BRIEFING

TRAVERS SMITH

Dispute Resolution round-up

March 2023

Welcome to the latest edition of our quarterly disputes newsletter, which covers key developments in the dispute resolution world over the last three months or so.

The last quarter has seen a raft of interesting cases in the financial markets and crypto space, with the Supreme Court considering issues arising from an alleged breach by a bank of its *Quincecare* duty, a High Court decision in the long running Italian municipality swaps saga which pulls somewhat against what has gone before, and the Court of Appeal opening the door to the imposition of novel fiduciary duties on software developers who take on a role in relation to cryptocurrencies. We also consider below a number of cases raising interesting points of contractual construction, with the courts wrestling with the true construction of a force majeure clause, the meaning of an express contractual duty of good faith, and the perennial issue of whether a buyer has validly notified a seller of potential warranty claims under a notification provision in a Sale and Purchase Agreement. If that isn't enough to pique your interest, on the competition litigation front we continue to see a rise in creative collective proceedings applications in the Competition Appeal Tribunal, plus some interesting proposals emanating from the European Parliament on the regulation of litigation funding in the EU.

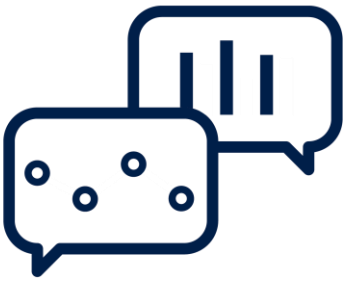
We hope that you continue to enjoy reading this round-up, whether a litigator by trade or a generalist, and whether in-house or in private practice, and that you will share it with any of your colleagues who may also find it useful.

Rob Fell

Head of Dispute Resolution

1 NEWS

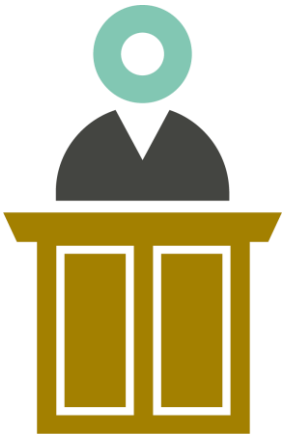
SRA ISSUES WARNING ON SLAPPS



Late last year the SRA issued a warning to practitioners on the use of Strategic Lawsuits Against Public Participation (**SLAPPs**), with a particular focus on pre-action letters. There is presently no legal or statutory definition of a SLAPP, but the term is most often used to describe a form of retaliatory litigation intended to deter freedom of expression. The SRA's warning states that it expects practitioners to identify when a proposed cause of action could be a SLAPP and, if such a situation is identified, to "*decline to act in this way*". The SRA suggests several "red flags" which although "*might not by themselves be evidence of misconduct*" may aid practitioners in identifying when this may be the case, including: (i) identifying the target of the suit (e.g. a journalist or academic); (ii) the nature of the instructions (e.g. if the instructions only relate to "public relations"); and (iii) the nature of the strategy (e.g. if a client requests that a cause of action target individuals in circumstances where a corporate entity is the more appropriate defendant). The scope for interpretation of the guidance will mean that reaching an assessment of whether a proposed action is indeed a SLAPP will not always be straightforward (although in practical terms it often will be), and practitioners will await further guidance with interest.

The SRA's warning also addresses the use of pre-action correspondence in circumstances where a recipient may be vulnerable or unrepresented, including warning against the use of terms such as "private & confidential" and "without prejudice" in circumstances where those terms are in fact incorrect. This guidance applies to all correspondence, not just correspondence in a defamation context, and so lawyers who deal with vulnerable or self-represented litigants (including in pro bono matters) should review the guidance carefully.

UPDATE ON COLLECTIVE PROCEEDINGS IN THE COMPETITION APPEAL TRIBUNAL



The collective proceedings (**CPO**) regime in the Competition Appeal Tribunal (**CAT**) continues to be used creatively with an increasing number of applications for CPOs being filed which look quite different to the

traditional competition law claims the regime was intended to facilitate.

In a particularly striking example, on 24 November 2022, the claimant law firm Leigh Day announced that they had secured funding from Bench Walk Advisors, a third-party litigation funder, to pursue collective proceedings by a "*significant class*" of UK bill-paying households against water and sewerage companies in England in relation to alleged "*unlawful discharges of untreated sewage and wastewater*". Leigh Day's announcement indicates that the claim will, notwithstanding the use of the CPO regime, address claims of environmental harm.

Separately, as previously reported in this newsletter, on 14 February 2022, Dr. Liza Lovdhal Gormsen as proposed class representative (**PCR**) filed an application in the CAT to bring collective proceedings against Meta, alleging that Facebook had abused its dominant position by making its users' access to the social media platform contingent on their provision of personal data, which Facebook then aggregated and profited from through advertising revenues. The application is of interest because it represents an attempt, following the Supreme Court's 2021 decision in *Lloyd v Google* to close the door to data privacy mass claims brought by way of the CPR 19.6 "representative action" procedure, to create an avenue for such claims to instead be pursued as breaches of competition law.

The much-anticipated hearing of Dr. Gormsen's application took place from 30 January to 1 February 2023. At the start of the hearing, the President of the CAT, Mr. Justice Marcus Smith, explained that, although the Tribunal is content to assume, for the purposes of certification, that Meta is dominant and that its conduct was abusive, the CAT would not certify a claim unless the applicant could make clear how the CAT could manage the cost and timing of the litigation to trial and how it will then try the claim. During the hearing, the CAT also focussed intensely on assessing the robustness of the proposed methodology to calculate the class's loss. The judgment, which was handed down remarkably quickly, on 20 February 2023, followed through on those concerns. It found the methodology of the PCR's economic expert, Mr. James Harvey, to be unclear, subject to significant flaws, and in need of "*root and branch re-evaluation…mere tinkering with the methodology will not do.*" On this basis the CAT concluded that the PCR had not put forward a satisfactory blueprint to trial, and declined to grant certification, instead requiring that the PCR file updated evidence within six months to address the deficiencies in its position. In recent certification applications claimants have generally (although not always) had little difficulty satisfying the Tribunal that their methodology to calculate damages was satisfactory at that stage, and there will likely be much discussion over whether this judgment is a straw in the wind as to how data privacy claims might be dealt with under the CPO regime, or simply the product of a particularly weak expert methodology.

For further information, please click here.

EUROPEAN PARLIAMENT PROPOSALS TO REGULATE LITIGATION FUNDING

In September 2022, the European Parliament voted in favour of new regulation of the EU's litigation funding sector, potentially to include a 40% cap on the amount funders can take from damages or settlement sums and a requirement for claimants to tell the court when they are supported by funding, and to reveal the identity of their funder. Some commentators consider that these proposed new rules, if implemented, could reduce the availability of litigation funding in EU jurisdictions, in particular for collective actions, and push funders to support claims in England and Wales instead.

UPDATE ON THE 2019 HAGUE JUDGMENTS CONVENTION

Following Brexit, there is no longer a comprehensive overarching framework in place between the UK and the EU governing the recognition and enforcement of civil court judgments. This less streamlined position may ultimately be resolved to some degree by the Hague Convention on the Recognition of Foreign Judgments in Civil and Commercial Matters 2019 (the **2019 Hague Judgments Convention**), an international convention which provides a relatively full framework for the recognition and enforcement of civil and commercial judgments as between contracting states.

On 29 August 2022, the EU acceded to, and the Ukraine ratified, the 2019 Hague Judgments Convention. It has also been signed (but not ratified) by Costa Rica, Russia, Israel, the US and Uruguay. As the first two contracting parties, it will come into effect between the EU (except Denmark) and Ukraine on 1 September 2023.

On 15 December 2022, the UK government announced that it is consulting on its plan for the UK to join the 2019 Hague Judgments

Convention. If the UK does join the Convention, as most practitioners hope will be the case, then it will apply as between the EU and the UK and provide greater certainty in this area than presently exists.

UAE TO ENFORCE ENGLAND AND WALES JUDGMENTS

On 13 September 2022, the UAE Ministry of Justice issued a directive confirming that England and Wales court judgments may be enforced in onshore UAE courts on the basis of reciprocity. The impact of the directive in practice remains to be seen but it nonetheless represents a step forward for the enforcement of English court judgments by onshore UAE courts.

2 CASES

CORPORATE AND COMMERCIAL DISPUTES

***Re Compound Photonics Group Ltd* [2022] EWCA Civ 1371**

This Court of Appeal decision arose in the context of an unfair prejudice petition brought by minority shareholders, including two prominent former directors, against a group of majority shareholders of Compound Photonics Group Limited (the **Company**). The main thrust of the petition was that the majority shareholders' removal of the two directors from the Company's board represented a breach of a clause in a Shareholders' Agreement which required the shareholders to act in good faith in their dealings with one another, and with the Company. The removal was therefore said to constitute unfairly prejudicial conduct.

The Court of Appeal, overturning the first instance decision, dismissed these arguments. In doing so it provided guidance on the interpretation of an express contractual duty of good faith in this context:

(i) **A duty of good faith must be construed based on context, applying ordinary principles of construction:** The Court moved away from the approach in *Unwin v Bond* of prescribing a rigid list of minimum standards inherent in a contractual duty of good faith, irrespective of the relevant factual background.

(ii) **A duty of good faith imposes a duty to act honestly:** The Court confirmed its earlier decision in *Re Coroin* that a duty to act in good faith imposes a core duty to act honestly.

(iii) **Depending on the contractual context, a duty of good faith may be breached by conduct which is not necessarily dishonest:** The Court suggested that, depending on context, a duty of good faith may be breached by conduct which is "*commercially unacceptable to reasonable and honest people*", even if not dishonest. However, it did not elaborate on the type of conduct which might fall foul of such an obligation.

(iv) **No broader requirement to act in accordance with the "*spirit of the bargain*":** The Court cast doubt, on an *obiter* basis, on the notion that a duty of good faith imports a broader duty of adherence to the "*spirit of the bargain*" reached in the underlying agreement.

While the Court of Appeal confirmed that a duty of good faith imposes a "*core duty*" of honesty, it left open the possibility that conduct which is not commercially acceptable may breach the former duty in some circumstances, even when not dishonest. However, the Court gave little guidance as to what conduct would fit this criteria. In view of the recent trend in unfair prejudice litigation of minority shareholders relying on alleged breaches of duties of good faith, this is an area where we should expect further litigation and clarification from the courts.

Read the judgment here.

Read our detailed briefing on the case here.

***MUR Shipping BV v RTI Ltd* [2022] EWCA Civ 1406**

In this decision, the Court of Appeal (by a majority) ruled that a force majeure clause did not apply because the party unable to comply with its obligations had offered suitable alternative performance (as envisaged by the clause, which included a reasonable endeavours obligation).

The dispute at issue concerned the carriage of bauxite from Guinea to Ukraine pursuant to a contract of affreightment between the shipowners, MUR, and the charterers, RTI. Under the terms of the contract, the amount of freight due was defined by reference to a price per metric tonne in USD.

In 2018, the US applied sanctions to RTI's parent company. MUR subsequently sought to invoke a force majeure clause in the contract to excuse it from further

performance, on the basis (amongst others) that the contract required RTI to make payments to it in USD. These payments could not in practice be made as they would almost all need to pass through the US banking system.

In response, RTI denied that there was any Force Majeure Event, arguing that only events which "*cannot be overcome by reasonable endeavors from the Party affected*" fell within the relevant definition. RTI argued that it had offered a form of alternative performance - payment in EUR, bearing any costs of conversion, which could be converted into USD as soon as it was received by MUR's bank. If MUR had exercised its "*reasonable endeavors*", it would have accepted this arrangement and the impact of the sanctions could have been overcome.

The majority in the Court of Appeal essentially agreed with RTI's argument. RTI's proposal to pay in EUR would not have resulted in any detriment to MUR and would have achieved precisely the same result as performance of the contractual obligation to pay in USD. MUR could not, therefore, rely on the force majeure clause. Force majeure clauses should be applied in a common-sense way which would achieve the purpose underlying the parties' obligations i.e., that MUR should receive the right quantity of USD in its bank account at the right time. There was no question of MUR being required to abandon or vary its contractual right to receive payment of freight in USD. Instead, the question was whether accepting payment in EUR would overcome the state of affairs resulting from the imposition of sanctions on RTI's parent company. The majority was not concerned with reasonable endeavours or force majeure clauses in general. Rather, "*[e]ach such clause must be considered on its own terms*".

Read the judgment here.

Read our detailed briefing on the case here.

***TP ICAP Ltd v Nex Group Ltd* [2022] EWHC 2700 (Comm)**

This decision concerned claims by a buyer, TP ICAP (the **Buyer**), against a seller, NEX Group (the **Seller**), for breaches of warranties in a Sale and Purchase Agreement (**SPA**). The SPA covered the sale and purchase of the entire issued share capital of ICAP Global Broking Holdings (the **Company**). The Seller sought strike out or summary judgment of parts of the claims, on the basis that they had not been the subject of a valid contractual notification from the Buyer to the Seller within the two year post-completion timeframe prescribed by the SPA, "*stating in reasonable detail the nature of the [claim] and, if practicable, the amount claimed*".

The warranties that the Buyer contended had been breached were, in high level summary, that as at certain points in time, (i) the Company (and various other entities and individuals) had not, so far as the Seller was aware, been subject in the preceding eighteen months to any non-routine regulatory enquiries which had had or would have a material adverse impact upon the Company's business, and (ii) nor, so far as the Seller was aware, did any circumstances exist which would be reasonably expected to give rise to legal proceedings against the

Company worth more than £500,000. The Buyer made written notifications to this effect within the requisite timeframe.

The Seller contended that, although the Buyer had made the notifications in time, it had made no attempt within them to particularise the "awareness" element of the alleged breaches of warranty (i.e. to explain why it considered that the Seller was aware that the relevant warranties were incorrect at the time they were given). The Seller further contended that the Buyer had failed to particularise whether and why the relevant non-routine enquiries would have had a material adverse effect. It argued that these failures rendered the Buyer's notifications invalid on the basis that they did not state "*in reasonable detail the nature of the [claims]*", meaning that the underlying claims should be contractually barred. In so doing, the Seller was hoping to exploit a significant line of case law in which post-SPA notifications have been held to be too general to comply with relevant notice provisions.

However, here the court rejected these arguments, finding that there was a real prospect that the Buyer had done enough in the notifications to state in reasonable detail the nature of its claims, despite not every element of those claims having been particularised.

Although every case will turn on its own facts, the decision in *TP ICAP* demonstrates that the courts can show latitude on the question of whether sufficient detail of a warranty claim has been provided in a contractual notification. The question of whether such claims have been validly contractually notified will remain a battleground between Sellers and Buyers, with Sellers continuing to seek to knock them out on the basis of allegedly defective notifications.

Read the judgment here.

FINANCIAL MARKETS DISPUTES

***Stanford International Bank Ltd v HSBC Bank plc* [2022] UKSC 34**

In this decision, a majority of the Supreme Court held that the fraudulent transfer of funds from an insolvent company's bank account does not result in any recoverable loss to the company if the funds are used to discharge the company's debts. In doing so, the majority affirmed the decision of the Court of Appeal to strike out Stanford International Bank Ltd's (**SIB's**) claim against HSBC Bank plc (**HSBC**). The backdrop to the claim was that SIB had effectively been run as a Ponzi scheme. SIB alleged that HSBC had breached its *Quincecare* duty – being the duty on banks to exercise reasonable skill and care in carrying out a customer's payment instructions when the bank is put on inquiry that those instructions may facilitate a fraud on the customer – in

providing banking services to SIB. The claim concerned the £116m paid out of SIB's bank accounts to those of its customers that happened to have withdrawn their funds before the Ponzi scheme unravelled (the **early customers**). To the disappointment of some practitioners hoping for guidance in this area, the Court made no findings as to the scope of HSBC's *Quincecare* duty or whether it had in fact been breached (although such guidance may eventuate when the Supreme Court hands down judgment in another *Quincecare* case, *Philipp v Barclays Bank UK Plc*). It instead confined its analysis to the question of whether – taking SIB's case at its highest – it could be said to have suffered any recoverable loss. The majority of the Court applied the net loss rule to find that it had not. If HSBC had refused to make the relevant payments, the counterfactual was that SIB would have an extra £116m to its credit, but would not have discharged the debts owed to the early customers. It was therefore in effectively the same position as it would have been had the payments not been made.

Read the judgment here.

Read our detailed briefing on the case here.

***Banca Intesa Sanpaolo SPA & Anor v Comune di Venezia* [2022] EWHC 2586 (Comm)**

This decision is the latest in the long running Italian swaps saga which has spawned many cases before the English courts, in which Italian municipalities seek to unpick swaps transactions entered into with banks in which they are out of the money. The municipality here, Comune di Venezia, argued that it had no capacity to enter into swaps it had concluded with two Italian banks, Banca Intesa Sanpaolo and Dexia, a question which, although the swaps themselves were governed by English law, was governed by Italian law. The Commercial Court concluded that a relatively recent Italian Supreme Court decision, known as the *Cattolica* decision, meant that this was indeed the case, and that the swaps were therefore void and unenforceable and that, in principle, the municipality was entitled to restitution of the net amounts paid under the swaps. However, the Court went on to find that the banks were in principle able to rely on a change of position defence on the basis that they had entered into back-to-back hedging transactions. The decision, which pulls somewhat against other decisions in this area, including the recent decision in *Dexia Crediop SPA v Provincia Di Pesaro E Urbino* [2022] EWHC 2410 (Comm), is likely to impact the similar claims which continue to be pursued by municipalities in both Italy and England and Wales. The element of the decision relating to the change of position defence is likely in particular to be a subject of focus for lawyers considering other claims, given that banks will very commonly enter into hedging arrangements. It will also be interesting to see the extent to which the defence might apply where banks have made other adaptions to their trading positions.

Read the judgment here.

***Tulip Trading Ltd v Bitcoin Association for BSV & Ors* [2023] EWCA Civ 83**

In this decision, the Court of Appeal has opened the door for the first time to the imposition of fiduciary duties on software developers who take on roles in relation to cryptocurrencies.

The claimant – an entity owned by the self-proclaimed inventor of bitcoin, Dr. Craig Wright – claimed that the private keys to its bitcoin accounts had been stolen leaving it unable to access over £3bn worth of bitcoins held in those accounts. It argued that the defendants, who were bitcoin software developers, owed it tortious and fiduciary duties in respect of the stranded bitcoins, and sought orders requiring the defendants to help it regain control of them (or, in the alternative, equitable compensation or damages).

At first instance, in the context of a challenge to the jurisdiction of the English courts to deal with the case, the judge held that, even taking the factual case pleaded by the claimant at its highest (i.e. even assuming that the role of the software developers in relation to the relevant bitcoin network was exactly as the claimant described it), there was no realistic prospect of establishing that the developers owed the contended-for fiduciary or tortious duties to the claimant.

On appeal, however, the Court of Appeal considered there to be a realistic argument (on the claimant's factual case) that the developers did in fact owe a fiduciary duty to the claimant, on the basis that they had taken on a role which involved making discretionary decisions and exercising power for and on behalf of bitcoin owners, who had entrusted their property to the developers' care. The Court was therefore prepared to dismiss the jurisdiction challenge and allow the case to proceed to trial, being the proper forum in which to decide whether a duty did in fact subsist, once the facts had been established. The outcome will be awaited with interest.

Read the judgment here.

CIVIL FRAUD

***Maranello Rosso Ltd v Lohomij BV & Ors* [2022] EWCA Civ 1667**

In this recent decision on the interpretation of settlement agreements, the Court of Appeal has confirmed that, where the natural meaning of the wording of a settlement agreement and its factual matrix indicate that it is objectively intended to cover claims in fraud and dishonesty, that agreement will be given effect, even where these is no express reference to such claims in the relevant clause. Although a court will not readily conclude that a release includes claims for fraud and dishonesty without express wording, there is no rule of law to

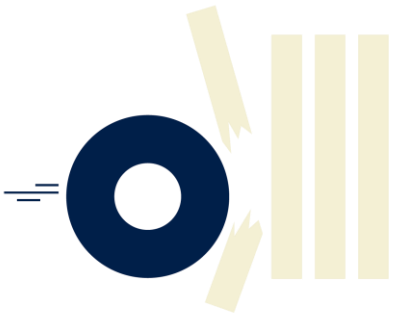
that effect i.e. requiring express wording in order to encompass such claims.

The case confirms that claims in fraud and dishonestly will not be given special treatment by the court when construing settlement and release clauses, and may be released by general wording. The judgment also highlights that parties should take care in the claims that they assert in pre-action action correspondence, as the court may take those into account as part of the factual matrix when deciding what claims the parties had in mind when agreeing the terms of the settlement.

Read the judgment here.

Read our detailed briefing on the case here.

COMPETITION DISPUTES



***Genius Sports Technologies Ltd & Ors v Soft Construct (Malta) Ltd & Ors* [2022] EWHC 2637 (Ch)**

In this decision, in a case involving competition and intellectual property claims, Mr. Justice Marcus Smith adopted a striking and unconventional approach to disclosure, placing the burden of a relevance review on the receiving party, not the disclosing party. Having originally ordered the parties to follow the "standard" PD51U (now PD57AD) disclosure model, the judge subsequently replaced this with a regime where the parties were required to conduct a disclosure review, targeted not at the identification and disclosure of relevant documents, but at the narrow exclusion of unequivocally irrelevant, and privileged, documents, with all other documents to be provided for inspection.

The judge held that this liberal approach to disclosure should be ordered where four conditions are satisfied: (i) there is a real risk that if a standard disclosure process is adopted, relevant documents will be missed; (ii) there is no danger of the process being used to oppress any of the parties to the litigation; (iii) the risk of disclosing privileged material is contained to the levels of any standard process of disclosure; and (iv) confidential material, whether relevant or irrelevant, is appropriately protected. He held that those conditions were (or would be) satisfied in the instant case, and dismissed the claimants' concerns about the burden that would be imposed on them by having to review and digest voluminous disclosure.

The judge's decision may have been coloured by the particular circumstances of this case, but it will be interesting to see whether his reasoning is adopted in other cases in future, in a competition litigation context in particular.

Read the judgment here.

Read our detailed briefing on the case here.

CIVIL PROCEDURE AND PRIVILEGE

***Jinxin Inc v Aser Media Pte Ltd* [2022] EWHC 2856 (Comm)**

In this decision, the court held that officers of a company could assert privilege as against the company, over personal documents held on the company's systems (for example, emails and other documents stored on the company's computer servers). The company argued that the officers could not have had any reasonable expectation of privacy in the data stored on their systems and that such data was therefore not confidential as against the company. The court disagreed, noting that the tests for confidentiality and privacy should not be equated; although both tests may in a given case lead to the same answer, that is not necessarily so because they rest on different legal foundations and protect different interests. As regards the test for confidentiality, the court noted that confidentiality itself is not simply a quality which information either has or does not have, but rather a relationship between information, persons and uses. Accordingly a document can be confidential as against certain persons but not others, and, crucially, a document can also be confidential with respect to the same person in relation to certain uses but not in relation to others.

Read the judgment here.

***Loreley Financing (Jersey) No 30 Ltd v Credit Suisse Securities (Europe) Ltd* [2022] EWCA Civ 1484**

In this decision, the Court of Appeal considered for the first time whether the identities of those authorised to give instructions to solicitors on behalf of corporate clients are covered by litigation privilege. The respondent defendants sought to know which individuals were authorised to give instructions in relation to the proceedings on behalf of the appellant claimant, Loreley. The Court of Appeal held that the general position is that the identity of those authorised to give instructions will not be protected, and rejected an argument that litigation privilege protects all information falling within a "zone of privacy" around a party's preparation for litigation.

The judgment also provides useful commentary about CPR 18 requests for further information – though the information sought was not privileged, it did not follow that Loreley ought to be ordered to provide such information under CPR 18. The Court commented that *"there is a spectrum of relevance"* and *"not everything which is relevant is the subject of a proper request under CPR 18"*. While CPR 18 is expressed in wide terms, giving the court power to order a party to clarify any matter which is in dispute in proceedings or to give additional

information in relation to any such matter, the Court discouraged disproportionate and unnecessary requests driven by a "*scorched earth policy to the conduct of proceedings*". The Court considered that, in this case, the information requested was not strictly necessary or proportionate.

Read the judgment here.

Read our detailed briefing on the case here.

***Microsoft Ireland Operations Ltd v JJH Enterprises Ltd* [2022] EWCA Civ 1509**

This short Court of Appeal decision confirms that, when a document is filed with the court electronically under Practice Direction 51O (i.e. using the court's electronic filing platform, CE-File), it may be filed any time up to midnight on the last day of the permitted filing period, unless there is a court order in place which specifies an earlier time.

Read the judgment here.

JURISDICTION

***Ebury Partners Belgium SA/NV v Technical Tough BC & Anor* [2022] EWHC 2927**

This decision represents one of the first times post-Brexit that the English courts have exercised their newly-returned power to grant anti-suit injunctions in respect of proceedings before EU member state courts (and what appears to be the first time post-Brexit that the power has been exercised to uphold exclusive English jurisdiction clauses).

The claimant, Ebury, provided foreign exchange currency services to the first defendant. The claimant contended that those services were governed by several contracts containing exclusive English jurisdiction clauses and governed by English law. A dispute arose when the first defendant failed to meet a margin call, and subsequently failed to pay further sums which fell due when the claimant closed out various trades. The first defendant commenced proceedings in Belgium seeking negative declaratory relief and challenging the validity of the contractual framework between the parties. The Belgian courts subsequently decided that a

jurisdiction challenge by the claimant should be dealt with on a rolled up basis with the main trial. The claimant therefore commenced English proceedings on the basis that the English courts were the correct forum for the dispute, and sought an anti-suit injunction in respect of the Belgian proceedings.

In granting the anti-suit injunction, the English court confirmed that such relief is now available in respect of proceedings before EU courts. It also considered and rejected an argument that the exclusive English jurisdiction clause in the main agreement between the parties had not been incorporated, on the basis that it was contained within terms and conditions to which the first defendant had acceded via an online tick box. Once it had been established that the parties' dispute was governed by exclusive English jurisdiction clauses, strong reasons would be needed for the anti-suit injunction not to be granted, which in the present case did not exist.

Read the judgment here.

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