UK HIGH COURT REFUSES TO EXERCISE JURISDICTION OVER CLAIM BY MIGRANT WORKERS IN MALAYSIA AGAINST DYSON IN THE UK

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On 18 October 2023, the UK High Court (the "Court") found that England & Wales was not the appropriate jurisdiction to hear a case brought against Dyson by Nepalese and Bangladeshi migrant workers alleging poor working conditions, said to be indicative of forced labour, in a Malaysian factory (*Limbu and Others v Dyson Technology Limited and Others* [2023] EWHC 2592).

"A case brought against Dyson by Nepalese and Bangladeshi migrant workers alleging poor working conditions."

BACKGROUND

A claim was brought by 24 Nepalese and Bangladeshi migrant workers against three members of the Dyson Group relating to working conditions in the ATA/J factory in Malaysia.

The workers alleged, amongst other things, that they:

- were moved from Nepal and Bangladesh to Malaysia to work in the ATA/J factory;
- were charged excessive recruitment fees for this service, resulting in conditions of debt bondage;
- received minimal wages (sometimes less than US$10 per day);
- worked shifts ranging from 12-18 hours per day;
- were refused time off and toilet breaks;
- had their documentation withheld;
- did not have their visas renewed (which they say effectively resulted in imprisonment for some); and
- were made to live in overcrowded dormitory-style accommodation with poor sanitation and inconsistent access to water.

The workers brought a civil negligence claim alleging that Dyson had been unjustly enriched as a result of the unlawful working conditions that its supplier, ATA/J imposed and had breached its duty of care by failing to address these issues.

"Worked shifts ranging from 12-18 hours per day."

DYSON'S APPROACH

Dyson argued that the proper jurisdiction for the claim to be heard was Malaysia, not England & Wales. Dyson supported its application with a number of undertakings to submit to the Malaysian courts, cover many of the claimants' costs and consent to procedural matters that may have otherwise posed obstacles to achieving justice in Malaysia.

THE COURT'S FINDINGS

In applying the test as to whether it was appropriate for the court to hear the case in England & Wales (the *Spiliada* test), there were three key factors that particularly influenced the Court's decision:

> "It was most appropriate for matters of Malaysian law, particularly novel ones, to be determined in Malaysian courts."

1. **Novel Malaysian legal issues should be determined by the Malaysian courts**

The Court noted that "*there are good policy reasons for letting Malaysian judges consider the novel points of law that are being raised in this claim within the context of their jurisprudence, rather than letting an English Court second guess what they might decide*" [122].

On this basis, the court found that it was most appropriate for matters of Malaysian law, particularly novel ones, to be determined in Malaysian courts. Those issues included whether joint liability applies to those in a supply-chain relationship and whether, to make out a claim in unjust enrichment, benefits must flow directly from the claimant to the defendant.

2. **The underlying harm occurred in Malaysia**

Whilst the Court acknowledged that the allegations raised referred to both England & Wales and Malaysia, the harm itself (being the alleged mistreatment of workers) occurred in the latter jurisdiction. Therefore, the Court found that "*the centre of gravity of this case is plainly Malaysia, and this is a strong factor pointing towards Malaysia as being the proper forum*" [102].

3. **Substantial justice is obtainable in Malaysia**

The claimants argued, amongst other things, that they would be unable to access suitably qualified advocates in Malaysia and significant costs would have to be incurred in bringing the case. However, as Dyson not only provided an undertaking to the submit to the jurisdiction of Malaysian courts, but also undertook to cover much of the claimants' upfront fees, leaving only an estimated £374 to be covered with the support of an NGO, the Court held it was reasonable to rely on these undertakings and they served to significantly mitigate the risks to justice associated with having the case heard in Malaysia.

The Court was satisfied there was no requirement that the claimants must have premium legal representation in Malaysia, simply that the claimants could access suitably qualified and expert legal representatives.

WHAT DOES THIS MEAN GOING FORWARD?

Whilst the English courts have accepted jurisdiction in a number of group actions relating to issues occurring overseas (including *Vedanta Resources PLC and another v Lungowe and other* [2019] UKSC 20, *Okpabi and others v Royal Dutch Shell Plc and another* [2021] UKSC 3, *Josiya and Others v British American Tobacco plc and others [2021] EWHC 1743, Municípo de Mariana & others v BHP Group (UK) Limited & Another* [2023 EWHC 2030), this will not always be the case, particularly where there are novel issues of foreign law to be decided and the defendant is able to assure an English court that it will take steps to facilitate the claim being heard in the more appropriate jurisdiction.

KEY CONTACTS

SARAH ELLINGTON
PARTNER • LONDON

T: +44 20 3314 6317

SEllington@wfw.com

LAUREN SATILL
ASSOCIATE • LONDON

T: +44 20 7155 2794

LSatill@wfw.com

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