

Stephen Houseman QC – Arbitration/Anti-Suit Injunctions

Stephen has been involved in a number of cases in the High Court and Court of Appeal in recent years concerning injunctive and other forms of relief in relation to pending or concluded arbitrations. Most of these concern applications for anti-suit and similar forms of injunctive relief ('ASI' for short). Such cases often involve associated jurisdictional or procedural issues, such as service of proceedings (e.g. by alternative method) upon foreign defendants, the court's jurisdiction over non-arbitrating / non-contracting parties involved in the relevant conduct, etc. Underlying disputes arise in a variety of commercial contexts, including banking, finance, insurance, corporate mergers, shipping, energy, construction.

The cases fall into the following broad categories:

[1] ASI relief to protect against a 'foreign attack' on an English-seat arbitral award

Noble Assurance Co & another v. Gerling-Konzern [2008] Lloyd's Rep IR 1; [2007] 1 CLC 85 (Toulson LJ) – Acted for Shell and its captive insurer, Noble. Proceedings commenced by reinsurers in Vermont seeking to set aside an award in London arbitration (Bermuda Form). Declaratory relief as to the meaning and effect of award granted in favour of both claimants, i.e. the arbitrating party (Noble) and also its parent company (Shell); ASI relief refused on discretionary grounds, including international comity. Instructed by Fulbright & Jaworski International (now Norton Rose Fulbright).

C v. D [2008] 1 All ER (Comm) 1001; [2008] 1 Lloyd's Rep 239 (CA) – Acted for major pharmaceutical company (insured). Proceedings in New York threatened by insurers by way of attack upon finality of arbitral award made in London (Bermuda Form). Until the subsequent CA decision in *Sulamérica* (see under [2] below), *C v. D* was the leading authority on ascertainment of the proper law of an (English seat) arbitration agreement contained within a substantive contract with an express choice of foreign law. Instructed by Allen & Overy.

[2] ASI relief to protect pending/prospective arbitration proceedings

Sulamérica Cia Nacional & others v. Enesa Engenharia SA & others [2013] 1 WLR 102; [2012] 2 All ER (Comm) 795; [2012] 1 Lloyd's Rep 671 (CA) – Acted for local insurers in reinsurance-led all risks programme covering construction of hydroelectric facility in Brazil. ASI relief granted to restrain proceedings (including for interim anti-arbitration relief) in Brazilian courts. CA decision became the leading authority on ascertainment of the proper law of an (English seat) arbitration agreement contained within a substantive contract with

an express choice of foreign law. (First instance decision of Cooke J is reported at [2012] 1 Lloyd's Rep 275.) The decision in *Sulamérica* has been the subject of published academic and practitioner analysis, e.g. *Arbitration International* 2013 (Volume 29 Number 1) at p.115. Instructed by Clyde & Co.

BNP Paribas SA v. OJSC 'Russian Machines' & others [2012] 1 Lloyd's Rep 649; [2012] 2 CLC 312 (CA) – Acted for major bank seeking ASI (different forms, mandatory & negative, including 'anti-avoidance' injunctions) against six associated corporate defendants on both contractual and non-contractual grounds, including vexatious collusion/conspiracy. Underlying Russian proceedings reached cassation appeal. Jurisdiction and service-related issues, including service by alternative method upon foreign defendants. (First instance decision of Blair J reported at [2012] 1 Lloyd's Rep 61; [2011] 2 CLC 942; [2011] Arb LR 49; see also Teare J's decision on deemed retrospective service [2012] EWHC 1023 (Comm).) Instructed by Clifford Chance.

Ukrainian Dispute (Anonymous) - Acted on behalf of claimants in November 2012, obtaining urgent parallel ASI relief, i.e. from both LCIA tribunal and Commercial Court on the same day, to restrain pursuit of proceedings brought unlawfully by defendant in the Ukrainian Courts. Underlying dispute concerned escrow regime for retention monies following an asset sale and purchase. Simon J granted an interim order pursuant to s.44(3) of the 1996 Act / s.37 SCA 1981 against both the contracting (arbitrating) party and non-contracting (non-arbitrating) party, involving shareholder / subsidiary context. Instructed by Baker & McKenzie.

International Finance Corporation & another v. Quantum Oil Terminals Ltd. Acted for injunction claimants (subsidiaries of the World Bank and OPEC, respectively) in ASI proceedings against a foreign defendant in respect of Ghanaian proceedings commenced after termination of development loans. ASI relief granted by Andrew Baker J (March 2017) and Robin Knowles J (December 2017) including in the face of anti-ASI and anti-arbitration injunctions threatened/obtained by defendant. Instructed by Allen & Overy.

Nori Holdings Ltd. & others v. Bank Otkritie Financial Corp [2018] 2 Lloyd's Rep. 80, [2018] 2 All ER (Comm) 1009. Acted for Russian bank (injunction defendant) resisting ASI relief sought by claimant companies in respect of Cypriot proceedings and Russian proceedings, respectively. Males J (as he then was) granted ASI relief in respect of Russian proceedings on the basis that insolvency-related claims were arbitrable; but refused ASI relief in respect of Cypriot proceedings on the basis of *West Tankers* decision of CJEU. Instructed by Steptoe & Johnson.

Perkins Engines Co. Ltd. v. Ghaddar & another [2018] 2 Lloyds Rep. 197, [2019] 1 All ER (Comm) 371. Acted for injunction defendants resisting ASI relief in respect of Lebanese proceedings commenced by them against a machinery supplier (Perkins) after termination of distribution agreement. Simon Bryan J granted ASI relief, based on the proper meaning

and effect of the conditional arbitration agreement in the parties' contract and reciprocal enforcement procedures in UK and Lebanon. Instructed by Allen & Overy.

Aqaba Container Terminal (PVT) Co v. Soletanche Bachy France SAS [2019] 1 Lloyd's Rep. 431. Acted for injunction claimant (ACT) seeking ASI relief against counterparty who commenced proceedings in The Hashemite Kingdom of Jordan seeking nullification of the parties' construction contract on constitutional grounds. ASI granted without notice by Jacobs J (August 2018), continued at contested return date by Moulder J (September 2018) and upheld at trial before Robin Knowles J in December 2018 (judgment handed down in March 2019). Instructed by Allen & Overy.

Ukrainian Dispute (Anonymous) Acted for injunction claimant (German manufacturer) seeking and obtaining ASI relief against two defendants in respect of proceedings commenced by one of them in the Economic Court in Kyiv asserting copyright in certain designs relating to parts being supplied to the counterparty for installation into a drilling rig in Ukraine. Teare J upheld mandatory and negative ASI relief against both defendants at the return date (May 2019) including on the basis of vexatious collusion between them. Instructed by Allen & Overy.

[3] Other injunctive relief relating to pending arbitration

Digicel v. West Indies Cricket Board (2008) – Acted for Caribbean telecoms company which was exclusive sponsor of West Indies Cricket Team, seeking interim injunction from Commercial Court under s.44(3) of the 1996 Act in order to hold the ring pending expedited arbitration for final relief. Underling dispute related to the '*Stanford '20/20 for \$20 million'* cricket match held in Antigua on 1 November 2008 (which the England Cricket Team lost...) Instructed by Jones Day.

Telenor East v. Altimo Holdings & another [2011] EWHC 735 (Comm); [2011] Arb LR 9 (Gloster J) – Acted for defendant shareholder (Altimo) resisting mandatory interim injunction designed to prevent a proposed strategic merger in the mobile telecoms sector, involving VimpelCom and Wind Telecom. Expedited arbitration in London. The merger subsequently completed in April 2011, creating the world's sixth largest mobile telecoms provider by subscriber numbers at the time. Instructed by Skaddens.

Ouais Group Engineering & Contracting v. Saipem [2013] EWHC 990 (Comm) (Poplewell J) - Acted for claimant seeking interim prohibitory and mandatory injunctive relief to prevent payment out under a series of on demand guarantees / performance bonds issued by Lebanese banks, against backdrop of pending arbitration in London. Underlying dispute concerned termination of contracts for onshore gas field installation and maintenance. Instructed by Addleshaw Goddard.

Law Debenture Trust Corp v. Elektrim Finance & another [2005] 2 All ER 476; [2005] 2 Lloyd's Rep 755 (Mann J) – Acted for major bondholders in pre-emptive proceedings designed to protect proposed arbitration. Decision concerns the interplay of ss.9 & 72 of the 1996 Act, as well as proper construction of a combined jurisdiction and arbitration clause giving one party a unilateral option to select arbitration. Underlying dispute related to default / acceleration under €510m Elektrim bond issue (related HL decision in *Concord Trust v. Law Debenture Trust Corp* [2005] 1 WLR 1591). Instructed by Bingham McCutcheon.

Rafael Advanced Defense Systems v. Mectron Engenharia [2017] EWHC 597 (Comm). Acted for intervening party resisting grant of injunctive relief relating to alleged misuse of confidential information in the defence procurement context (Brazilian Air Force). Teare J dismissed the interim injunction. Instructed by Clifford Chance.

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