

The Grant of an Anti-Suit Injunction in Connection with a Contract Governed by English Law

NIGEL PETER ALBON (T/A N A CARRIAGE CO) v (1) NAZA MOTOR TRADING SDN BHD (A company incorporated with limited liability in Malaysia) (2) TAN SRI DATO NASIMUDDIN AMIN [2007] EWHC 1879 (Ch). *The Lawtel summary:*

The applicant (Y) applied for an injunction restraining the respondent Malaysian company (N) from pursuing arbitration proceedings in Malaysia. Y alleged that the underlying agreement between the parties was an oral agreement made in England subject to English law. N alleged that there was a joint venture agreement signed by the parties in Malaysia governed by Malaysian law and containing a provision for arbitration in Malaysia. N denied concluding the English agreement as alleged by Y. Y contended that his signature on the joint venture agreement had been forged. Y had obtained permission to serve the proceedings out of the jurisdiction and an order for alternative service. N had applied unsuccessfully for a stay of proceedings in favour of arbitration proceedings in Malaysia, the court holding that the issue of the authenticity of the joint venture agreement should be determined by the English court rather than in the arbitration proceedings. Y had obtained on an application without notice an order restraining N from pursuing the arbitration proceedings in Malaysia but that injunction had been discharged as the sanction for failure by Y to comply with a court order. Y then made a further application for an injunction. Y contended that the court had jurisdiction to grant an anti-suit injunction and should grant an injunction barring N from taking any further steps in the arbitration proceedings pending the outcome of the English proceedings. N contended that the relief should be limited to barring N from inviting the arbitrators to rule on the authenticity of the joint venture agreement but should leave it to the arbitrators to decide whether to proceed with the arbitration in the interim without prejudice and subject to any determination by the English court on the issue of authenticity and accordingly of the arbitrators' jurisdiction.

Lightman J. held that the grant of an anti-suit injunction in connection with a

contract governed by English law was a claim made in respect of the latter contract within CPR r.6.20(5)(c), *Youell v Kara Mara Shipping Co Ltd* (2000) 2 Lloyd's Rep 102 applied. If that was wrong, the court had jurisdiction to grant an anti-suit injunction on the basis of N's application for a stay, *Glencore International AG v Metro Trading International Inc* (No3) (2002) EWCA Civ 528, (2002) 2 All ER (Comm) 1 considered. N was a foreign party brought into the jurisdiction by answering a claim within CPR r.6.20: it had not willingly submitted to the jurisdiction without reservation and it had not brought a counterclaim. But it had applied for a stay, and that application was ongoing and required the court to adjudicate on the authenticity of the joint venture agreement.

In those circumstances, the court had power to protect its processes in the course of and for the purposes of determining the claim to the stay, and that included where necessary the power to grant an injunction restraining N from taking steps within or outside the jurisdiction which were unconscionable and which might imperil the just and effective determination of the claim to the stay, *Grupo Torras SA v Al-Sabah* (No1) (1995) 1 Lloyd's Rep 374 considered. The pleaded claim to an injunction fell within the gateway relied on and the necessary permission was granted to serve the amended claim form and amended particulars of claim in Malaysia. (2) The injunction sought was necessary to protect the interests of Y in the instant proceedings. For N to prosecute the arbitration proceedings or to allow the arbitrators to proceed with them pending determination whether N had forged Y's signature on the joint venture agreement was to duplicate the instant proceedings. That was oppressive and unconscionable, *Tonicstar Ltd (t/a Lloyds Syndicate 1861) v American Home Assurance Co* (2004) EWHC 1234 (Comm), (2005) Lloyd's Rep IR 32 considered. Both sets of proceedings would be concerned with exactly the same subject-matter, *Elektrim SA v Vivendi Universal SA* (2007) EWHC 571 (Comm), (2007) 2 Lloyd's Rep 8 considered. The court declined to frame the injunction so as to leave it open to N to proceed with the arbitration inviting the arbitrators to determine what, if any, steps to take in the interim and without prejudice to the determination of authenticity by the English court.

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