

COMMERCIAL DISPUTES WEEKLY – ISSUE 179

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BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

"A claim or cause of action is not a fund but is an economic resource, on which basis the pursuit of the proceedings was not a breach of Regulation 11(5)."

Mints v PJSC National Bank Trust

Sanctions

Two Russian banks were involved in ongoing proceedings before the English court after they brought a claim against the defendants. When the war in Ukraine began, one of the claimant banks became a designated person under the UK sanctions regime. The defendants sought a stay of proceedings on the basis that continuation would breach sanctions. The Court of Appeal held that the sanctions legislation did not restrict a party's right of access to court to pursue a civil claim. A judgment could lawfully be entered in favour of a designated person after a trial which held that person to have a valid cause of action. Further, the sanctions regime permitted payment of sums where they were due under a contract or other obligation that was in place before designation. Pursuing civil proceedings was not a breach of the sanctions regime because the claim was an economic resource, not a fund.

Obtaining judgment was exchanging the cause of action for the judgment, not funds.

OFSI had licensed the claimant to pay its own lawyers' fees and could do the same for any costs orders made against the claimant. To do otherwise would risk a successful application by the defendants for a stay of proceedings and frustrate the claimant's right of access to court.

Mints v PJSC National Bank Trust [2023] EWCA Civ 1132, 6 October 2023

Maritime

The Commercial Court has recently handed down two judgments in the ongoing proceedings following the grounding of the M/T Prestige oil tanker off the coast of Spain, which caused significant pollution. The vessel's P&I Club obtained an arbitration award in England that Spain was bound by the terms of the Club's insurance. That award was declared by the English court to be enforceable under section 66 of the Arbitration Act 1996 ("AA 1996"). Spain obtained Spanish court judgments against the Club and sought to enforce them in England. The Club obtained a further arbitration award for damages for Spain's failure to adhere to the arbitration clause. When Spain challenged that award under section 67, 68 and 69 AA 1996, the English court rejected the challenges, with the exception of the injunctive relief.

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The Spanish judgments could not be enforced in England as they were irreconcilable with the English judgments enforcing the earlier arbitration award. The Commercial Court also held that a CJEU decision was not binding on the English court where it held that the Spanish proceedings had been commenced first and so the English enforcement orders were not to be recognised. The issue had already been dealt with in the English court, the CJEU had exceeded its jurisdiction and English public policy confirmed the issue estoppel. Spain had clearly breached the equitable obligation to arbitrate and compensation was appropriate, but the tribunal had no jurisdiction to grant an injunction against a state.

The proceedings involving France followed a similar pattern and France challenged, under section 69 AA 1996, the award of equitable compensation and an injunction against it. The Commercial Court held that there had been no error of law on the claim for equitable compensation, but there had been an error of law in relation to the injunction. An arbitrator had no greater power than the court to grant an injunction against a State under the State Immunity Act 1978.

London Steamship Owners' Mutual Insurance Association Ltd v Kingdom of Spain (The "PRESTIGE") [2023] EWHC 2473 (Comm), 6 October 2023

French State v London Steamship Owners' Mutual Insurance Association Ltd [2023] EWHC 2474 (Comm), 6 October 2023

Jurisdiction

The Court of Appeal has allowed an appeal from Mr Justice Bright's decision to refuse to grant a final anti-suit injunction ("ASI") in relation to proceedings commenced in Russia in a dispute arising out of bonds governed by English law with a Paris-seated arbitration agreement. Fresh evidence on French law had been provided, which established that although the French courts would not grant ASIs, they would recognise an ASI granted by a foreign court. The Court of Appeal considered that there was a serious issue to be tried on the merits and a good arguable case that the claim satisfied the jurisdictional gateway relating to contracts governed by English law. An English court would enforce a promise in an English law contract not to do something. As the French courts would not grant an ASI, the appropriate forum for the ASI claim was England. Given that the French courts would recognise such an order, there was no good reason not to grant the ASI.

Deutsche Bank AG v RusChemAlliance LLC [2023] EWCA Civ 1144, 11 October 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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