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Anti-Suit Proceedings

Deutsche Bank AG and Another v Highland Crusader Offshore Partners LLP and Others [2009] All ER (D) 129 (Apr) (Queen's Bench Division, Commercial Court) (Burton J) (3 April 2009)

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FACTS

The claimant and defendant companies signed three Global Master Repurchase Agreements (the 'GMRAs'). The governing law clause in each GMRA provided, so far as material: 'Governing Law: This Agreement shall be governed by and construed in accordance with the laws of England. Buyer and Seller hereby irrevocably submit for all purposes of or in connection with this Agreement and each Transaction to the jurisdiction of the Courts of England ... Nothing in this paragraph shall limit the right of any party to take proceedings in the courts of any other country of competent jurisdiction'. The claimants subsequently gave written notice of margin calls to the defendants and default and default valuation notices were served, pursuant to which it was clear that proceedings would be issued by the first claimant to enforce the defendants' indebtedness. The defendants then issued a petition in Texas against both claimants (the 'Texan Proceedings'), seeking a declaration of non-liability under the GMRAs and making a counterclaim against the claimants.

In the UK, the claimants commenced action against the defendants (the 'English Proceedings'). Eventually, the claimants issued, inter alia, an anti-suit injunction against the defendants in respect of the Texan Proceedings.

CONCLUSION

An English court would grant an anti-suit injunction if the 'ends of justice' required it. The guidance of authority was that where a remedy for a particular wrong was available both in the English court and in a foreign court, the English court would, generally speaking, only restrain the plaintiff from pursuing proceedings in the foreign court if such a pursuit would be vexatious or oppressive. A party would ordinarily act vexatiously or oppressively in pursuing proceedings in the non-contractual jurisdiction in parallel with proceedings in the contractual jurisdiction, unless there were exceptional reasons, not foreseeable at the time when the contractual jurisdiction was agreed. The issue arose irrespective of which set of proceedings started first. In the instant case, there were no exceptional unforeseeable circumstances justifying the defendants' pursuit of the Texan Proceedings, the non-contractual forum.

The anti-suit injunction was granted. The defendants should take steps to have the Texan Proceedings stayed until after the outcome of the English Proceedings.