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BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

> "To be effective sanctions need to send messages to the designated person, and others in a similar position, that the conduct in question is unacceptable."
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> Shvidler v Secretary of State for Foreign, Commonwealth and Development Affairs

Sanctions

The claimant had been designated under the UK sanctions regime on the basis that he was a business partner and close associate of a prominent Russian businessman, Roman Abramovich, and that he owned or controlled an extractives company through which he obtained benefits, as well as supported the Russian government. His assets were frozen and his children lost their school places. The claimant challenged the designation as a disproportionate interference with his human rights. The court rejected the claimant's challenge. There were multiple examples of financial benefits received by the claimant from roles with companies owned or controlled by Mr Abramovich. The designation by the Secretary of State for Foreign, Commonwealth and Development Affairs was therefore well founded and justified for reasons including that the effect of the sanctions on the claimant may well discourage others from involving themselves in businesses supportive of the Russian state.

Shvidler v Secretary of State for Foreign, Commonwealth and Development Affairs [2023] EWHC 2121 (Admin), 18 August 2023

Jurisdiction – Additional Claimant

The dispute arose out of the collapse of a dam in Brazil that killed 19 people and caused extensive damage. The dam was owned by a Brazilian company, which itself was jointly owned by the Part 20 defendant and a subsidiary of a UK company. It had already been held that the courts of England and Wales were the appropriate forum for the claims against the UK parent company. The court also held that the Part 20 defendant could be joined to the English proceedings on the basis that they were jointly and severally liable under Brazilian law. There were serious issues to be tried as to when the defendant could seek contribution and limitation issues. The claims against the Part 20 defendant were not standalone proceedings for which Brazil was the most appropriate forum. They were additional claims within proceedings brought by 732,000 claimants for which it had already been determined that the courts of England and Wales were the most appropriate forum. There was significant overlap between the claims and requiring the defendants to issue fresh proceedings in Brazil would entail wasted costs and the possibility of inconsistent findings.

Municipio de Mariana and other v BHP Group (UK) Ltd and others [2023] EWHC 2030 (TCC), 7 August 2023

Bankruptcy

Mr and Mrs Brake were made bankrupt in 2015 and sought to challenge a number of transactions entered into by their trustees in bankruptcy to dispose of their bankrupt estate. They claimed to qualify as 'dissatisfied persons' under section 303(1) Insolvency Act 1986. The Court of Appeal found that the Brakes did have sufficient standing to challenge the transactions, but the Supreme Court overturned that decision. The Brakes did not fall within any of the categories that had sufficient standing, namely creditors, parties with an interest in any surplus and certain limited cases. The actions challenged by the Brakes related to their possessory rights to a cottage, not their personal capacities as bankrupts. Further, there was no concern that to not permit such applications would mean the misconduct of trustees would go unchecked. Trustees in bankruptcy are authorised by a recognised professional body and it was for such bodies to maintain proper standards.

Brake and another v Chedington Court Estate Ltd [2023] UKSC 29, 10 Aug 2023

Adjudication

Henry Construction Projects Ltd was the contractor and Alu-Fix the subcontractor under a JCT Standard Building Sub-Contract in relation to works on a hotel development. Following a dispute the subcontractor terminated the contract, thereby triggering a payment mechanism. When the contractor did not pay, the subcontractor commenced a 'smash and grab' adjudication ("SGA"). Before the SGA was complete, the contractor commenced a 'true value' adjudication ("TVA") asserting that the subcontractor owed it £235,000 as a result of overpayments. The SGA awarded payment to the subcontractor. The court held that the contractor had not been entitled to commence the TVA until after it had satisfied its immediate payment obligation (which the SGA confirmed had arisen). As a result, the adjudicator in the TVA had no jurisdiction.

Henry Construction Projects Ltd v Alu-Fix (UK) Ltd [2023] EWHC 2010 (TCC), 23 May 2023 (This judgment only recently became available)

Arbitration

SQD and QYP were parties to an agreement in relation to a project overseas that was governed by English law. Disputes were to be dealt with by ICC arbitration in Paris. When a dispute arose QYP commenced proceedings in the courts of its home jurisdiction. SQD applied to the English court for an anti-suit injunction to restrain the proceedings because it was a breach of the arbitration agreement. The English court refused the injunction on the basis that French law does not recognise anti-suit injunctions and has a philosophical objection to them. Having chosen arbitration in France, and therefore the procedural law of the arbitration being French law, the parties were taken to have been aware of this. The choice of English governing law for the agreement did not make the English court the proper forum nor was it appropriate for the English court to intervene.

SQD v QYP [2023] EWHC 2145 (Comm), 21 August 2023

Should you wish to discuss any of these cases in further detail, please speak with a member of our London dispute resolution team below, or your regular contact at Watson Farley & Williams:

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