Brown Rudnick CIS Briefing

Edition no.1 – May 2019

A recent decision of the High Court of England and Wales highlights the importance of jurisdictional considerations in claims between international businessmen dealing largely with assets outside of the jurisdiction of the English courts, and, in particular, when the English courts have jurisdiction to hear such claims. This note summarises the key aspects of the decision, which will be of general interest to those involved in international disputes, and particularly those involved in disputes between high net worth individuals where jurisdiction is in issue.

Tugushev v (1) Orlov, (2) Roth, (3) Petric [2019] EWHC 645 (Comm) is a case which forms part of a bitter and high-profile battle between two Russian businessmen, the Claimant, Alexander Tugushev, and the First Defendant, Vitaly Orlov, alongside two of Mr Orlov's associates, in relation to the Norebo Group, which is a corporate group which operates an international fishing business largely under Russian state fishing quotas. Related proceedings have taken place in a number of jurisdictions, including Russia (both civil and criminal), Norway, Hong Kong, the Isle of Man and Guernsey.

The most recent decision of the High Court dealt with the challenge to a worldwide freezing order that had been obtained by Mr Tugushev against Mr Orlov in the sum of US$350 million and against permission that had been granted to Mr Tugushev to serve proceedings out of the jurisdiction.

This case demonstrates the ways in which a Claimant in litigation can show that a defendant is resident within the jurisdiction and therefore establish that the English courts have jurisdiction to hear such a claim, and the circumstances in which permission to serve out of the jurisdiction will be granted.

Background

Mr Tugushev asserted that, along with Mr Petrov and Mr Roth, he had set up the Norebo Group, which became a very successful business. He claimed that he had been the victim of a conspiracy between Mr Petrov and Mr Roth to misappropriate and/or deny the existence of his one-third interest in the group. He also claimed to have been the victim of the misappropriation of his direct shareholding in a Russian company within the group, as a result of a conspiracy between the three Defendants. He brought claims in contract and conspiracy for damages, declaratory relief and an account. Mr Orlov denied any wrongdoing and challenged the jurisdiction of the English courts.

In support of his case that the English courts had jurisdiction, Mr Tugushev argued that Mr Orlov was domiciled in England, giving rise to an absolute right to serve out of the jurisdiction, as while Mr Orlov had a home in Russia, he also resided in an apartment which he owned in London.

He further relied on the "tort gateway" and the "necessary or proper party gateway" in CPR PD 6B para.3.1(9) and para.3.1(3). As to the "necessary or proper party gateway", Mr Petric was the "anchor" defendant, being domiciled in England.

Judgment

Carr J found that Mr Tugushev had a good arguable case that Mr Orlov was resident, and therefore domiciled, in England in July 2018 when the claim form was issued. Mr Orlov spent substantial periods of

time in England for the dual purpose of business and seeing his family (his four sons all lived in England). It was found that his visits to England followed a regular and settled pattern: he usually came to London once or twice a month, with exceptions at Christmas and in the summer. Further, in 2018, he viewed the cost of maintaining his London flat as one of his "ordinary living expenses" and the residence had a degree of permanence and continuity. Importantly, Mr Orlov's business-visa status did not prohibit him from having a usual residence in England.

The conclusion that Mr Orlov was domiciled in England at the relevant time was a complete answer to his jurisdictional challenge.

However, notwithstanding that conclusion, in the alternative, the judge considered what the claimant had to show in order to obtain permission to serve out, namely: there was a serious issue to be tried on the merits of his claims against the defendant; there was a good arguable case that one of the gateways was satisfied; England was the proper place to bring the claim, being clearly and distinctly the appropriate forum to try the claim.

The judge found that these conditions were met and both gateways were satisfied.
As to the tort gateway, Mr Tugushev had a good arguable case that the making of a conspiratorial agreement was sufficient to amount to a substantial and efficacious act justifying Mr Orlov being brought here to answer the claim, and might constitute an act committed within the jurisdiction from which damage had been or would be sustained for the purpose of the gateway.

Further, England was clearly and distinctly the most appropriate place for all the claims to be resolved. In particular, Mr Petric (and potentially Mr Roth) would be sued here in any event. Mr Roth, who was domiciled in Switzerland, objected to proceedings taking place in Russia. Further, Mr Tugushev had undertaken not to pursue in Russia his separate contractual claims as pleaded in the instant action. The facts of the two conspiracy claims were very closely intertwined, and it was obvious that they should be resolved together in one jurisdiction.

The claim demonstrates the time and expense that can be spent dealing with jurisdictional challenges and the importance of detailed strategic planning in relation to jurisdiction.. In Tugushev, the hearing ran for four days and generated what the judge called "a depressingly vast amount of material", including 19 witness statements and five further expert reports served by Mr Orlov. It also resulted in costs in the region of £5.2 million.

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