs of a Russian company called Yurganz, which is a subsidiary of the first defendant. It is those actions which are said to give rise to claims against all three defendants. Those claims, it is now common ground, are governed by Russian law, and they relate to events which occurred in Russia, set out in the particulars of claim, which I need not recount for present purposes.
2. The basis on which jurisdiction over the second defendant is asserted is that she is said to be a necessary or proper party to the proceedings which are taking place in England against the first and third defendants. It is common ground that, in accordance with the Brussels Regulation, the claimants are entitled to sue the first and third defendants in this country where they are domiciled, and there is no basis on which could, or have sought to, dispute the jurisdiction of the English Courts in relation to the claims against them.
3. It is also common ground that, as helpfully summarised in the judgment of Lord Collins in the case of Altimo Holdings v Kyrgyz Mobil Tel [2012] 1 WLR 1804 at para 71, there are three questions to be decided for present purposes. First, it is necessary for the claimant to show that there is a reasonable prospect of success on the merits in the claims which it makes against the first and third defendants. Although that was at one stage in dispute, it is now accepted on behalf of the second defendant that that requirement is satisfied. Secondly, there must be a good arguable case that the claim falls within one of the gateways to jurisdiction in practice direction 6B. In this case the only relevant gateway relied upon is that the second defendant is a necessary or proper party to the claim against the first and third defendants. Again it is accepted on the second defendant's behalf that that requirement is satisfied. It plainly is satisfied, because the facts relied on for the purpose of the claims against all three defendants are essentially the same facts. It is therefore clear that the claims all involve essentially the same factual investigation. Applying other tests which are endorsed in paragraph 87 of the Altimo case, it is also plainly the case that if the second defendant had been within the jurisdiction she would have been a proper party to the action and, furthermore, that the claims against all three defendants are closely bound up with each other and have a common thread.
4. The issue in dispute is whether the third requirement is satisfied. That requirement is that England must be shown by the claimant to be clearly the most appropriate forum for the trial of the action against the second defendant. The claimant's

submission - which I accept and I do not understand, when it is correctly formulated - to be disputed, is that, in answering the third question, the fact that the second defendant is a necessary or proper party is a relevant and indeed weighty factor to take into account, albeit that it is not conclusive and does not in any way exclude consideration of other factors. The reason why it is a weighty factor is, in essence, that it is generally desirable that claims arising out of the same facts and requiring a single factual investigation should be decided in one proceeding in the same place. The reasons which make that so are, first, the desirability of avoiding duplication and waste of time and costs and, second, the undesirability of inconsistent judgments. Those are the policy considerations which underlie the jurisdiction of the court over a defendant who is a necessary or proper party to those proceedings, and those same policy factors are clearly important factors to take into account in deciding which is the most appropriate and convenient forum for the trial.

5. On behalf of the second defendant, Mr Moverley Smith submits that the connections of this case and of the claimant and the second defendant are all, or almost all, with Russia. In particular, he points out that the claimant and the second defendant are both Russian and the second defendant is domiciled in Russia, that Russian law governs the only claim in this action which is now pursued, that all the facts relied upon, so far as identifiable from the particulars of claim, took place in Russia, that all the relevant transactions were in Russian currency, that the loss suffered allegedly by the claimant was suffered in Russia, that it is reasonable to expect that all the relevant witnesses, with the possible exception of the third defendant, will be in Russia and speak Russian as their first language and, furthermore, that all the relevant documents are likely to be located in Russia. I accept that, if the claim against the second defendant were a freestanding claim, all those factors would point overwhelmingly to Russia being the appropriate forum for the claim. However, the context is that the claim against the second defendant is not a freestanding claim, and it has to be considered in circumstances where the claimant has chosen to bring, and is entitled to bring, claims against the first and third defendants in England, which it says it anyway wishes to pursue, regardless of whether the second defendant is brought into these proceedings or not. What therefore has to be considered, as Mr Alexander on behalf of the claimant submits, is not whether England or Russia is the more suitable forum for the claim against the second defendant, other things being equal, but whether it is appropriate to have proceedings against the second defendant in Russia in circumstances where proceedings involving identical or virtually identical facts, all the same transactions, witnesses and documents, will anyway be taking place in England. The real question, in other words, is whether the factors which connect the claim against the second defendant with Russia carry weight in circumstances where to require the claim to be pursued in Russia would result in duplication of cost and the risk of inconsistent judgments - the same factors which make the second defendant a necessary or proper party.
6. In response to that, Mr Moverley Smith relies on three points. First, he argues, though he does not put it at the forefront of his case, that it is relevant to take account of the claimant's motive in bringing the proceedings against the first and third defendants in England. He draws my attention to the discussion in the

Altimo case at paragraphs 75-79, where it is said, first, that the mere fact that D1 is sued only for the purpose of bringing in D2 is not fatal to the application for permission to serve D2 out of the jurisdiction, but also that that fact is something which may be relevant in the exercise of the court's discretion.

7. It seems to me that if the situation were one in which claims against the defendants domiciled in England would not be brought except for the fact that it was sought to use those claims as a hook on which to bring another defendant into the jurisdiction, then that would be a strong reason for discounting the arguments in favour of England being the most appropriate jurisdiction. However, I cannot conclude that that is the situation in this case. The claimant says that it wishes and intends to bring a claim, at any rate against the first defendant, and to pursue that claim in any event and regardless of whether the second defendant is joined to the proceedings or not. Its reason for doing so is said to be that the first defendant is equally responsible in law for the alleged wrongdoing, and that it has, or until very recently had, substantial assets. If those assets have been dissipated, then, says the claimant, there is nevertheless a real prospect that they might be recovered by appointing a liquidator if judgment is obtained against the first defendant and the company is then wound up. There is no reason to question, and no evidence has been adduced by the defendant to contradict the accuracy of those assertions. I therefore accept that the starting point for present purposes is that there will be a claim against at least the first defendant, in any event - a claim which the claimant considers, for reasons which are not gainsaid, that it is worthwhile to bring - and that this is therefore not a situation in which the English domiciled defendants have been sued only for the purpose of bringing in a foreign defendant to the jurisdiction.
8. The two other arguments on which Mr Moverley Smith places greater weight are, first, an argument that it is a matter of choice on the claimant's part to bring the proceedings against the first and third defendants here. Those defendants, he says, could equally well have been sued in Russia. There is no evidence before the court that that is the case, but I am prepared to assume for the purposes of argument today that it is the case, and in any event Mr Moverley Smith has confirmed, albeit only in the course of his oral submissions, that if necessary the first and third defendants will give undertakings to submit to the jurisdiction of the Russian courts.
9. The argument, therefore, is, in substance, that although the claimant has chosen to sue the first and third defendants in this country, it has an alternative forum available, a forum which is much more convenient when one considers all the connecting factors, and that if the claimant chooses still to pursue claims against the first and third defendants in England even if unsuccessful in joining the second defendant to those claims so that the second defendant can only be pursued in Russia, then that is a choice which it has made, and the fact that it is a matter of choice negates, or substantially diminishes, the weight that would otherwise be given to the importance and desirability of avoiding duplication of proceedings and the risk of inconsistent judgments.
10. I see the force of that point but it does not seem to me to answer the fact that it is a

matter of entitlement on the claimant's part to sue the first and third defendants in England. There is no reason why the claimant should be expected or required to relinquish that right in order to avoid duplication of proceedings. Rather, it seems to me that the existence of that right and the fact that it is being exercised is the starting point and the background against which I ought to consider the question of whether England is also the appropriate forum for the claim against the second defendant.

11. The third matter on which Mr Moverley Smith relies is that the second defendant, he submits, is the major party or protagonist in the case. It is on that basis that he distinguishes the recent decision in this court in JSC BTA Bank v Granton Trade [2011] 2 All ER 542. In that case there were claims against a number of defendants, all relating to matters which had occurred in Kazakhstan. The claimant was a bank in Kazakhstan. Several of the defendants were domiciled in Kazakhstan, but two of the defendants were domiciled in England. The facts of that case were, therefore, in many respects similar to the facts of the present case. An argument was made similar to some of the submissions Mr Moverley Smith has made in this case that England was not the most appropriate forum for claims against the Kazakhstan based defendants. It was said, first of all, that all the connections were with Kazakhstan and, secondly, that it would be wrong to treat that fact as outweighed simply by the existence of proceedings in England against the two defendants who were domiciled here. The interests of justice would not be served, so it was submitted in that case, by allowing the tail to wag the dog. Christopher Clarke J did not accept that submission. He drew a distinction, however, between a case in which the anchor defendant is the chief protagonist and one where that defendant is a minor player. He said at paragraph 28 of the judgment:

“A decision that permission should be granted to serve the protagonist out of the jurisdiction because the minor player is domiciled within the jurisdiction would indeed allow the tail to wag the dog. But if the anchor defendant is the protagonist a decision to allow a minor player to be served outside the jurisdiction may be entirely appropriate. That would be, to continue the metaphor, to allow the dog to wag the tail. Just as it may make little sense to have the venue determined by where the claim against the most insignificant player will be heard, so it may make little sense to have the venue where the most significant will be sued passed over in favour of another jurisdiction to whose jurisdiction a lesser player is subject. I do not mean thereby to suggest that whether or not jurisdiction should be exercised against a foreign defendant is necessarily determined by whether the anchor defendant, or the defendant sought to be joined, fits into some particular descriptive category ("major/minor"; "principal/secondary"); only that a decision as to appropriate forum must necessarily take account of the relative importance in the case of different defendants and particularly those against whom proceedings in England are practically bound to continue.”

12. In that case the two English defendants were identified by Christopher Clarke J as

being major protagonists, and in those circumstances he considered that England was distinctly the more appropriate forum for the trial of the action against the other defendants who were domiciled in Kazakhstan as well. Mr Moverley Smith distinguishes that case on the basis that, in his submission, the position is the other way round here. He points to the fact that it is the claimant's case that the second defendant is the party under whose direction and control the other two defendants acted in relation to the relevant matters. She is, he submits, the major player. They are the minor players. And, in those circumstances, to bring the second defendant into the jurisdiction on the back of the claims against the other two defendants would indeed in this case, unlike the JSC case, be allowing the tail to wag the dog.

13. Again I see force, at least at first sight, in that submission, but it seems to me that more scrutiny needs to be given to what is meant by the distinction between major and minor players, or protagonists and lesser parties, in this context, and why that distinction matters to the extent that it does. I find it difficult to see why the fact that one or another defendant is alleged to be on the facts, to put it colloquially, the person who called the shots should itself be a particularly important consideration in deciding which is the most appropriate forum for the claim. Of much greater significance, as I see it, are, first of all, whether, as a matter of law, there are relevant distinctions to be drawn between the claims against the different defendants, and, secondly, whether the defendants within the jurisdiction are defendants against whom, in the words of Christopher Clarke J, "proceedings in England are practically bound to continue".
14. Looking at the matter in that way, it seems to me, first of all, that in point of Russian law, at least as I understand it from the expert evidence before the court, the claims against the three defendants are claims based upon a theory of joint liability in tort. To that extent, as a matter of law, all three defendants are equally culpable or not.
15. Secondly, I have already addressed the fact that the claimant intends, for what ostensibly are good reasons, to pursue its claim in England against the first and third defendants in any event, regardless of whether the second defendant is joined in or not. The proceedings in England are, therefore, practically bound to continue. In these circumstances, it does not seem right to me to describe the first defendant at any rate as a minor player. In terms of the factors which matter for the purpose of deciding appropriateness of forum, the first defendant seems to me to be an at least equal actor with the second defendant in this case.
16. At the end of the day, it does seem to me to come down to the fact as being decisive in the way I should exercise my discretion that the claimant has a claim against the first defendant in England, which it is entitled to pursue and will in practice be pursuing in any event. Looking at the matter against that reality, the position therefore is that if proceedings against the second defendant can only be brought in Russia, that would necessitate duplication of evidence and a risk of inconsistent judgments. Furthermore, the question is not, as I said earlier: is Russia or England the more appropriate place for the claim against the second defendant being tried, other things being equal? The real question is whether it is more appropriate to have that claim tried in Russia in addition to the claim against

the other defendants in England raising all the same factual and legal issues. It seems to me that the answer to that question is clearly no.

17. For those reasons, the claimant has established, in my judgment, that England is clearly and distinctly the more appropriate forum for the claim against the second defendant. The application to challenge the jurisdiction must therefore be dismissed.

(Further discussion followed)

18. MR JUSTICE LEGGATT: I am loathe to put the parties to additional expense and require additional hearings unnecessarily, but, at the same time, there are plenty of authorities which emphasise the importance of being cautious when ordering a preliminary issue.
19. The way I see things on the present state of the litigation is that I can see a cogent case for having a hearing of a preliminary issue, essentially on the question whether this claim is premature for the reasons given by Professor Maggs: namely, that on a proper analysis of Russian law the bankruptcy law provides a complete code in this area, effectively excluding general principles of tort law, and under the bankruptcy law a claim of the kind which the claimants wish to bring arising out of the facts they allege could only arise, if at all, at the earliest once Yurganz moved beyond the stage of external administration into bankruptcy proper, and indeed on Professor Maggs' opinion not in fact until the conclusion of the bankruptcy process.
20. However, it would be an unusual thing to order a preliminary issue at a stage when we have not yet come to the point of a case management conference in this court, which, in ordinary circumstances, comes at the close of pleadings and for which there are a number of procedural requirements which assist the court in deciding how the litigation should be conducted in the future. Those include an agreed list of issues in the case, and case management information which indicates, for example, what witnesses each party would intend to call at a full trial of the issues in the case. All that information is relevant because, in deciding whether there should be a preliminary issue, it is always a question of trading off the benefits that would be achieved if the preliminary issue is decided in favour of the party which wants it, against the disadvantages of having a preliminary issue if it is decided in the opposite way. To make that judgment, one ought to have a better understanding of what the scope of a full trial would be then I think it is possible to have on the present state of information.
21. I am therefore not going to make an order for a preliminary issue today. I am, I am afraid, going to require the parties to come back for a case management conference once the pleadings have closed. I think that the delay will be beneficial, because it will give the claimant a longer opportunity than it has so far had to consider its position, where it reasonably makes a point that there has been little time for it consider the merits of a preliminary issue. The claimant will have an opportunity, in the first place, to reflect on the way its case is put and, secondly, to reflect on the

question of whether it is appropriate to have a preliminary issue in the way that it has been argued today.

22. The indication that I give is that, as I have already said, on the way matters appear at present there seems to me to be a lot of attraction in the point that there should be a preliminary issue in the case on the basis that, if the arguments made by Professor Maggs are right, they would provide a short answer to the claim that is being made. I think there should be an opportunity for further reflection before the court goes down the course of ordering a preliminary issue which, once done, cannot be undone, and it is not a decision that should be made without careful and full consideration.
  
23. I am willing to consider a timetable for bringing the case back, if that is helpful, for a final decision to be made. And, if it is helpful, that it should come back before me, if that is feasible to achieve, on the basis that it will save a lot of time, and I do not want to put the parties to unnecessary cost by having to explain everything again to somebody else, then I will consider that too. So you may want to think, if you have not already, about how you want to proceed.

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