

“GOLDEN ENDURANCE” – English Court considers party’s challenge to foreign judgment

In Golden Endurance Shipping SA v RMA Watanya SA and others (2016) EWHC 2110 (Comm), the Court considered whether a foreign judgment should be recognised in England, and whether the claimant had submitted to the jurisdiction of the foreign court. The Court also considered whether it was an abuse of process for the claimant to rely on a stance in the English proceedings which was allegedly inconsistent with the one it had taken in the foreign proceedings.

Background

A cargo of wheat bran pellets was shipped to Morocco, where it was found to be damaged. The cargo receiver's insurers commenced a subrogated claim in respect of the cargo in the Moroccan courts, and were awarded damages. The claimant subsequently commenced proceedings in London, requesting that the Moroccan judgment not be recognised. The insurers argued that the Moroccan judgment should be recognised by the English courts because the claimant had submitted to the jurisdiction of the Moroccan courts.

The claimant sought to rely on section 33 of the Civil Jurisdiction and Judgments Act 1982 (the Act), which provides exceptions for certain actions that do not amount to submission to the jurisdiction of an overseas court (including, for example, simply appearing in the foreign proceedings) and proceeded "to ask the court to dismiss or stay the proceedings on the ground that the dispute in question should be submitted to arbitration or to the determination of the courts of another country" (s. 33(b) of the Act).

Decision

Phillips J held that the claimant had not submitted to the jurisdiction of the Moroccan courts and the Moroccan judgment was not entitled to recognition by the English courts. It was held that the claimant's primary response in the Moroccan proceedings was for the dismissal of the Moroccan proceedings in favour of London arbitration. Philip J also held, obiter, that even if (contrary to his conclusion) it was possible for the claimant to mount a jurisdictional challenge in Morocco, the claimant had not, from an English law perspective, abandoned its challenge or succumbed to the jurisdiction of the Moroccan courts. The judge found that the course taken by the claimant was an appropriate one for a party seeking to have a dispute referred to arbitration and regarded by Moroccan lawyers as the only legitimate course of action available to the claimant in the circumstances. It was clear, the Court found, that the claimant's objection, based on the alleged incorporation of arbitration clauses, was its primary contention throughout.

It was also argued that the claimant had adopted an inconsistent stance in previously commencing English proceedings without arguing that the dispute should be referred to arbitration. The insurers essentially adopted an argument that the claimant was "blowing hot and cold". This abuse of process argument was also rejected by the English court, as there was no "blatant inconsistency" between the claimant's English and Moroccan positions. While the judge accepted that there was "a degree of tension" between the claimant's positions in the English and Moroccan proceedings, in his view, this was the type of situation that could arise where disputes were pursued "in parallel proceedings in different jurisdictions and governed by different laws". It was determined that this was "certainly not the type of blatant inconsistency which would cause the court to prevent a party from relying on the position it has undoubtedly and properly adopted in foreign proceedings."

Comment

This decision provides a useful indication of the Court's approach when determining whether the party against whom an overseas judgment was handed down, has submitted to the foreign jurisdiction. The case also illustrates that, to a certain degree, different stances may be adopted by a party in parallel proceedings in more than one jurisdiction. However, when facing complaints of abuse of process, the Court indicated that it would take a broad and robust view if it found a "blatant inconsistency" with the position adopted in foreign proceedings. In situations of jurisdictional conflict, it is always advised to tread very carefully.



Author:
Conor McStravick