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IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURT  
OF ENGLAND & WALES  
COMMERCIAL COURT (KBD)



No. CL-2023-000516

NCN: [2024] EWHC 1474 (Comm)

Rolls Building  
Fetter Lane  
London, EC4A 1NL

Monday, 13 May 2024

Before:

MR JUSTICE JACOBS

B E T W E E N :

COMMERZBANK AG

Claimant

- and -

RUSCHEMALLIANCE LLC

Defendant

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MR R MILLETT KC and MR M GREGOIRE (instructed by Allen Overy Shearman Sterling LLP)  
appeared on behalf of the Claimant.

THE DEFENDANT did not appear and was not represented.

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**J U D G M E N T**

MR JUSTICE JACOBS:

- 1 This is an application by the claimant (“Commerzbank”), for various forms of relief concerned with preventing, in various different ways, the defendant (“RusChemAlliance”) from pursuing proceedings in Russia and obtaining relief which is sought there.
- 2 The forms of relief sought by Commerzbank include a lifting of a stay which I imposed on 28 September 2023 and a variation of the order, which was made on that day, so as to accelerate the return date for the interim injunction which had previously been granted by Bryan J on 31 August 2023.
- 3 Commerzbank also seeks to amend its arbitration claim form in order to expand in certain ways the relief which had previously been claimed. It also seeks a final anti-suit injunction and a final anti-enforcement injunction. The relief sought in that respect is not simply the relief which might be granted on the return date which might otherwise have taken place, but in fact involves the final determination of the claim. So that is the relief which is being sought and it is sensible that I should explain the background to the claim which is made.
- 4 The substance of these proceedings started with an order made by Bryan J on 30 August 2023. On that occasion, Commerzbank sought anti-suit relief to prevent proceedings from being brought and continued in courts in Russia. The underlying basis of the claim was that the relevant contracts between the parties, which were in the nature of performance bonds, contained a term providing that they were governed by English law and also contained an arbitration agreement. The unusual feature of the case, and of two other cases which have proceeded to some extent in parallel, is that the arbitration agreement provided for the arbitration to take place in Paris, rather than in London. The anti-suit relief sought on that occasion was to some extent novel, although there was in fact a precedent for it. At all events, Bryan J made an order which granted anti-suit relief on that occasion, and his order provided for the order to be served on various individuals at RusChemAlliance by email.
- 5 The position at that time was that there was a separate set of proceedings on a very similar bond which involved another bank called UniCredit. In that case, there was an expedited hearing of the case and in the event it came before Sir Nigel Teare. The substantial issue raised in that case was whether or not the English court had any jurisdiction, in circumstances where the arbitration was taking place in Paris. There was also a related question of whether, if the court had jurisdiction, the court should proceed to exercise that jurisdiction. In due course, Teare J decided in favour of RusChemAlliance. It is not necessary to describe in detail his judgment but it was subject to a potential appeal to the Court of Appeal.
- 6 That was how matters stood on 25 September 2023. At as that date, RusChemAlliance was represented by a firm of solicitors, Enyo Law, who were in fact the same solicitors as were acting in the proceedings involving UniCredit. They in fact have continued to act in the present proceedings until very recently indeed.
- 7 On 25 September 2023, they wrote a letter to Allen & Overy LLP, who were then acting for Commerzbank, and whose successor firm (following a merger with another firm) continues to act for that company. They said in the letter:

“As you may be aware, our client is involved in parallel proceedings commenced by UniCredit Bank AG in relation to the same underlying

transaction. In the UniCredit proceedings, UniCredit sought an anti-suit injunction from the English court and our client challenged the English court's jurisdiction.

On 22 September 2023, the final hearing of the UniCredit Proceedings took place before Sir Nigel Teare. We will circulate a copy of the anonymised judgment to you as soon as it is available. By way of summary, the Court allowed our client's jurisdiction challenge and refused UniCredit's application for permission to appeal. However, UniCredit indicated to the Court that it will be applying for permission to appeal from the Court of Appeal and, in the circumstances, the Court continued the interim injunction against our client until the appeal process has been exhausted (with certain caveats)."

8 The important paragraph of the letter is paragraph 5 which is as follows:

"The jurisdictional issues in the UniCredit Proceedings are materially identical to those raised in the Commerzbank Proceedings (i.e. the governing law of the arbitration agreement, and the proper place for the claim). The Court of Appeal will be considering those issues in UniCredit's appeal (either by refusing permission to appeal, or on any substantive appeal if permission is given). In the premises, it would make no sense for the Commerzbank Proceedings to proceed pending the outcome of the UniCredit appeal. Such an approach would merely result in wasted costs and wasted court time in these proceedings."

9 Enyo Law therefore proposed that, until the appeal process in the UniCredit proceedings was exhausted: (a) the interim anti-suit injunction contained in paragraph 1 of the order of Bryan J dated 31 August would be continued; (b) the Commerzbank proceedings are otherwise stayed; (c) the time for RusChemAlliance to make any application under CPR 11.1 shall be extended until 21 days after the lifting of the stay; and (d) the return date listed for 28 September 2023 shall be vacated.

10 So that was 25 September 2023, and the matter then came before me on 28 September 2023 at a hearing of what was originally intended to be the return date in respect of the injunction granted by Bryan J. By the time of that hearing the parties were substantially agreed as to the appropriate order which was, to a large extent, along the lines which had been proposed by Enyo Law. There was some debate at the hearing before me, which I in due course resolved, as to the precise terms of a qualification to the injunction, but that is not material for present purposes.

11 The material part of the order which I made on that occasion was as follows. The present proceedings were stayed until the appeal process in respect of the Teare order in the parallel proceedings was exhausted. (The "parallel proceedings" were the proceedings involving UniCredit). The time for RusChemAlliance to make any application under CPR 11.1 was extended until 21 days after the lifting of the stay. The return date was adjourned, with the adjourned return date to be listed on the first available date at least 35 days after the lifting of the stay. Paragraph 5 of the Order provided that both parties had permission to apply to amend this order including, if appropriate, to bring the return date forward.

- 12 The matters then developed in summary as follows. There were a number of hearings in Russia and there was to some extent (although on Commerzbank's case not complete) compliance with an undertaking which had been given by both parties and which was recorded in the 28 September 2023 order. That undertaking was on the part of both parties "to use their best endeavours to procure that the proceedings between the claimant and the defendant in the Arbitrazh court of St Petersburg and Leningrad Oblast Russian Federation are adjourned until after the return date in the present proceedings."
- 13 The current position is that there has been no actual return date in the present proceedings. There is an adjournment which is presently in existence in the Russian proceedings, but which will expire effectively on Wednesday of this week, 15 May 2024, when there will be a further hearing in Russia. As already indicated, however, it is not necessary to go into the details of precisely what has happened in Russia in the period from September 2023 to quite recently; because there has been, to a large extent, compliance with the undertaking and it is fair in summary to say that the Russian proceedings have not moved forward in any particularly significant way.
- 14 The next relevant development for present purposes is that the UniCredit case did go to the Court of Appeal, permission having been granted. Following the hearing, an order was made by the Court of Appeal which overturned the decision of Sir Nigel Teare. The judgment of the Court of Appeal was handed down on 2 February 2024, although the court had made orders which were sought by UniCredit on 29 January 2024. The citation for the judgment is [2024] EWCA Civ 64.
- 15 I have been referred to the various orders which were made by the Court of Appeal on that occasion. The orders which Commerzbank now seeks are materially identical, although drafted with some marginal differences, to the orders which the Court of Appeal made in the UniCredit proceedings.
- 16 Subsequent to that decision of the Court of Appeal, it appears that in Russia RusChemAlliance took the position, temporarily, that it would not abide by the Court of Appeal's order. However, once permission to appeal to the Supreme Court was granted, RusChemAlliance reverted to their previous stance which was substantially to comply with the orders which had been made.
- 17 The most recent hearing in Russia in the proceedings between the present parties was on 6 March 2024. The effect of that hearing was to adjourn the present case to 15 May 2024, next Wednesday.
- 18 The next material development was 23 April 2024 when, the matter having been argued in the Supreme Court relatively shortly before that date, the Supreme Court decided to dismiss the appeal. I have been referred to the order made by the Supreme Court on that occasion. The full judgment of the Supreme Court is still awaited. However, the order made by the Supreme Court in the UniCredit proceedings was such as to maintain in full force the orders which had previously been made by the Court of Appeal in that case. The decision of the Supreme Court has, therefore, brought the Unicredit proceedings to an end. In relation to the proceedings between the present parties, the automatic effect of the Supreme Court decision is that the stay granted in my 28 September 2023 order has been lifted.
- 19 Mr Millett KC, on behalf of Commerzbank in the present proceedings, accepts that that is the position and he submits that it is appropriate that my order made today should record that there has in fact been a lifting of the stay. I agree.

- 20 The impact of the Supreme Court decision would ordinarily be, if RusChemAlliance was minded to comply with it, to dispense with any real need for further significant hearings in the present case. However, as described below, it appears that RusChemAlliance is not minded to obey the injunctions previously granted by the English courts, including the Supreme Court. That is why Commerzbank now seeks the various orders which I have described.
- 21 The relevant developments since the date when the Supreme Court handed down its ruling on 23 April 2024 are as follows. On 29 April 2024, Allen & Overy, on behalf of Commerzbank, wrote to Enyo Law a letter which invited them to give an undertaking as to their position and to agree certain directions if they were minded to pursue the case any further. The letter of 29 April 2024 referred to the previous history, pointing out that the effect of my order of 28 September 2023, in the light of the Supreme Court's decision, was that the stay had now been lifted. They asked for the following confirmation:

“We, therefore, write to ask you to confirm, as you have done several times previously, that RusChemAlliance will use its best endeavours to seek a stay in the Russian proceedings until after the return date consistent with the undertaking that the parties have given to the English court.”

Allen & Overy went on to say:

“Given that the next Russian hearing is just over two weeks away, and to allow time to act if the confirmation is not given, we ask for this confirmation by close of business on Tuesday, 30 April 2024. If this confirmation is given, we are content for the parties' Russian counsel to discuss how best to achieve the stay in the Russian proceedings as they have done previously.”

Then finally in paragraph 6 they say:

“With the stay now having been lifted, the parties should now liaise regarding the return date. This is not a new injunction and the issues are the same as those in the UniCredit proceedings which your client has now fully litigated. We, therefore, do not consider it necessary to wait 35 days for the return date, rather we invite you to consent to bringing the return date forward pursuant to para.5 of the Jacobs' order and to the following directions.”

- 22 The directions proposed that: RusChemAlliance should serve its evidence by Friday 10 May 2024; Commerzbank should serve its evidence in reply by Friday 17 May 2024; and a return date should be listed for one day on the first available date from Friday 24 May 2024.
- 23 The letter concluded:

“However, we should say that our client reserves all rights in particular if the confirmation requested in para.3 above is not given.”

- 24 There was no prompt response to that letter from Allen & Overy. Shortly afterwards, Mr Freeman, who has conduct of this matter and who has served a witness statement in support of the present application, spoke to Mr Telyatnikov of Enyo Law to enquire when a response should be expected. That was on 1 May 2024, by which time Allen & Overy had become A & O Shearman. Mr Freeman’s evidence is that he was told by Mr Telyatnikov that Enyo had no instructions, and also that it might not be straightforward to receive them owing to the 1 May public holiday in Russia. Mr Freeman’s evidence is that no substantial response from Enyo was forthcoming after this conversation.
- 25 The next material development occurred on 6 May 2024, in other words, only last Monday, which was a Bank Holiday in England. In Russia, there was a hearing in the UniCredit proceedings and the evidence about that has come from a Russian lawyer, Mr Igor Gorchakov. He has reviewed an audio recording of the proceedings and his evidence is that, despite the UK Supreme Court order dismissing RusChemAlliance’s appeal against the final injunctive relief granted by the English Court of Appeal, RusChemAlliance had taken active steps to pursue its case against UniCredit in Russia.
- 26 At the hearing on 6 May 2024, amongst other things, RusChemAlliance did the following. It requested the Arbitrazh court to lift the stay in the Russian proceedings that had previously been granted on 14 February 2024. It applied for the Russian Affiliate of UniCredit Bank AG to be joined as a co-defendant. It also applied to increase the value of its claim against UniCredit by a further sum of just under €10 million.
- 27 So it is apparent from that evidence that, despite their ultimate defeat in the Supreme Court, RusChemAlliance does not intend to abide by the orders which the English courts have made. That position is confirmed or reinforced by developments which have taken place in the present proceedings themselves.
- 28 The next development was that A & O Shearman sent a further letter following the hearing in Russia in the Unicredit case. That letter was dated 6 May 2024. They referred to the fact that there had been no response to their earlier letter, and to the developments which I have described in the Russian proceedings involving UniCredit. They described these as being steps taken by RusChemAlliance unambiguously directed at pursuing its case against UniCredit. They said as follows:

“In view of (1) the absence of confirmation sought in our letter and (2) the clear contraventions by RusChem of the injunctions granted by the English court to UniCredit at today’s hearing, it is plain that there is a significant risk that RusChem will breach its undertaking to the English court and the Anti-Suit Injunction at the next hearing in the Russian proceedings on 15 May 2024. You will appreciate that our client cannot remain inactive in the face of this risk.”

- 29 Paragraph 7 of the letter was then as follows:

“In the circumstances, please confirm to us by no later than 6:30 pm (London time) tomorrow, 7 May 2024 that:

- (a) RusChem will comply with the Undertaking, and that therefore its Russian counsel will discuss with Commerzbank's Russian counsel how best to achieve the further adjournment of the Russian Proceedings beyond the next hearing (on 15 May 2024), as they have done previously; and
- (b) whether RusChem agrees with our proposed course of action set out in our letter to bring forward the return date in the Proceedings."

30 The letter then continues in paragraph 8:

"In the absence of such a response, or such a response in those terms, our client will take it that RusChem will not comply with the Undertaking and will instead pursue its claims in the Russian Proceedings, as it has against UniCredit. Our client is now at serious risk of the Russian court entering judgment against it in the absence of an order that RusChem takes all steps necessary to stop it from doing so. In such circumstances, we hereby give you notice that, on 8 May 2024, our client will apply for:

- (a) paragraph 4 of the Jacobs' Order to be amended pursuant to paragraph 5, such that the return date is brought forward to a date in advance of 15 May 2024;
- (b) directions for RusChem to serve any evidence by Thursday 9 May 2024 (or such other date as the Court may direct);
- (c) final (alternatively interim) anti-suit and anti-enforcement injunctive relief and a final (alternatively interim) mandatory injunction ordering RusChem to discontinue the Russian Proceedings (and permission to amend the Claim Form as appropriate), and an inter partes hearing before the Commercial Court judge on or before 14 May 2024."

The letter concluded by asking for a response to the letter, and what comments RusChem had on its proposals, so that they could be taken into account.

31 The next material development is that Enyo Law ceased, or at least purported to cease, to act as solicitors for RusChemAlliance. I have been shown the notice of change of solicitor which was filed on behalf of RusChemAlliance. This indicated that Enyo Law were no longer to be acting and that RusChemAlliance would now be acting in person. The notice of change was, however, defective in that it failed to identify an address for service of the proceedings within the UK as required by CPR Part 42 and the Part 42 Practice Direction, and CPR 6.23 as well.

32 I agree with Mr Millett that that failure does not mean that the notice of change can be treated as a nullity. However, the position as it appears to be me, as provided for in CPR 42.2 and the Part 42 Practice Direction, is that it can be argued forcefully that Enyo Law had not in fact ceased to act at the moment and that they remain on the record as solicitors in circumstances where no place of service has been specified in the notice of change.

- 33 However, helpfully, the notice of change did identify a number of email addresses where documents could be served and which were thereby identified as the address of RusChemAlliance. Three email addresses (one of which contained a typographical error in the notice of change) were the same, subject to that typographical error, as the email addresses which had been identified in Bryan J's original order made in August 2023. The fourth email address, which was identified, was rcadr@elwi.com. That email address is an email address of a law firm called Elwi, based in Russia. The designation "rcadr" is not a particular individual but is in fact a group email. That means that emails are received by various Russian lawyers who were working at Elwi, instructed by RusChemAlliance, in connection both with the Russian proceedings, which I have described, and also the Paris arbitration proceedings.
- 34 A bundle of recent correspondence has been prepared by A&O Shearman. These documents show that notice of the present application have been provided to RusChemAlliance and their lawyers. At 1.16 pm on 10 May, which was last Friday, RusChemAlliance and its lawyers were given notice of the application which Commerzbank were making. They were given notice that a court hearing would take place at 10.30 this morning, and the location of the hearing: originally in court 18, but subsequently adjusted to court 27. All of that information was given in various emails to the various email recipients identified on the notice of change. It is clear that all of those emails were received, apart from the one which was sent to the email address which had the typographical error and that was corrected by sending also to the correct email address without the typographical error.
- 35 It is also plain, from the materials in the bundle of recent correspondence, that a large number of people, including at least one of the recipients at the company, and a number of lawyers at Elwi.com, have in fact received and read the emails which had been sent. Accordingly, there is no doubt that both the company and their Russian lawyers have been given notice of today's hearing.
- 36 That explains the background and Mr Millett on behalf of Commerzbank submits that I should make the various orders today which he is seeking.
- 37 The concern which I have had is that it is unusual for the court to be asked to make an order on a final basis in circumstances where no prior order has been made that a final hearing will take place on the day when the order is sought: in the present case, today. I have been concerned about whether it is appropriate for me to do that, and have considered whether there are other steps that I can take which will potentially achieve a similar result but will give an opportunity to RusChemAlliance and its lawyers to decide finally whether they do wish to say anything to the court before such orders were made. It does seem to me that in principle, and subject to anything which I hear from RusChemAlliance or its advisers, that this is an appropriate case to make the various orders that have been sought, including expediting the final determination of the claim for an injunction so as to enable that claim to be determined prior to the next hearing in the Russian proceedings.
- 38 There are a number of reasons why I think that this is an appropriate case to do so -- notwithstanding that that course will involve substantial abridgments of time.
- 39 The first reason is this, It is highly unusual for the substantial issue, raised by a defendant in response to a claim, to be the subject of an existing Supreme Court decision in parallel proceedings which have only just been concluded. The effect of the Supreme Court decision upholding the Court of Appeal is that the only potential argument which has ever



been identified, in response to Commerzbank's claim for injunctive and related relief, has been finally disposed of against RusChemAlliance.

- 40 Secondly, and allied to that point, this is not a case where RusChemAlliance had ever made any suggestion that there is a potentially different point which they can raise as against Commerzbank, when compared to the points that were raised and decided against them in relation to UniCredit. On the contrary, if one goes back to the letter from Enyo law dated 25 September 2023, the point being made in that letter was that the only argument available to RusChemAlliance was indeed the point that was being litigated in the UniCredit proceedings. That, too, was the basis of the order which I made on 28 September 2023. So there was only ever one defence that was being advanced in this case, and the substance of that defence was that there was no jurisdiction on the part of the English court over RusChemAlliance and no jurisdiction to grant the injunctive relief which UniCredit had been seeking.
- 41 It was no doubt for that reason that the hearing before Teare J was a somewhat unusual hearing: in that it was both a hearing of the jurisdictional challenge by RusChemAlliance, and an expedited hearing of the trial of the claim which UniCredit was making. On appeal, final relief was granted by the Court of Appeal, whose decision was upheld by the Supreme Court. The important point, as Mr Millett submitted, is that if there had been a defence to the case it would have emerged in the UniCredit proceedings, and that there has never been any suggestion that there is any defence to the claim other than the point which has been argued and ultimately now resolved against RusChemAlliance.
- 42 The third point, which is significant in the present context, is that RusChemAlliance has been given a large number of opportunities to engage with the present case subsequent to the decision of the Supreme Court. I have referred to the letter from A & O on 29 April 2024, the discussion with the defendant's solicitor on 1 May 2024, the further letter on 6 May 2024 that was sent by A & O Shearman, and the correspondence which was sent on Friday which indicated that the hearing would take place today.
- 43 The position as it seems to me, at least having not heard anything from the defendant, is clear. If one considers what has happened, both in these proceedings and in the Russian proceedings involving UniCredit, it is obvious, on the present material at least, that RusChemAlliance has decided that it will serve no useful purpose for it to continue to participate in the English proceedings. That is, no doubt, why Enyo Law are no longer acting. It is also plain from RusChemAlliance's conduct in relation to UniCredit, and their failure to provide any confirmation that they will abide by undertakings previously given to the English court in these proceedings, that RusChemAlliance's intention is to seek to continue the Russian proceedings in ways which they think will advantage them.
- 44 It does seem to me that, against that background, it is appropriate for the court to take whatever steps can reasonably be taken, consistent with due process being followed, to ensure that the rights of Commerzbank in this case are protected as fully as the court can protect them. That will involve the expedition of the substantive claim and the various other aspects of relief which are sought by Commerzbank, including expedition of the return date and granting the relatively minor amendments to the claim form.
- 45 I emphasise that these conclusions are on the basis of the present information and the present evidence. But it does seem to me to be appropriate to give one final opportunity to see whether RusChemAlliance do wish in any way to engage in the present case. I therefore indicate that I will be minded tomorrow morning to grant the various orders which have

been sought, including the final relief which is sought by Commerzbank, and that I would do so at a remote hearing of which notice can be given to the various email addresses (with appropriate correction of the one erroneous address) which have been identified in the notice of change to which I have referred. All parties can then attend remotely and if RusChemAlliance, now acting in person, have anything that they wish to put before the English court, then they will have an opportunity to do so then.

- 46 The notice of the application can also be given to Enyo Law who, for the reasons I have given, may still be properly regarded as being the solicitors on the record for RusChemAlliance. I will also make, in order to regularise the position which is contemplated by the notice of change of solicitor, orders for alternative service on the various email addresses (with the typographical error corrected) as well as alternative service on Enyo Law itself.
- 47 The matter will, therefore, be expedited to come back before me tomorrow morning and I will fix the time of the hearing at 10 a.m. London time. If nothing has changed in the meanwhile, then for the reasons which I have set out in this judgment this morning, I will make the various orders which are sought by Commerzbank. I will today make orders for alternative service and any other orders that it is necessary for me to make today abridging time so as to make tomorrow's remote hearing an effective hearing.

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**CERTIFICATE**

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