



Neutral Citation Number: [2024] EWHC 1338 (Comm)

Case No: CL-2024-000184

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
KING'S BENCH DIVISION
COMMERCIAL COURT

The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: Friday, 24th May 2024

Before:

MR. JUSTICE FOXTON

Between:

BARCLAYS BANK PLC

**Claimant/
Applicant**

- and -

(1) PJSC SOVCOMBANK
**(2) LLC SODEISTVIE MEZHDUNARODNYM
RASCHETAM**

**Defendants/
Respondents**

MS. LOUISE HUTTON KC and MS. ELLEN TIMS (instructed by **Simmons & Simmons LLP) appeared for the **Claimant/Applicant**.**

The Defendants/Respondents were not present and were not represented.

Approved Judgment

Transcript of the Stenograph Notes of Marten Walsh Cherer Ltd.,
2nd Floor, Quality House, 6-9 Quality Court, Chancery Lane, London, WC2A 1HP.
Tel No: 020 7067 2900. DX: 410 LDE
Email: info@martenwalshcherer.com
Web: www.martenwalshcherer.com

MR. JUSTICE FOXTON:

1. This is an application before me today for final injunctive relief, both in the form of an anti-suit injunction and an anti-enforcement injunction, and also for declaratory relief arising out of a syndicated loan agreement (“the Facility”) entered into by the claimant Barclays Bank Plc (“Barclays”), with the first respondent PJSC Sovcombank (“Sovcombank”).
2. By way of brief background, the second respondent, who has been referred to as AIS, is an independent corporate entity formed out of the business of the first respondent, Sovcombank. The Facility is governed by English law, and clause 45.1 gives the English courts exclusive jurisdiction in all relevant respects so far as actions brought by Sovcombank are concerned, albeit in the usual way in finance documents Barclays would have the ability to commence proceedings elsewhere if it so wished.
3. The immediate cause of the present dispute is sanctions imposed as a matter of English law, which, as I shall explain, I am satisfied had the legal effect of preventing Barclays from making payments to Sovcombank under the Facility.
4. Against that background, Sovcombank commenced proceedings in Russia, seeking damages for the non-payment of amounts it claimed were due under the Facility, relying upon various provisions of the Russian Civil Code which give rise to what, under English law, would be regarded as tort-based remedies: in particular for abuse of rights under Article 10.1 of the Russian Civil Code, but also referring to negligence. It is the position of Barclays that those proceedings involved a breach of the exclusive jurisdiction clause in the Facility. On that basis, it obtained a without notice anti-suit injunction from HHJ Pelling KC. He gave fairly extended reasons for his conclusion in a judgment with a neutral citation number [2024] EWHC 834 (Comm). The return date came, and although a letter had been written by AIS in advance of that return date, referring to the difficulties of being able to instruct English legal representatives due to sanctions, there has otherwise been no response or participation by either Sovcombank or AIS to these proceedings. The injunction was renewed by HHJ Pelling KC on the return date.
5. As I have indicated, the application before me is for final relief.
6. I am satisfied that the claim brought in Russia, seeking damages for alleged non-payments under the Facility, is one that falls full square within the exclusive jurisdiction clause in clause 45.1. It is also clear that AIS, as assignee, exercising derivative rights obtained from Sovcombank, is in no better position than Sovcombank when seeking to enforce assigned rights arising out of or relating to the Facility.
7. It is clear to me, and certainly I am persuaded on the balance of probability, that the pursuit of the proceedings in Russia is occurring in breach of the exclusive jurisdiction clause. In those circumstances, a long line of cases in this court make it clear that the court will ordinarily grant injunctive relief to enforce the parties' contractual bargain, unless strong reasons for not doing so are shown. There are no strong reasons in this case.
8. I can confirm that I am content to adopt the reasons that HHJ Pelling KC gave in his judgment for reaching the same conclusion. In particular, there has been no significant delay in this case. We are at a relatively early stage of the Russian proceedings. It cannot be said that there have been any lack of clean hands on behalf of the applicant. While there has been some suggestion by AIS in correspondence that it may be in difficulty in obtaining English legal representation,

there has been a significant period in which it has been able to invoke the licence provisions by which it is possible to instruct English lawyers, notwithstanding the effect of sanctions. There has been no sufficient evidence before me that it is, in truth, not practicable for AIS to retain English lawyers to respond to this application, and I have concluded that the more likely reason for its non-participation is a considered decision not to participate because it has taken the view that it will focus its attentions on the Russian proceedings.

9. I am also satisfied it is just and equitable to grant the anti-suit injunction sought. The English court will, in almost all cases, uphold the parties' agreement to exclusive English jurisdiction.
10. The second head of relief sought is an anti-enforcement injunction. That, at one stage, was a relatively rare beast in English civil procedure, although it is fair to say reports of sightings have significantly increased against the background of ongoing events arising from the Russian/Ukraine conflict. It is possible to find cases, and Ms. Hutton KC has very properly drawn them to my attention, stressing that the grant of an anti-enforcement injunction (i.e. one that would prevent a judgment creditor, who has obtained a judgment in proceedings brought abroad from taking steps to enforce that judgment) would be an exceptional measure.
11. More recent cases, and in particular I am referring to *SAS Institute Inc v World Programming Ltd* [2020] EWCA Civ 599, have made it clear that there is no separate jurisdictional requirement of “exceptionality” over and above the reasons for granting anti-suit injunctive relief, but, in practice, it is likely to be a rare case in which it will be possible to persuade a court to grant such an injunction.
12. In this case I am satisfied that the anti-enforcement relief sought is appropriate. First, the facts of this case appear to be full square with those in the *Deutsche Bank v RusChemAlliance LLC* [2023] EWCA Civ 114, a decision of the Court of Appeal to which Ms. Hutton KC took me. Although the anti-enforcement injunction application was dealt with briefly in the Court of Appeal's judgment at paragraph 43, the court made it clear that it was appropriate to grant the AEI because the effect of the evidence in that case was that even if the respondent to the anti-suit injunction had sought to discontinue the Russian proceedings, the approval of the court would be required, that the approval might not be granted, and that judgment might be entered regardless. I have expert evidence to exactly the same effect in this case.
13. In addition, as Ms. Hutton KC points out, the anti-enforcement injunction is being sought in this case in advance of the obtaining of any judgment before the Russian court, and therefore the court is not in the position considered in to *Masri v Consolidated Contractors (No. 3)* [2009] QB 503, *Mamidoil-Jetoil Greek Petroleum Company SA & Anor v Okta Crude Oil Refinery AD* [2003] 1 Lloyd's Rep. 1 and, *ED & F Man (Sugar) Ltd v Yani Haryanto (No. 2)* [1991] 1 Lloyd's Rep.161 and 429, in which proceedings in the foreign court had run their full course, resulting in a judgment, and then an injunction was sought from the English court seeking to restrain enforcement of the judgment at that stage. Whilst it can be said that the teeth granted in the anti-enforcement injunction sought will inevitably bite if, and only if, a judgment is entered, I am persuaded that there is a material distinction between applications made at an early stage pre-judgment and those made post-judgment, because the comity considerations in acting now are less intrusive than when the foreign court has already given judgment, the period of time and legal process that will elapse before a judgment is entered will usually involve delay and the incurring of expense by the respondent and also because obtaining a judgment in some sense vests a property right in the judgment creditor, which an anti-enforcement injunction would interfere with. Against that background, it seems to me an injunction given in advance of that position is inherently less intrusive.

14. In any event, however, on the basis of the *SAS* case and *RusChemAlliance* decision, where an anti-suit injunction has been sought at an early stage, but the concern is that that, of itself, will not be effective, either because it will not be complied with or because, even if it is complied with, a judgment may be entered in the foreign proceedings in any event, it does seem to me that the requirement for obtaining an anti-enforcement injunction will readily be satisfied, and I am persuaded they are satisfied in this case.
15. That leaves the issue of the declaration. In its original formulation, that declaration might have been capable of giving rise to some complexities, both because there might have been a debate as to whether the English sanctions regime removed Barclay's liability, or simply rendered a debt that was due not payable for a period of time, and because of complexities that might have arisen from the assignment that Sovcombank says it has made to AIS. In fact, the terms of the declaration sought before me now are much narrower. In its final form what the declaration sought is that Barclays "is not liable to the first or second defendant on the claim advanced in the Russian proceedings relating to the freezing of €198,090.70, which it holds as agent under a senior facilities agreement."
16. Taking the matter in stages, I am persuaded that it is, in principle, appropriate to grant declaratory relief of that kind. It is clear from *Messier-Dowty v Sabena* [2000] 1 WLR 2040 at 2042, that whatever reluctance the English court might once have felt about granting negative declaratory relief, that reluctance has now passed, and where such declarations would serve a useful purpose, it is appropriate for the court to grant them. It seems to me a declaration would serve a useful purpose here, particularly when made by the court that the parties have agreed has exclusive jurisdiction, and which is the jurisdiction which is source of the law which the parties have agreed should govern their contract, and where what is in issue is the effect of sanctions imposed in this jurisdiction.
17. I have been taken in Ms. Hutton KC's and Ms. Tims' skeleton argument through the provisions of the UK sanctions. They are provisions, it is fair to say, that now come before the court on a regular basis. I am persuaded that the sanctions extend to the payments Barclays would otherwise have been required to make under the Facility, that the regulations that have that effect fall within the scope of section 1(1) of SAMLA (the relevant authorising piece of legislation, and that the effect of the statute and the regulations in conjunction is that payment to Sovcombank would be a breach of the regulations and amount to a criminal offence.
18. It is also clear that section 44(1) of SAMLA gives a defence to liabilities which might otherwise arise where a payment is not made or an obligation is not performed because of a reasonable belief that non-payment or non-performance is required by the regulations. I am satisfied that is the position here, the effect of which is that there was no breach by Barclays of the Facility in not making the payment which might otherwise have been due to Sovcombank.
19. Reverting to the Russian proceedings, they seek damages on the basis that there has been some form of legal wrong by Barclays in not making those payments. As I have indicated that is not the position under the law which governs the parties' obligations. In circumstances in which there is no breach in not paying Sovcombank, AIS can be in a no better position as a transferee of Sovcombank in seeking damages for wrongful conduct. Whether that is on the basis that Sovcombank has no damages claim to transfer, or on the basis that AIS, as an assignee, can stand in no better position than Sovcombank does not really matter for present purposes.

20. In those circumstances, I am persuaded to grant the negative declaration sought in paragraph 48 of the skeleton argument, subject only to the revision that the words “for damages” will be inserted immediately after the word “claim” in that declaration.
21. I will now pick up any other matters that fall to be addressed on the basis of the order.

Post-script

22. As I finished delivering judgment orally, an e-mail came through to me at 9:56, enclosing a very short e-mail sent from Sovcombank's legal team. I am going to read that e-mail into the record:

“We are writing on behalf of PJSC Sovcombank. Please be advised that Sovcombank had received numerous correspondence from Simmons & Simmons LLP and starting from April 2024 we was seeking legal representation in the UK courts for proper and fair protection of its rights and interests, based on the OFSI General Licence INT/2024/4671884, which came into force from 29th April 2024. Sovcombank approached, or tried to approach, eight UK law firms and received only one response with an extensive KYC request. We continue to review the received request and are not in a position to be properly represented in front of the UK courts.”

23. I begin by commenting that the existence of licences in relation to legal representation goes back rather earlier than 29th April 2024. References to earlier iterations can be found in my judgment in *VTB Commodities Trading DAC v JSC Antipinsky Refinery* [2022] EWHC 2795 (Comm). The short answer is there has been a licence regime since sanctions were imposed in February 2022, which has been modified in a more favourable way for the purposes of funding legal representation over time. In this case the e-mail from Sovcombank is perhaps at first sight surprising, because its position appears to be that it is no longer the appropriate respondent, but that AIS is. In any event, the email is completely shorn of any detail as to when it took steps to seek legal representation, who has been approached, et cetera.
24. Ms. Hutton KC submits, and I accept, that this matter has been underway since March. There has been a period of time of some months to obtain legal representation. I cannot believe that an organisation which is a substantial bank, such as Sovcombank, would be at all unfamiliar with KYC requirements of law firms operating outside Russia. In addition, I should say that no indication is given of what Sovcombank’s possible response to the relief sought might be.
25. In those circumstances, I am not persuaded that that last-minute communication changes the decision I have reached on the basis of the submissions at this hearing.

[Further Argument]

26. Application is now made for the costs, both of the without notice application, the return date and the final relief sought before me today. In effect, what is being sought are the costs of the case, so one does not need to be troubled, as sometimes happens, by the argument that the interim application costs should await trial. This has been the trial, and Barclays have succeeded, so I accept that costs follow the event.

27. On the ruling I have given, the proceedings being pursued in Russia are being pursued in breach of contract, and there is ample authority of this court to the effect that where proceedings are brought to enforce a choice of English jurisdiction and to restrain proceedings brought in breach of that contract, the appropriate basis of assessment is the indemnity basis. It is against that background that I have approached the schedule of costs.
28. I have also borne in mind, as Ms. Tims submits, that this has been a matter that has involved a number of urgent hearings. The reason for that, understandably, is the need to move promptly against a background of pending Russian litigation, not simply to avoid any suggestion of delay, and also to preserve comity by ensuring that any orders are made at the earliest possible stage, but also to avoid a position in which any application in this jurisdiction becomes otiose because there is some judgment on the merits in Russia before relief is obtained here. So, I will make allowance for that in my assessment.
29. I am satisfied, although the amount of principal in issue in the case is relatively small, that, in truth, the case involves rather wider and more significant issues as to the status of the Facility generally. So, for as long as the sanctions continue, it would be wrong to focus simply on the amount that is in issue at this stage.
30. In all those circumstances, I am persuaded that a very limited deduction to the schedule of costs is justified. I am also persuaded that it is a band 1 case for hourly rate guideline purposes, with the result that all the rates charged are within the guideline.
31. There are quite a few personnel involved, and that always creates scope for an overlap in work and given that the respondents are not here to make that point themselves, I have taken the view that I should make some allowance for that. I am going to make some small reduction to the profit cost figure from £97,000 to £90,000, but otherwise I will award the costs sought. The VAT figure on those profit costs will need to be adjusted pro rata to reflect the reduction I have made in the sum sought. Otherwise, I will award costs on the basis of the schedule. I am going to ask someone else to do the mathematics, and for that figure to be incorporated in the final version of the order to be sent through.

(This Judgment has been approved by the Judge)

Transcription by Marten Walsh Cherer Ltd
2nd Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP
Telephone No: 020 7067 2900 DX: 410 LDE
Email: info@martenwalshcherer.com
Web: www.martenwalshcherer.com