COLLAS CRILL

Latest guidance from ECSC Court of Appeal on global anti-suit injunctions

NOVEMBER 2021

The Court of Appeal in the Eastern Caribbean Supreme Court recently handed down its Judgment in relation to an application for a global anti-suit injunction. The Appellants to this appeal were Mr Abyzov and Emmerson International Corporation, a company controlled by Mr Abyzov ('the Abyzov parties'). The Respondents were Mr Vekselberg and two companies which form part of the Renova Group ('the Renova parties').

The Judgment dismissed the Abyzov parties' appeal, which provides useful clarification as to the strict approach taken in the BVI towards global anti-suit injunctions.

Background

Briefly, the case concerns a joint venture entered into by Mr Abyzov and Mr Vekselberg. There has been litigation between the Abyzov parties and the Renova parties in the BVI for some 7 years. There has also been litigation involving some of these parties in Russia and, more recently, Cyprus ('the Cyprus proceedings').

On 12 October 2020, the Abyzov parties made their second application against the Renova parties for an anti-suit injunction. The Abyzov parties had previously applied (without success) for a global anti-suit injunction restraining the Renova parties from commencing or continuing satellite litigation against them in any court other than the BVI, in connection with issues in the BVI proceedings. The application dated 12 October 2020 sought orders that:

1. Integrated Energy Systems Limited ('IES') and Gothelia Management Limited (claimants in the Cyprus proceedings) discontinue the Cyprus proceedings;
2. Mr Vekselberg should cause Brookweed Trading Limited, CJSC KES-Holding and LLC T Plus Invest (also claimants in the Cyprus proceedings) to discontinue the Cyprus proceedings; and
3. a worldwide anti-suit injunction be granted restraining the Renova parties from commencing, continuing or taking any steps in proceedings against the Abyzov parties in any court or tribunal other than in the BVI, in respect of any issues arising in the BVI proceedings.

This application was refused at first instance by Justice Wallbank in its entirety. The decision was appealed by the Abyzov parties based on 13 grounds.

The outcome of the appeal

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

The appeal was dismissed by the Honourable Paul Webster, who gives the majority Judgment, with whom the Honourable Louise Esther Blenman and the Honourable Mario Michel agree. The Judgment mainly concerned anti-suit injunctions and the ability to make orders concerning parties and proceedings outside the jurisdiction.

It was held that whilst IES and Gothelia are parties in both the BVI and Cyprus proceedings, Mr Vekselberg is not a party to the Cyprus proceedings and he does not have a controlling interest in two of the claimant companies in Cyprus (T Plus Invest and KES-Holding). T Plus Invest and KES-Holding are also not registered in the BVI. The Court of Appeal held that Justice Wallbank was correct in determining that the BVI court had no jurisdiction over those parties and added that there was no evidence that Mr Vekselberg could cause those companies to discontinue the Cyprus proceedings. Interestingly, it was commented that the BVI court could not effectively deal with any non-compliance if the injunction was granted and it would therefore be pointless.

Summary

This Judgment confirms that the BVI court *can* consider the merits of foreign proceedings in the exercise of their discretion to grant an anti-suit injunction. However, this is only one factor to be considered and can only be decisive if the foreign claim is hopeless, bogus or entirely without merit. The overarching considerations are whether the foreign proceedings are vexatious or oppressive (see Minib Masri v Consolidated Contractors International Company (UK) Ltd and others (No 3) [2009] QB 503), interfere with the court's process (see Kenneth Krys and Joanna Lau v Stichting Shell Pensioenfonds BVIHCVAP 2011/036) or are otherwise unconscionable.

There is no requirement to consider the merits of the foreign claim and it was agreed on appeal in this case that the Cyprus court was best placed to consider the merits of that claim. Furthermore, it was noted that the issues in the Cyprus proceedings were different to those in the BVI proceedings and the BVI was therefore not the appropriate forum in which to trial those issues.

The appeal was dismissed and the Court of Appeal confirmed that anti-suit injunctions can be useful in some cases, but the court will not grant this relief lightly as it interferes with litigants' access to the court and the jurisdiction of foreign courts. Ultimately, the decision to grant anti-suit injunctions is a matter of discretion for the trial judge on the specific circumstances of the case.

The Judgment can be read in full here.

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

COLLAS CRILL

For more information please contact:



Ellie Crespi

BVI Managing Partner | BVI

t: +1 284 852 6335 | **e:** ellie.crespi@collascrill.com



Rocco Cecere

Partner | Cayman

t: +1 345 914 9630 | **e:** rocco.cecere@collascrill.com

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.