Issue estoppel and abuse of process in respect of foreign judgments (Mad Atelier International v Manès)

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Dispute Resolution analysis: This case provides a useful outline of the complicated questions that will arise in respect of an argument that a claim brought in England is an abuse of process, where a linked judgment has been obtained outside of the jurisdiction. Key to the question of abuse will be the precise nature of the two disputes and the parties in question, as well as the presence of an exclusive jurisdiction clause within the contract providing that England is the relevant forum. Written by Georgia Whiting, barrister, 4 King's Bench Walk.

Mad Atelier International BV v Manès [2020] EWHC 1014 (Comm)

What are the practical implications of this case?

This case provides a useful analysis of the case law pertaining to what amounts to an abuse of process in respect of a linked foreign case, which is a complicated, and at times difficult to follow, area of law.

It is clear that a foreign judgment can give rise to issue estoppel and the conditions which must be satisfied are: (1) the judgment relied upon must be (a) made by a court of competent jurisdiction (b) final and conclusive; and (c) on the merits; (2) the parties (or their privies) must be the same in both sets of proceedings; (3) there must be a clear determination of the issue by the judgment—it must not be merely collateral or obiter comment; and (4) the issues in the later action must be the same as those decided by the judgment in the earlier proceedings.

A foreign ruling will be final and conclusive if the party asserting the estoppel can establish that the ruling cannot be relitigated in the foreign country in any new action between the parties, or their privies. The fact that a judgment or decision can be appealed does not prevent it from being final. It is clear from the judgment that the foreign legal system must regard the particular issues relied upon as forming the English issue estoppel as having preclusive effect—ie, it is not simply enough that the foreign court would consider the judgment final and conclusive.

Where the court finds that there has been no issue estoppel arising out of a foreign judgment, then although there can still be abuse in such circumstances, those occasions will be rare, and any decision that a litigant is not entitled to have its dispute determined in the courts of the country permitted by the terms of the contract, will be rarer still. In the instant case the judge considered that there was no question of an impermissible attack on the judgment in the relevant foreign proceedings.

Thus, the case provides helpful clarity in terms of the complicated legal concepts of abuse of process and issue estoppel in respect of a foreign judgment that is linked in some way.

What was the background?

The parties appeared before the court on the application of the defendant, Mr Manès, who had applied to strike out and or enter summary judgment in respect of all or part of the claims brought by MAD International against him. Alternatively, an application for a stay was sought.

The underlying claims related to the breakdown of a joint venture to develop a new brand and restaurant. Proceedings had previously been brought by MAD International in the Paris Commercial Court to overturn Share Transfer Documents in connection with this venture against two companies: the first company, MA Développement, was owned wholly by Mr Manès, and the second company, MAD Atelier, was owned wholly by MA Développement. In July 2018, the Paris Commercial Court gave judgment, dismissing MAD International's claim, which MAD International subsequently appealed. The decision in that appeal is due to be handed down in October 2020.

In proceedings commenced in England in April 2019, MAD International alleged that Mr Manès had breached a 2015 Joint Venture Agreement ('the JVA'). The JVA was to be implemented in two stages.

The stage included that the vehicle for the joint venture, MAD International, was incorporated on 26 June 2015. On incorporation it was wholly owned indirectly by Mr Manès. At the time, MAD Atelier, which was indirectly owned by Mr Manès via MA Développement, owned the restaurant. The shares held by MA Développement in MAD Atelier were then transferred to MAD International in stage one.

The second stage was for another company to purchase 60% of the shares in MAD International. On the same day, the parties entered into the JVA, which included provision for the ownership and operation of the restaurant and included an exclusive jurisdiction clause in favour of the English courts.

The overall effect of the joint venture was that MAD Atelier would be moved from the control of Mr Manès (through MA Développement), to the full ownership of MAD International, in which the third party company owned 60% of the shares.

A factual dispute arose thereafter, with MAD International asserting that the restaurant, the subject of the JVA, performed well, and that there were no real issues between the parties. The first time that they were made aware of any issues was in September 2016. Mr Manès instead claimed that the joint venture ran into difficulties early on, and the relationship between the parties deteriorated. Following an Annual General Meeting in 2016, various documents (the Share Transfer Documents the subject of the proceedings in the Paris Commercial Court) were signed that had the effect of transferring MAD International's shares in MAD Atelier back to MA Développement. It was said by MAD International that the shares were sold at a significant undervalue.

One of the key grounds in which the present application was pursued in the English courts, related to an alleged abuse of process. The exact scope of the French proceedings was in dispute but, in summary, MAD International had claimed that valid consent had not been given to effect the share transfer, as the signatory had been fraudulently induced. In the English proceedings, MAD International alleged breaches of the JVA and claimed damages to represent the alleged sale of the shares at an undervalue.

What did the court decide?

The court has the power to strike out a statement of case pursuant to CPR 3.4(2)(b) in respect of an abuse of process. The doctrine of res judicata has various strands, two of which were relevant in the instant case: (1) issue estoppel, and (2) abuse of process. The judgment also considered abuse of process in the wider sense (ie outside of issue estoppel).

Issue estoppel in relation to a foreign judgment

Mr Manès contended that only the foreign judgment must be final and conclusive, as a matter of foreign law—then, English law would be used to determine whether the particular issues that the foreign court had decided ought to bind the parties. In contrast, MAD International contended that the foreign legal system must regard the particular issues relied upon as forming the English issue estoppel as having preclusive effect. The dispute arose because it appeared to be common ground that France did not have a doctrine of 'issue estoppel', as only the operative parts of judgments constituted res judicata.

The judge agreed with MAD International's position; it was not enough for the foreign judgment to be final and conclusive, the specific issues within it likewise had to be precluded from being relitigated in France for there to be an issue estoppel on the French decision, with the judge citing dicta of Sales J in *Seven Arts Entertainment Ltd v Content Media Corporation plc* [2013] EWHC 588 (Ch) that:

> 'It is common ground that in order for an issue estoppel to arise in the courts in England by reference to a judgment of a court in a foreign jurisdiction (here, the Ontario Judgment), it is necessary to show not only that the requirements to establish an issue estoppel according to the law of the lex fori (England) are satisfied, but also that the **issue in question** would be treated as res judicata according to the law of that foreign jurisdiction: see *Carl Zeiss* [1967] 1 AC 853 , 919A-C (Lord Reid), 927C-D (Lord Hodson), 936A-B (Lord Guest), 949C-D (Lord Upjohn) and 969G-970A (Lord Wilberforce).' (emphasis added)

See further the judge's discussion at paras [50]–[61] for detailed reasons for rejecting the submissions made on behalf of Mr Manès.

In addition the judge concluded that Mr Manès was not the privy of MA Développement and MAD Atelier despite his owning 100% of the former, which in turn wholly owns the latter: 'I do not consider that the mere fact that someone is a 100% shareholder of a company makes them the company's privy.' (at para [67]).

The judge ultimately found that no issue estoppel arises from the Paris judgment as the decision was not final or conclusive, there was no privity of interest between the parties to the French proceedings and those to the English proceedings, the relevant issues were not issues concluded by the Paris Commercial Court but comments on the state of the evidence and the issues in the English proceedings were significantly broader than the issues in the French proceedings.

Abuse of process in the absence of issue estoppel—collateral attack and Henderson v Henderson abuse

Having concluded there was no issue estoppel the judge was also satisfied that the English proceedings were not an abuse of process in the wider sense. Specifically:

- because there was no issue estoppel from the foreign judgment in relation to the claims at hand, this was a powerful factor against finding abuse
- the factual issues contained within the English proceedings were much broader than those before the Paris Court (which in any event did not actually make any binding conclusions on factual issues)
- most of the issues would not 'fall away' within the English proceedings, if the Paris judgment were successfully appealed
- Mr Manès was not privy to the French proceedings
- there was an exclusive jurisdiction agreement in favour of England, which was a strong indication there was no 'manifest unfairness' in relitigating particular issues in the only jurisdiction contractually available to them
- there was no prima facie assumption that proceedings with overlapping factual issues are an abuse of process, and
- there was no *Henderson v Henderson* type abuse as it was simply not the case that the issues could and should have been brought in the earlier proceedings

Taking such factors collectively and individually, the judge concluded that the English proceedings were not an abuse of process and so declined to strike out the claims on such a basis.

The judge also declined to grant summary judgment, having found that the claims were afforded a real prospect of success, the principles of such an application not being in dispute. The application for a stay was also dismissed, as Mr Manès failed to demonstrate that there were exceptionally strong grounds for a stay, for reasons including that there was an exclusive jurisdictional clause in favour of the English courts, and the length of any stay in the English proceedings would be uncertain, as even though the Paris Appeal Court's decision is expected by October 2020, each party in respect of the proceedings in France would have the right to appeal to the French Court of Cessation in relation to any points of law.

Mr Manès' applications were all, accordingly, dismissed.

Case details

- Court: Queen's Bench Division (Commercial Court)
- Judge: Mr Justice Bryan
- Date of judgment: 12 September 2018

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