

The availability of anti-suit injunctive relief, despite delay (Specialised Vessel Services v MOP Marine Nigeria)

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Arbitration analysis: The acknowledged starting point when seeking anti-suit injunctive relief is that you must act promptly, but is that the whole story? In a case where a party waited approximately a year to bring a claim for injunctive relief to the English High Court, Mr Justice Calver granted it. The case highlights the factors on which a party can rely to counter an argument that there has been delay. The case also considers the effect on the exercise of the court's discretion of the defendant having obtained an injunction abroad in breach of an exclusive arbitration agreement. Written by Saira Paruk, barrister at Quadrant Chambers, counsel for the claimant in this case.

Specialised Vessel Services Ltd v MOP Marine Nigeria Ltd [\[2021\] EWHC 333 \(Comm\)](#)

What are the practical implications of this case?

The judgment re-emphasises the principles found in the case law on delay in making an application for anti-suit relief. However, the outcome reminds us that delay should not be looked at in isolation. The case shows that despite the strong words in the previous cases about delay, there are certain factors which ameliorate the position for claimants. This was a common sense approach, allowing parties to consider the best approach in all the circumstances.

The case sets out with some precision relevant factors which the court considered justified or tempered the effect of the delay, namely that:

- the foreign proceedings had not progressed very much in the intervening period, so no prejudice had been suffered by the defendant
- the foreign court had not engaged with the substantive merits of the case
- any resources wasted by the foreign court had been minimal and only in relation to the jurisdictional issues
- foreign law advice had suggested that there was a good chance of dealing with the matter quickly and efficiently in the foreign court
- the English court was not being asked to second guess any decision of the foreign court

So, if a party chooses not to bring a claim for injunctive relief immediately after being served with foreign proceedings in breach of an arbitration or jurisdiction clause, relief may still be granted if they can show good reason for the approach taken. Parties should consider these factors when choosing how to proceed, and if and when an application for injunctive relief is made, consideration of these issues needs to be evidenced. In particular, evidence of positive foreign law advice that the approach taken is justified should be obtained.

It should be noted, however, that in this case, the delays experienced by the courts in Nigeria as a result of coronavirus (COVID-19) and other scheduling issues favoured Specialised Vessel Services (SVS). Therefore, as with the exercise of any discretion, these principles and factors should be taken as guidelines only, as each case will be decided on its own particular facts.

What was the background?

The claimant, owners of the vessel the 'SVS COCHRANE' (the vessel) chartered the vessel to the defendant, MOP Marine Nigeria Ltd (MOP), by virtue of a bareboat charter dated 23 January 2019 (the bareboat charter).

The bareboat charter contained an exclusive arbitration agreement providing for arbitration in London, governed by English law (and in accordance with the London Maritime Arbitrators Association Terms). On 9 October 2019, the vessel was involved in a collision with a tugboat in waters close to Bonny Island, Nigeria. The vessel was grounded and had not been in operation since the collision.

As a result of the collision, SVS had claims against MOP under the bareboat charter, including for outstanding hire, loss equivalent to the value of the vessel and additional damages.

Despite the arbitration agreement, in November 2019 MOP commenced proceedings in Nigeria. Such proceedings claimed negative declarations regarding liability and an injunction preventing SVS from contacting MOP further in relation to the payment of hire. SVS was eventually served with these proceedings in January 2020. SVS applied for an extension of time to make an appearance before the Nigerian courts, a stay of the proceedings on the grounds of jurisdiction, and entered a memorandum of conditional appearance (which is required if a party is contesting jurisdiction). SVS commenced arbitration in May 2020 and MOP then issued a separate action in Nigeria, under which it sought and obtained an ex parte injunction preventing SVS and the arbitrator from pursuing the arbitration.

Following the listing and adjournment of various hearings, the status of the proceedings of Nigeria at the time of this claim was as follows:

- the stay application was heard in October 2020, but judgment was awaited
- SVS's application to set aside the interim injunction was dismissed; an appeal was due to be heard in November 2020 (that hearing was listed for 2 March 2021)

SVS's claim for injunctive relief in the English High Court was issued in January 2021.

What did the court decide?

The court re-emphasised the basis on which anti-suit relief is granted, and in particular that the relief sought is against the defendant, not against the foreign court. The judge then re-enforced the principles derived from the case law on delay, as recently set out in the case of *Daiichi Chuo Kisen Kaisha v Chubb Seguros Brasil SA (formerly Ace Seguradora SA) (THE SOUTHERN EXPLORER)* [\[2020\] EWHC 1223 \(Comm\)](#).

However, having analysed the facts of this case closely, the judge drew distinctions between the case at hand and those that went before. Accordingly, the judge held that, despite the year-long delay between SVS being served with the Nigerian proceedings and the issue of its claim for anti-suit relief, he would exercise his discretion to grant the injunctive and declaratory relief sought.

The factors which persuaded the judge that the delay should not count as a decisive factor against granting the relief sought were as follows:

- there was objective justification for the approach taken (ie to pursue a stay and dispute the injunction in Nigeria). Local lawyers had advised that there was a good chance of a successful and speedy outcome in Nigeria itself

- MOP had never engaged with the validity of the arbitration agreement and no judgment dealing with that issue had yet been handed down
- the Nigerian court process had itself caused delays as result of coronavirus and other scheduling delays
- as a result, there had been no real progress in those proceedings. Accordingly, the English court was not being asked to second guess any decision of the Nigerian court and it was not a case of SVS seeking to have two bites of the cherry
- the judge accepted the evidence of SVS that it had acted in an attempt to minimise costs by seeking an order of the Nigerian court itself, which was also, the judge accepted, an approach taken in deference to the foreign jurisdiction
- although it was regrettable that resources of the Nigerian court had been taken up, it had been minimal and only incurred in relation to jurisdiction

Furthermore, the judge held that just because the Nigerian court had granted an anti-suit injunction, this did not mean that the English court should not intervene on grounds of comity. Indeed, the nature of the breach by MOP and the existence of the injunction were reasons for the English court to intervene. In this regard the judge referred to and relied on the case of *Ecom Agroindustrial Corp Ltd v Mosharaf Composite Textile Mill Ltd* [\[2013\] EWHC 1276 \(Comm\)](#).

In all the circumstances, including MOP's clear submission to London arbitration, the judge granted the injunctive relief sought (in effect, an anti-anti-suit injunction).

The judge also held (again referring to *Ecom v Mosharaf*) that on the facts, it was an appropriate case for mandatory relief. Prohibitory relief alone was unlikely to have any practical effect in this case.

Finally, also relying on *Ecom v Mosharaf*, the declaratory relief sought was granted. The judge held that it would assist SVS (i) if MOP does not obey the injunction, and (ii) in terms of enforcement.

Case details:

- Court: Commercial Court, Queen's Bench Division, Business and Property Courts of England and Wales, High Court of Justice
- Judge: Calver J
- Date of judgment: 18 February 2021

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