

The enforcement and recognition of foreign judgments through the English courts (Public Stock Co v Starr Syndicate)

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Dispute Resolution analysis: In this case, the High Court considered the recognition and enforcement of a foreign judgment in the English courts. In particular, consideration was given as to the correct test to be applied when determining whether parties can be said to have agreed to submit to the law of a foreign jurisdiction, and the effect this will have on enforcement. The principles as per the Privy Council decision in *Vizcaya Partners Ltd v Picard* were also considered, as was the defence of bias. Written by Georgia Whiting, barrister, 4 King's Bench Walk.

Public Joint Stock Co ('Rosgosstrakh') v Starr Syndicate Ltd and other companies
[\[2020\] EWHC 1557 \(Comm\)](#)

What are the practical implications of this case?

This case makes clear that, whether there is an agreement to submit to the jurisdiction of a foreign court, is a question of English private law. However, it is also clear that the construction of an agreement to submit to the jurisdiction of a foreign court is a question of the relevant law of the agreement. Therefore, the issue of construction is not to be resolved by considering how 'English law eyes' would interpret the clause since questions of interpretation are to be determined by the foreign law.

While the decision in the case of *Vizcaya Partners Ltd v Picard* [\[2016\] UKPC 5](#), [\[2016\] 3 All ER 181](#) was not binding on the High Court, it was clearly persuasive, and is likely to be followed in future.

It is also clear that, where experts disagree on matters such as jurisdiction, it is unlikely that summary judgment will be awarded, as it is difficult to assess the weight to be given to such matters in the absence of oral evidence at a full trial of the issues.

In terms of the defence of bias, this case again makes clear the limitations of an application for summary judgment where there is evidence that needs to be tested. It is also clear that the defendants would have to show that the decision of the court in question was deliberately wrong, as opposed to merely incompetent, and this is a high threshold to meet.

What was the background?

This case concerned the claimant's application for summary judgment on its claim for recognition and enforcement of three judgments obtained in its favour in the Russian courts in 2015 and 2016. The main judgment related to a policy of reinsurance (the reinsurance policy) which was written by the defendant reinsurers for JSC Kapital Insurance (Kapital) who had in turn written a policy (the insurance policy) in favour of Sukhoi Civil Aircraft Company (Sukhoi).

Kapital at the material time was a subsidiary of the claimant and had succeeded to the benefit of the judgments. It was also a subsidiary of a state-owned company. Sukhoi was a division of the aerospace and defence conglomerate that is majority owned by the Russian state.

The underlying insurance claim related to a plane crash which occurred in 2012 and in respect of which Kapital had made payment to Sukhoi under its hull and third-party liability cover. An indemnity was subsequently sought under the reinsurance policy, as it was argued that the flight in question was a demonstration promoting air travel in Asia and was

consequently not covered by the insurance policy, which only applied to ‘test and certification flights’.

There were two grounds on which summary judgment was defended, namely, a ‘lack of jurisdiction’, and ‘bias’. In terms of the lack of jurisdiction point, the reinsurance policy contained the following choice of law and jurisdiction clause:

‘This reinsurance shall be governed by and construed in accordance with the law of Russia and each party agrees to submit to the exclusive jurisdiction of the Courts of Russia.’

The judgment in respect of the liability under the ‘All Risks’ section of reinsurance policy had been obtained by Kapital through the courts of a town in Siberia, located in the Khanty-Mansi Autonomous Region-Yugra. The subsequent (unsuccessful) claim by the defendants under the legal liability section of the reinsurance policy was brought in Moscow.

In terms of bias, it was said by the defendants, among other things, that the independence and impartiality of Russian courts is often undermined by interference from the state and ‘powerful litigants’ and that, judging by the ‘wholly perverse’ decisions reached in Kapital’s favour, the proper inference to be drawn was that they (and others) improperly influenced those courts.

What did the court decide?

The application for summary judgment failed on both the jurisdiction and bias grounds.

The question of jurisdiction

Dealing with the question of jurisdiction, both the claimant and the defendants had obtained reports of specialists in Russian law. However, the respective experts disagreed as to whether the courts in Russia had jurisdiction to consider the claims against the defendant reinsurers.

The judge held that, contrary to the submissions of the claimant, the issue of construction was not to be resolved by considering how ‘English law eyes’ would interpret the clause, since questions of interpretation were governed by Russian law. It was clear from the Privy Council decision in *Vizcaya Partners Ltd v Picard* [\[2016\] UKPC 5](#), [\[2016\] 3 All ER 181](#) that the construction of an agreement to submit to the jurisdiction of the foreign court is a question of the relevant law of the agreement.

If the interpretation of the jurisdictional clause in accordance with Russian law led to the conclusion that the Siberian court did not have jurisdiction (as one expert contended), then there would be a real prospect of the defendants establishing that it would not be a judgment capable of being recognised or enforced under English law, applying the principles expressed by Dicey under rule 42 as it would not be a judgment:

‘given by the court of a foreign country with jurisdiction to give that judgment in accordance with the principles set out in Rules 43 to 46.’

Given that the experts in the instant case had not had the opportunity to give oral evidence and had accordingly not been subject to cross-examination, there was no basis upon which the judge could fairly reduce the weight given to the respective experts’ reports. It was accordingly not possible for the court to resolve the differences in the views held by the experts at that stage, without having the benefit of oral evidence.

Bias

Considering the second element of the application, bias, it was accepted that a foreign judgment which otherwise is enforceable, cannot be enforced if it was procured by fraud. However, the judge considered that the defendants would not have to establish a ‘conspiracy’ per se, but they would have to establish, on the evidence, improper influence of the court in question and the relevant appeal courts. The defendants would also have to show that the courts were deliberately wrong and not merely incompetent—that is a high

threshold. However, again, given the disagreement of the experts and the high threshold in question, this was a matter which could only be determined at trial.

Case details

- Court: High Court of Justice, Business and Property Courts of England and Wales, Commercial court (QBD)
- Judge: Mrs Justice Moulder
- Date of judgment: 17 June 2020

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