



International Arbitration Focus Team

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BonelliErede Obtains Anti-Suit Injunction from English High Court

Introduction

International parties often choose to arbitrate their cross-border disputes as opposed to settling them before domestic courts, ousting the jurisdiction of any national court by way of an arbitration agreement. Despite opting for arbitration, some parties choose to bring their grievances to domestic courts, in contravention of their arbitration agreement. One of the avenues to compel parties to respect their arbitration agreement is an “anti-suit injunction”, which seeks to restrain a party from commencing or continuing legal proceedings before a domestic court.

In a recent case led by BonelliErede London team, our client, a party to an international construction agreement, was served with a foreign court proceeding regarding a dispute that had already been resolved in an ICC arbitration seated in London, where the arbitral tribunal had issued an award in favor of our client. To secure the exclusive jurisdiction of the arbitral tribunal and the enforcement of the award, BonelliErede successfully obtained an anti-suit injunction from the English High Court, which issued an order restraining the counterparty from continuing the domestic proceedings in breach of the arbitration agreement.

Anti-Suit Injunctions – A Primer

An anti-suit injunction is a provisional or interlocutory measure that restrains party from commencing or continuing court proceedings brought in another forum.

A party facing court proceedings in a dispute subject to an arbitration agreement may apply to the courts of the arbitral seat of the arbitration requesting an order for the counterparty to withdraw the domestic court proceedings. Failure to comply with the court’s order may result in serious consequences for the offending party, including a finding of contempt of court.

Under English Law, the Senior Courts Act 1981 empowers the English courts to grant anti-suit injunctions to restrain foreign proceedings that have been instituted in contravention of an arbitration agreement.

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Pursuant to ss.37(1) and (3) of the Senior Courts Act 1981, English Courts may prohibit a party from commencing or continuing domestic court proceedings and may take positive steps to remediate the breach of the arbitration agreement.

Under English Law, applications for anti-suit injunctions should be filed promptly after becoming aware of the risk of non-compliance with an arbitration agreement and in any event before foreign procedures have advanced significantly. However, even a substantial period of delay may not be fatal for parties seeking anti-suit injunctions, provided they are able to demonstrate the good and justifiable reasons for the delay.¹ The Court noted in *VTB Bank PJSC v Valeri Dzhanibekovich Mejlumyan* that:

First, even where there is a binding exclusive jurisdiction clause, the injunction should be sought promptly, and before the foreign proceedings are too far advanced. Second, the questions of delay and comity are linked. Third, prejudice to the injunction defendant due to delay is significant, and if delay is not prejudicial it may be given significantly less weight. But delay is not necessarily immaterial in the absence of prejudice to the injunction defendant. The need to avoid delay arises from a variety of reasons including, in addition to prejudice to the injunction defendant, waste of judicial resources, the need for finality, and comity towards the foreign court. Fourth, and perhaps most importantly, the courts will take into account the extent to which the delay was justifiable or excusable in the circumstances; and will weigh delay against the importance of enforcing the forum clause. Even delay that can be criticized will often not be sufficient to justify refusing an injunction and thus permitting a breach of contract to continue. It seems that time taken in challenging the foreign court's jurisdiction does not in itself justify delay in applying for an anti-suit injunction.²

A Closer Look at the Recent Case

The underlying dispute arose out of a contract (the “**Contract**”) to design, procure, install, test and commission a gas line between a joint venture (the “**JV**”) and a company specializing in project management, engineering, and procurement (the “**Contractor**”). The Contractor received an advanced payment. Due to the slow progress of the Contractor's work, the JV operator terminated the Contract. Pursuant to the Contract, the Contractor was only entitled to keep the portion of the advanced payment for the works performed up to the date of termination.

¹ In *Africa Finance Corp and others v Aiteo Eastern E&P Company*, the English Commercial Court ruled that a 13-month delay in seeking an anti-suit injunction was not unreasonable given that the parties engaged in a negotiation period and the foreign procedure in Nigeria had not advanced significantly. See, *Africa Finance Corp and others v Aiteo Eastern E&P Company Ltd* [2022] EWHC 768 (Comm), § 94.

² *VTB Bank PJSC v Valeri Dzhanibekovich Mejlumyan* [2021] EWHC 1386 (Comm), §94. Similarly,

Upon the Contract's termination, the Parties disagreed on the amounts to be reimbursed to the JV. After appointing an independent quantum expert to value the amounts due under the Contract and an unsuccessful attempt of amicable settlement, the JV commenced an ICC arbitration, with London as the seat of arbitration.

On 15 June 2022, the arbitral tribunal issued an award in favour of the JV. Months later, the Contractor initiated proceedings before the domestic courts in Nigeria on the same dispute that had already been settled in the London seated arbitration. BonelliErede filed an application for an anti-suit injunction before the English High Court to prevent the Contractor from pursuing any substantive proceeding arising out of the Contract in domestic courts, and requested leave from the Court to enforce the arbitration award.

The High Court issued an order restraining the Contractor from taking further steps to pursue its claim before the domestic courts and from commencing any other substantive claim or proceeding before the domestic courts arising out of the claims that had already been resolved in the arbitration. The order has been now formally served on the Contractor.

Conclusion

BonelliErede's recent success in obtaining an anti-suit injunction for its client in the English court highlights the following:

- Anti-suit injunctions can be a vital tool to protect the enforceability arbitration agreements.
- The English courts' pro arbitration stance is mirrored in their approach to anti suit injunctions, and is a further advantage of choosing London as the seat of arbitration.



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