



An anti-suit injunction is an important safe-guard for the integrity of proceedings which have been brought in the English Court. The question in *Star Reefers Pool Inc. v. JFC Group Co. Ltd* was how far will the Court interfere with foreign proceedings when drawing a line between one side's legitimate interest in English proceedings and the other side's juridical advantages abroad?

In order to obtain an anti-suit injunction you must have an exclusive English jurisdiction or an arbitration agreement. Otherwise you must show that England is the natural forum for the resolution of the dispute and the party against whom the injunction is claimed has behaved in an unconscionable manner.

This case concerned two letters issued by JFC, a Russian Company, in favour of Star Reefers, a Cayman Islands company. JFC asserted that the letters were governed by Russian law and were not binding, while Star Reefers claimed that the letters were guarantees which were subject to, and were binding under, English Law. The letters did not contain either an agreement for English law or Arbitration.

In June 2010 JFC commenced proceedings in Russia for a declaration that the letters were ineffective under Russian law. Star Reefers then sued JFC and obtained an anti-suit injunction from the English Court restraining the Russian proceedings. This appears to be the first case where a foreign litigant who had commenced proceedings before English proceedings were begun was enjoined for unconscionable conduct in the absence of an agreement to litigate or arbitrate in England.

JFC challenged the anti-suit injunction. The challenge failed but JFC obtained permission to appeal from the Court of Appeal.

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A Registered European Lawyer, Jaime graduated in Law in 2003 with a major in European Law and holds a LLM degree in International Maritime Law.

He commenced his professional career as a lawyer in Spain before becoming a shipping lawyer in the UK. Jaime has practiced shipping both in Spain and the UK although he spent most time in London where he has practiced in-house and in private practice. He was a claims executive for one of the international P&I Clubs and a shipping lawyer in two City firms. His experience covers all aspects of shipping including charterparty and bill of lading disputes, cargo claims, claims arising under marine insurance policies, collision, oil pollution and commodity trade disputes.

In addition to English, he speaks Spanish and Italian with a basic understanding of French.

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Acts of Piracy

Last year Swinnerton Moore LLP represented charterers in an appeal against a London arbitration award where shipowners sought to rely upon the Conwartime 1993 provision to justify proceeding via the Cape of Good Hope rather than through the Gulf of Aden as ordered. The court had held that the test was whether there was a “real likelihood”, in the sense of a real danger, that the vessel would be exposed to acts of piracy.

Unusually, clarification was sought from the court as to the meaning of “exposed to War Risks” in Conwartime. War Risks are defined in that provision as including acts of piracy and the court held that the phrase “exposed to War Risks” should properly be construed as referring to a situation which is “dangerous” and this the court said flows naturally from the wording of the clause read as a whole and thereby gives effect to the parties’ intentions.

The court noted that what is dangerous will depend upon the facts of the particular case and the court declined, on the facts set out in this award, to trespass upon the fact finding responsibilities of the appointed arbitrators and so remitted the award to the arbitrators.

Giving guidance to the arbitrators the court said “I shall order that the award be remitted to the arbitrators to reconsider, in the light of my judgment and having regard to the evidence adduced by the parties, whether, in the reasonable judgment of Bulkhandling, there was a real likelihood that the vessel would be exposed to acts of piracy in the Gulf of Aden. In shorthand the question is whether, in the reasonable judgment of Bulkhandling, there was a real likelihood that the Gulf of Aden would, on account of acts of piracy, be dangerous to Triton Lark”.

This is a very helpful clarification by the courts of the test shipowners need to satisfy if they wish successfully to decline to follow orders to undertake transits of areas affected by piracy and that is certainly not limited to the Gulf of Aden.

...Anti-suit injunctions, continued from front page

JFC did not submit to the English jurisdiction. It was not trying to extricate itself from English proceedings or confuse the litigation by commencing further proceedings abroad or as Morrison J. put it “*hijack the decision which is presently before this Court*” - Tonicstar Ltd v. American Home Assurance Co. Star Reefers’ claim would proceed unopposed, therefore the foreign proceedings would not impede the English proceedings and the anti-suit injunction was not necessary to protect Star Reefers’ English action.

Rix L.J. considered that the English Court should not set itself up as a tribunal to decide whether a foreign court had a case fit for trial. The foreign law point had to be bound to fail in order to be vexatious - British Airways Board v. Laker Airways Limited.

JFC’s conduct was not vexatious. JFC had commenced its proceedings first and had not submitted to the jurisdiction of the English Court. There was nothing unconscionable in JFC refusing to submit to the jurisdiction. The fact that the Russian proceedings had been commenced without notice was not unconscionable or vexatious.

Rix L.J. concluded:-

“It is hard to see that a party can be said to be acting unconscionably when it seeks a legitimate juridical advantage in a foreign court, especially where that is the court of its domicile, the place where any obligation fails to be performed, and the place where, if there was a contract of guarantee created by the posting of the guarantee letters to Star Reefers from Russia, those contracts were made”.

The Court therefore set aside the anti-suit injunction.

The case clarifies points of principle in relation to anti-suit injunctions in circumstances where there is no submission to the jurisdiction either in the contract or in the conduct of the party. It sets a limit on the ability of the English Court to interfere in foreign proceedings.

JFC were represented by Steven Gee QC and Peter Stevenson both of Stone Chambers instructed by Lewis Moore of Swinnerton Moore LLP.

BE NOTICED

In Peck Plc Ltd v Thai Maparn Trading

Co Ltd [2111] EWHC 3306 [Comm] the question was whether the Buyer had given a notice under GAFTA Form 120, Clause 7 extending the contractual period of delivery. The Buyer sent an email to the Seller saying that it was ready to extend the delivery period by 21 days and that if it did not receive a reply within two days it would treat the Seller as being in default. Minutes later the Buyers’ solicitors sent a message giving notice under clause 7 of GAFTA Form number 119 saying that the Buyer required the delivery period to be extended by an additional period of 30 days and that if the Seller failed to respond within seven days the Buyer would hold the Seller in breach.

The Board of Appeal of GAFTA held that no valid claim for an extension was made because the notices were conditional.

The Court held, on appeal,

1. The Buyers message was not a valid claim. It said the Buyer was “ready” to extend the delivery period and put Sellers on notice that if they failed to reply they would be in default.
2. The Solicitors’ message was not sufficient either. A notice that did not make it clear that the delivery period was being extended was not a sufficient or valid notice. Additionally, the reference to the wrong contract form and the wrong extension period meant that the message was not a valid claim.

The case emphasises the importance of drafting notices with precision as the Buyer’s damages claim failed.

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