Issue estoppel and abuse of process in relation to foreign judgments

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The High Court has recently handed down judgment in ***MAD Atelier International B.V. v Manès*** [2020] EWHC 1014 (Comm) in which Mr Justice Bryan dismissed an application by the Defendant ("Mr Manès") to strike out, and/or for summary judgment in respect of, the Claimant's ("MAD International") claim on the grounds it amounted to an abuse of process as a result of a judgment of the Paris Commercial Court in proceedings brought by MAD International against two of Mr Manès' companies in France.The decision involves a detailed and helpful consideration of the law in relation to issue estoppel, and abuse of process more generally, in relation to foreign judgments and the circumstances in which the English court will grant a case management stay in a claim brought in this jurisdiction pursuant to an exclusive English jurisdiction clause.

The Facts

Mr Manès is a Michelin-starred French chef and the owner of a well-known French restaurant in Paris called "L'Atelier de Jöel Robuchon" ("Paris Restaurant"). In 2015, he entered into a joint venture agreement ("JVA") with the Dogus Group to develop the "L'Atelier de Jöel Robuchon" brand internationally. MAD International was incorporated to be the vehicle for the joint venture.

In 2017, MAD International issued proceedings in France against two of Mr Manès' companies alleging that Mr Manés had fraudulently induced it to transfer its shares in the Paris Restaurant to one of the companies. In July 2018, the Paris Commercial Court dismissed MAD International's claim ("French Judgment"). MAD International appealed and the appeal is currently pending in France.

The English Proceedings

In April 2019, MAD International issued proceedings In England claiming damages for breach of the JVA pursuant to the exclusive English jurisdiction clause in the JVA. Mr Manès applied to strike out the claim on the grounds that the French Judgment created an issue estoppel because the core allegations relied upon by MAD International had already been heard and determined by the Paris Commercial Court and/or the claim was an abuse of process more generally. In the alternative, Mr Manès sought a stay pending the resolution of MAD International's appeal in France.

The Outcome

Bryan J held there was no issue estoppel and no abuse of process more generally. In particular, he held that the French Judgment was not final and conclusive and the parties to the two sets of proceedings were not privies. He also refused to grant a case management stay, inter alia, because to do so would subvert the purpose and effect of the exclusive English jurisdiction clause in the JVA.

Points of Interest

There are two particular points of interest in the judgment. First, Bryan J considered whether, as Mr Manès contended, only the foreign judgment must be final and conclusive as a matter of foreign law and English law can be used to determine whether the particular issues that the foreign court decided ought to bind the parties or their privies. Following a detailed analysis of the House of Lords decisions in ***Carl Zeiss Stiftung v. Rayner & Keeler Ltd (No. 2) and The Sennar (No. 2)***, Bryan J. rejected that contention and held that the particular issues relied upon as forming the issue estoppel must be regarded as having preclusive effect under the relevant foreign law. In effect, therefore, the relevant foreign legal system must either have a doctrine of issue estoppel which covers the issues raised, or a doctrine which has precisely the same underlying basis and operation.

Secondly, Bryan J considered whether, as Mr. Manès contended, in the light of the House of Lords' decision in ***Johnson v. Gore-Wood***, the mere fact that Mr Manès was the controlling shareholder of the companies in the French proceedings could

by itself establish privity of interest for the purposes of issue estoppel. Bryan J. rejected that argument and held that the fact that a party is a 100% shareholder of a company does not, without more, make them the company's privy. In particular, he held that: (1) the contrary conclusion in ***Johnson v. Gore Wood*** was a concession and obiter, and its correctness had been doubted by Lord Millett in Johnson and by Lord Sumption in ***Virgin Atlantic Airways v. Zodiac Seats UK***; and (2) in subsequent cases controller-subsidiary relationships have not been found to be, by themselves, sufficient to establish privity.

Stewart Chirnside acted as junior counsel for MAD International (instructed by Andrew Rimmington, Simon Style and Clare Freshwater of Mishcon de Reya LLP). Stewart was led by Jasbir Dhillon QC.

Stewart Chirnside

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Stewart specialises in commercial litigation, including banking and finance, commercial fraud, professional negligence, property damage and product liability. Stewart is recommended in Legal 500 as a leading junior in the fields of Banking and Finance, Financial Services and Professional Negligence and in Chambers & Partners UK Bar as a leading junior for Commercial Dispute Resolution.

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