

**EASTERN CARIBBEAN SUPREME COURT
BRITISH VIRGIN ISLANDS**

**IN THE HIGH COURT OF JUSTICE
COMMERCIAL DIVISION**

CLAIM NO. BVIHCM 2013/00160

BETWEEN:

By way of Claim:

[1]	RENOVA INDUSTRIES LIMITED	
[2]	WEDGWOOD MANAGEMENT LIMITED	
[3]	ZAPANCO LIMITED	
[4]	LAMESA HOLDING SA	Claimants
	and	
[1]	EMMERSON INTERNATIONAL CORPORATION	Applicant
[2]	TOMSA HOLDINGS LIMITED	
[3]	ALABASTER ASSOCIATES LIMITED	
[4]	GARDENDALE INVESTMENTS LIMITED	
[5]	MIKHAIL ABYZOV	Applicant
[6]	ROMOS LIMITED	
[7]	FRESKO FINANCIAL LIMITED	Defendants

And by way of Counterclaim:

[1]	EMMERSON INTERNATIONAL CORPORATION	Applicant
[2]	TOMSA HOLDINGS LIMITED	
[3]	ALABASTER ASSOCIATES LIMITED	
[4]	GARDENDALE INVESTMENTS LIMITED	
[5]	ANDREY TITARENKO	Claimants by way of Counterclaim
	and	
[1]	RENOVA INDUSTRIES LTD	
[2]	WEDGWOOD MANAGEMENT LIMITED	
[3]	ZAPANCO LIMITED	
[4]	LAMESA HOLDING SA	
[5]	VIKTOR VEKSELBERG	Respondent
[6]	INTEGRATED ENERGY SYSTEMS LIMITED (a company incorporated under the laws of Belize)	
[7]	ODVIN FINANCIAL INC	
[8]	GOTHELIA MANAGEMENT LIMITED	

[9] RENOVA HOLDING LIMITED
 [10] VLADIMIR KUZNETSOV
 [11] ALEXEI MOSKOV
 [12] ALEXANDER KOLYCHEV
 [13] MIKHAIL SLOBODIN
 [14] MAKSIM MAYORETS
 [15] RENOVA MANAGEMENT AG
 [16] PAO T PLUS
 [17] INTEGRATED ENERGY SYSTEMS LIMITED
 (a company incorporated under the laws of Cyprus)
 [18] CLERN HOLDINGS LIMITED
 [19] STARLEX COMPANY LIMITED
 [20] SUNGLET INTERNATIONAL INC
 [21] OOO RENOVA-HOLDING RUS

Defendants by way of Counterclaim

And by way of Ancillary Claim:

[1] MIKHAIL ABYZOV
 [2] ROMOS LIMITED
 [3] FRESKO FINANCIAL LIMITED
 [4] ANDREY TITARENKO
 [5] GOLDFORT LIMITED

Claimants by way of Ancillary Claim

and

[1] RENOVA INDUSTRIES LTD
 [2] WEDGWOOD MANAGEMENT LIMITED
 [3] ZAPANCO LIMITED
 [4] LAMESA HOLDING SA
 [5] VIKTOR VEKSELBERG

Respondent

[6] INTEGRATED ENERGY SYSTEMS LIMITED
 (a company incorporated under the laws of Belize)
 [7] ODVIN FINANCIAL INC
 [8] FLOPSY OVERSEAS LIMITED
 [9] VLADIMIR KUZNETSOV
 [10] ALEXEI MOSKOV
 [11] ALEXANDER KOLYCHEV
 [12] MIKHAIL SLOBODIN
 [13] RENOVA MANAGEMENT AG
 [14] RENOVA HOLDING LIMITED
 [15] PAO T PLUS
 [16] INTEGRATED ENERGY SYSTEMS LIMITED
 (a company incorporated under the laws of Cyprus)
 [17] CLERN HOLDINGS LIMITED
 [18] MAKSIM MAYORETS

Defendants by way of Ancillary Claim

And by way of Third Ancillary Claim:

[1] **EMMERSON INTERNATIONAL CORPORATION**
Claimant by way of Third Ancillary Claim/
Applicant

and

[1] **VIKTOR VEKSELBERG**
Respondent

[2] **INTEGRATED ENERGY SYSTEMS LIMITED**
[3] **VLADIMIR KUZNETSOV**
[4] **EVGENY OLKHOVIK**
[5] **ANDREY BURENIN**
[6] **YAKOV TESIS**
[7] **ALEXEI MOSKOV**
[8] **IGOR CHEREMIKIN**
[9] **IRINA MATVEEVA**
[10] **PAVLINA TSIRIDES**
[11] **IRINA LOUTCHINA SKITTIDES**
[12] **PHOTINI PANAYIOTOU**
[13] **ARTEMIS ARISTEIDOU**
[14] **A.B.C. GRANDSERVUS LIMITED**
[15] **STARLEX COMPANY LIMITED**
[16] **RENOVA INDUSTRIES LIMITED**
[17] **SUNGLET INTERNATIONAL INC.**

Defendants by way of Third Ancillary Claim

2020: May 26;
June 2.

Appearances:

Mr. Philip Marshall QC, Mr. Ajay Ratan, Mr. Iain Tucker and Ms. Cate Barbour for Emmerson International Corporation and Mr. Mikhail Abyzov
Mr. Simon Birt QC, Ms. Arabella di Iorio and Mr. Shane Quinn for Mr. Viktor Vekselberg

NOTE OF ORAL JUDGMENT

[1] **WALLBANK, J. (Ag.):** On 20th March 2020 Emmerson International Corporation and Mr. Mikhail Abyzov as Applicants applied for an anti-suit injunction against Mr. Vekselberg. The application was heard a week ago on 26th May 2020. I have considered the evidence and arguments before the Court and express the respectful judgment that the application should be refused, with costs to Mr. Vekselberg. The following are the reasons for that decision.

- [2] As with most interlocutory disputes in these proceedings, this application was extremely hard fought, with copious evidence and lengthy arguments. In the interests of expedition, I will refer below only to those matters which I believe are essential and in a manner which is as brief as possible. It is not necessary for me, nor an appropriate use of the Court's limited resources, to decide who is right and who is wrong on every area of controversy between the parties.

Introduction

- [3] The injunction sought was expressed in terms that Mr. Vekselberg should be restrained from 'commencing, or prosecuting, or continuing, or taking any steps in or otherwise participating in proceedings in any court or tribunal in Russia, or in any other court or tribunal other than in the BVI, whether by himself, his servants agents or otherwise, against Emmerson and Mr. Abyzov in respect of any dispute arising out of or in connection with the issues in this claim'. The words 'or otherwise participating in proceedings' were dropped at the hearing on 26th May. I would have had no hesitation in finding that an injunction in those terms would clearly have been too wide and too vague. But still, Mr. Vekselberg was put to the trouble of meeting an application in those terms right up until the hearing, and that is a factor that goes to the issue of costs.
- [4] The relief sought would also have required Mr. Vekselberg to discontinue proceedings commenced by him against Mr. Abyzov in the Gagarinskiy District Court in Moscow in respect of the same central issues as stand to be determined in these proceedings.
- [5] The Applicants also sought their costs of this application.
- [6] The grounds for the application were expressed to be twofold, that
- (1) Mr. Vekselberg is amenable to the Court's jurisdiction, and
 - (2) in bringing the foreign proceedings in respect of the same central issues which stand to be determined in these proceedings, Mr. Vekselberg has acted in a way that is unconscionable.
- [7] The Applicants filed a 33rd Affidavit of Mr. Konstantin Dodonov in support of the application. That was responded to by a 20th Witness Statement of Mr. Jeremy Andrews on behalf of Mr. Vekselberg. Mr. Dodonov filed a 34th Affidavit in reply.

- [8] It was submitted on behalf of Mr. Vekselberg, in sum, that:
- (1) An injunction is no longer required in order to enjoin pursuit of the legal proceedings in Russia because those proceedings have ended and Mr. Vekselberg has undertaken not to pursue them, nor seek the same relief there, any further;
 - (2) The wider injunction sought is an unprecedented injunction of breath-taking scope and entirely unjustified, as well as contrary to authority;
 - (3) The exercise of the power to grant an anti-suit injunction is entirely dependent upon an analysis of the particular foreign proceedings that the injunction seeks to prevent. The Court must ask itself whether those foreign proceedings are 'oppressive or vexatious'. That is not possible where the injunction sought is unspecific and general, and it is inappropriate to grant such an injunction in the abstract.
- [9] The first set of Russian proceedings are at an end. Time for further appeal expired on 20th February 2020. This application was issued after those proceedings ended.
- [10] The second set of Russian proceedings ended on 7th April 2020, i.e. some two and a half weeks after this application was filed. Time for appeal is still running but Mr. Vekselberg has undertaken in a letter of his legal representatives in this jurisdiction, Agon Litigation, to the Applicants' legal representatives, Messrs. Walkers dated 12th May 2020
- (1) not to appeal;
 - (2) that he will not commence or pursue any other proceedings against Mr. Abyzov in Russia seeking equivalent relief to that sought in the Russian proceedings.
- [11] Consequently, Mr. Vekselberg contends that the parts of the application seeking orders concerning the Russian proceedings falls away. I agree that this is their effect.
- [12] There is no need for an order that Mr. Vekselberg discontinue the Russian proceedings as far as I can see. In respect of the first set of proceedings Russia's Court of Cassation has dismissed Mr. Vekselberg's claims. Those claims can go no further. In respect of the second set of proceedings, if Russian procedural law is the same as the law of this jurisdiction (and I have not seen any evidence to the contrary) then they will come to a natural end when the

period for appeal expires. Mr. Vekselberg has undertaken to allow this to occur and I have seen nothing that gives any reason to believe that he will go back on his word.

- [13] The Application for a general injunction remains extant. It is an injunction against Mr. Vekselberg from commencing or prosecuting or continuing or taking any steps in any other proceedings, 'whether by himself, his servants, agents or otherwise' in respect of a very broad category of disputes, namely 'any dispute arising out of or in connection with the issues in' these proceedings in the Territory of the Virgin Islands ('BVI'). This injunction is intended to have global effect.
- [14] At the hearing the Applicants offered to add qualifying words 'without the permission of the Court'. The Applicants explained that this was intended to introduce some flexibility, such that the injunction would not act as a complete ban. It is readily apparent to me that the Applicants recognized that, as originally sought, the injunction could operate to deny Mr. Vekselberg access to justice to which he is properly entitled. Thus, the Applicants sought to save the remainder of their application through the addition of such a permission.
- [15] The Applicants submitted that the fact that Mr. Vekselberg agreed to provide undertakings demonstrates that some form of relief as sought in the Application is appropriate. The only question is what form such relief should take.

The factual matrix

- [16] The Applicants present a picture of Mr. Vekselberg having conducted the Russian proceedings in bad faith and with obstinate determination. They urge that that is the backdrop against which the application for a general injunction should be viewed.
- [17] The Applicants urge that Mr. Vekselberg took his claims in the first set of Russian proceeds all the way to Russia's third level court of appeal, the Court of Cassation. Those claims directly overlapped with the claims this Court will be required to determine at trial in this jurisdiction. Mr. Vekselberg has stated in these proceedings that he wants the issues tried in the BVI. He wanted the trial to be brought on, before the circumstances changed due to United States sanctions, being events beyond his control. Yet Mr. Vekselberg pressed for the Russian court to determine those issues. When the Russian Court of Cassation ruled against Mr.

Vekselberg, he did not step back and accept the position. He brought the second set of proceedings. Those too have been dismissed.

- [18] The Applicants have put into evidence an English translation of the Russian Court of Cassation's decision in the first set of Russian proceedings. The translation is poor and difficult to understand clearly. In this, upon my reading of it, the Court of Cassation explained that the court of first instance had refused to accept Mr. Vekselberg's statement of claim on the basis that the claim was of a type over which that court had no jurisdiction. The court of appeal overturned that decision, but disallowed the statement of claim on other grounds that the dispute was in essence a dispute over factual evidence, which is pending before this BVI Court. The Court of Cassation added what appears to have been either a secondary reason or some sort of ancillary observation that 'it is doubtful if the claimant [Mr. Vekselberg] exercises his procedural rights in good faith since he avoids submitting a counterclaim so that it could be considered jointly with the initial claim'. The Court of Cassation explained that it is not permissible for a party to exercise any civil rights 'solely with the intention of causing harm to another person, perform any actions to circumvent the law for an illegal purpose, or otherwise exercise any civil rights knowingly in bad faith (abuse of rights)', but it then did not hold that this is what Mr. Vekselberg had done.
- [19] The Applicants here submit that this was a finding that Mr. Vekselberg had conducted the first set of Russian proceedings in bad faith.
- [20] They say further that Mr. Vekselberg's relentless and obstinate pursuit of a second set of materially identical Russian proceedings shows that his conduct was vexatious and oppressive, in bad faith, and that he is not to be trusted. There are jurisdictions other than Russia, where he can pursue his vexatious mischief, such as in Cyprus or Switzerland. Mr. Vekselberg appears intent upon derailing the BVI proceedings by seeking favourable substantive rulings on the same issues from courts elsewhere. Mr. Vekselberg thus needs to be stopped.
- [21] Mr. Vekselberg contends that in these BVI proceedings he is a Defendant, not a claimant. It cannot thus be said that claims brought by him in Russia as claimant are abusive, vexatious or oppressive. Moreover, Mr. Vekselberg denies that he controls companies alleged to be his that are bringing claims in these BVI proceedings. Whether he controls them or not is an issue that

is in dispute here, thus it would be wrong for this Court to impute such control for the purposes of this application.

[22] Mr. Vekselberg denies that he conducted himself in bad faith in the Russian proceedings.

[23] I would also observe that there is no exclusive jurisdiction agreement in favour of the BVI Court in place.

Legal principles

[24] A useful starting point for a summary of the principles applicable to the grant of anti-suit injunctions is to be found in the English Court of Appeal decision in **Emmott v Michael Wilson & Partners Ltd** at paragraphs 36 and 37:

“36. In very broad terms, the touchstone for the grant of an anti-suit injunction, as with any other injunction, is what the ends of justice require. This determination involves an exercise of discretion by the court. The particular facts of the case are critical to the exercise of this discretion. Subject to the particular facts, and the overriding discretion of the court in achieving the interests of justice, the following principles for the exercise of the discretion are well established.

37. In *Société Nationale Industrielle Aerospatiale v Lee Kui Jak* [1987] AC 871 at page 892, Lord Goff (giving the judgment of the board) held that the following four principles govern the grant of an anti-suit injunction. (1) The jurisdiction is to be exercised when the ends of justice require it. (2) Where the court decides to grant an injunction restraining proceedings in a foreign court, its order is directed not against the foreign court but against the parties so proceeding or threatening to proceed. (3) An injunction will only be issued restraining a party who is amenable to the jurisdiction of the court, against whom an injunction will be an effective remedy. (4) Since such an order indirectly affects the foreign court, the jurisdiction is one which must be exercised with caution.”¹

[25] In **Deutsche Bank AG v Highland Crusader Offshore Partners LLP** the English Court of Appeal stated the following principles.² These have been recognized in our own jurisdiction.³ In abbreviated form, so far as they are material here, they are these:

¹ [2018] EWCA Civ 51 at paragraphs 36 and 37 (Sir Terence Etherton MR).

² [2010] 1 WLR 1023 at paragraphs 49 and 50 (Toulson LJ).

³ In *re Fairfield Sentry Limited (in Liquidation) et al.* BVIHCPMAP 11 -16, 23 – 28 of 2016 (unreported, delivered 20th November 2017) at paragraphs [57] – [59] (Pereira CJ).

- (1) The court may restrain a defendant over whom it has personal jurisdiction from instituting or continuing proceedings in a foreign court when it is necessary in the interests of justice to do so;
- (2) Without narrowly restricting grounds to vexation and oppression, the party seeking an anti-suit injunction must generally show that proceeding before the foreign court is or would be vexatious or oppressive;
- (3) Justice requires that the claimant in the foreign court should be restrained from proceeding there;
- (4) If the English court considers England to be the natural forum and can see no legitimate personal or juridical advantage in the claimant in the foreign proceedings being allowed to pursue them, it does not automatically follow that an anti-suit injunction should be granted, for that would be to overlook the important restraining influence of considerations of comity;
- (5) An anti-suit injunction always requires caution because it involves interference with the process or potential process of a foreign court;
- (6) The prosecution of parallel proceedings in different jurisdictions is undesirable but not necessarily vexatious or oppressive;
- (7) The decision whether or not to grant an anti-suit injunction involves an element of discretion and the principles governing it contain an element of flexibility.

[26] At paragraph 56 in **Deutsche Bank AG v Highland Crusader Offshore Partners LLP** the court also said:

“...there must be a good reason why the decision to stop the foreign proceedings should be made by an English judge rather than a foreign judge, and cases where justice requires the English court to intervene will be exceptional.”

[27] I have considered whether, as the Applicants have submitted, different principles apply to different categories of anti-suit injunction. I am not persuaded that the principles are significantly different. Once jurisdictional requirements are satisfied, the Court’s discretion is engaged. How the discretion is to be exercised will differ according to the circumstances of each case. The Court must bear in mind that an anti-suit injunction is an exceptional remedy. The jurisdiction must be exercised with caution. In cases where there is no jurisdiction agreement, an applicant must generally show foreign proceedings would be unconscionable. That is a broad, flexible concept. Usually, but not exclusively, it means that foreign

proceedings would have to be vexatious or oppressive. The discretion is a flexible one to enable the ends of justice to be achieved in the peculiarities of each particular case.

Flaws in Applicants' position

Flaw 1 – Insufficient evidence of bad faith

- [28] The Applicants wish this Court to assume that Mr. Vekselberg comes from a position of bad faith. There is in my respectful judgment insufficient evidence for this.
- [29] First, the Russian Court of Cassation made no clear finding that Mr. Vekselberg had conducted proceedings in Russia in bad faith. It merely expressed a doubt in this regard.
- [30] Secondly, the reason given for the doubt was a single reason, to do with how Mr. Vekselberg had ***not*** pleaded his case. No positively abusive acts were identified nor held to have been committed.
- [31] Thirdly, the primary rationale for the Russian Court of Cassation's decision was a purely procedural one. The Court of Cassation found that the appellate court had been entitled upon the factual circumstances of the case to set aside the lower court's decision but to reach the same result for different procedural reasons.
- [32] Fourthly, the mere fact that a party should forcefully seek to press claims that he believes he has in another jurisdiction and avails himself of available appeals processes does not automatically render such proceedings vexatious, oppressive or unconscionable.
- [33] Taking the totality of Mr. Vekselberg's conduct into account, there is no sufficient or clear case of bad faith or unconscionability to warrant a global and general anti-suit injunction against him to be made.

Flaw 2 – No presumption of vexation or oppression

- [34] By proposing that Mr. Vekselberg should be enjoined from suit elsewhere generally other than with this Court's permission, the Applicants want the Court to say that Mr. Vekselberg needs to

persuade this Court that his proposed steps are not unconscionable in order to obtain permission to pursue other proceedings.

- [35] This approach is, I think, wrong, at least in a case where there is no clear evidence that a litigant is in bad faith. The burden is on the Applicants to show that steps Mr. Vekselberg are taking or proposes to take are vexatious or oppressive. It is not on Mr. Vekselberg to disprove this in order to be given permission. In this regard I will follow the approach of the English Court of Appeal in **Deutsche Bank AG et al. v Highland Crusader Offshore Partners LLP et al.**⁴ where Toulson LJ stated at paragraph 106:

“I do not consider that it would be right to start from a general presumption that parallel proceedings in a non-selected forum are to be regarded as vexatious or oppressive and that there is a burden on the party responsible for them to make out a strong case to justify them...”

- [36] Moreover, in **Société Nationale Industrielle Aerospatiale v Lee Kui Jak** the Privy Council stated:

“Indeed, it has been stressed that there is no presumption that a multiplicity of proceedings is vexatious.”⁵

And:

“...everything depends on the circumstances of the particular case...”⁶

Flaw 3 – Overly wide, general, global anti-suit injunction sought

- [37] The Respondent argues that there is no basis in law for such a wide and general anti-suit injunction as sought here, which does not identify any particular proceedings. I agree, for the following reasons.

- [38] It was stated in **Société Nationale Industrielle Aerospatiale v Lee Kui Jak** that there is a ‘fundamental requirement that an injunction will only be granted where the ends of justice require’.⁷

⁴ [2010] 1 WLR 1023 at 1051, paragraph 106 (Toulson LJ).

⁵ [1987] 1 AC 871 at 894 B – C (Goff LJ).

⁶ [1987] 1 AC 871 at 894 D (Goff LJ).

⁷ [1987] 1 AC 871 at 895 G – H (Goff LJ).

- [39] That and other authorities, such as **Adamovsky v Malitskiy**⁸ in our Court of Appeal and **Emmott v Michael Wilson & Partners Ltd**⁹ in the English Court of Appeal, have stressed that the jurisdiction to grant anti-suit injunctions must be exercised with caution, because such an order indirectly affects a foreign court and interferes with the conduct of foreigners abroad.
- [40] Such caution implies a close degree of scrutiny as to steps a litigant is likely to take.
- [41] Whilst there **might conceivably** be instances where the circumstances of a particular case warrant a wide and general anticipatory anti-suit injunction without reference to any particular proceedings, the requirement of caution would **generally** militate against that. The ends of justice would **generally** (but not necessarily always) require that the Court must be able to look at particular proceedings or proposed proceedings before determining whether or not it would be unconscionable for a litigant to bring or pursue them. I agree with a submission made by the Respondent that this Court should not arrogate to itself the power to decide what steps a litigant may or may not take in a different country before any such proceedings are even yet proposed. Indeed, that would generally be monstrous hubris.
- [42] In **Emmott v Michael Wilson & Partners Ltd** the English Court of Appeal stated that '[t]he particular facts of the case are critical to the exercise of the discretion'.¹⁰
- [43] The Applicants argue that there is authority which supports the grant of an anti-suit injunction without specific proceedings started or proposed. The Court has power to do so: that much I accept. They rely upon the English High Court and Court of Appeal cases of **Masri v Consolidated Contractors International (UK) Ltd. et al.**¹¹ There, the English High Court granted a worldwide anti-suit injunction against judgment debtors who had commenced proceedings in Yemen seeking to relitigate matters which had already been adjudicated upon in England. The judgment debtors had portrayed the Yemeni proceedings as vindicating some right independent of this, but the High Court Judge saw through this. He recognized an 'enormous chasm of credibility'¹² between what the judgment debtors and their lawyers said the

⁸ BVIHCMAP2014/0031 (unreported, delivered 3rd February 2017) at paragraphs [27] and [62] (Kentish-Egan JA (Ag.)).

⁹ [2018] EWCA Civ 51 at paragraph 37 (Sir Terence Etherton MR).

¹⁰ [2018] EWCA Civ 51 at paragraph 36 (Sir Terence Etherton MR).

¹¹ [2007] EWHC 1510 and [2008] EWCA Civ 625 respectively.

¹² [2007] EWHC 1510 at paragraph 19 (HHJ Mackie, QC).

proceedings were intended to be and the form they took. Persuaded to enjoin the proceedings in Yemen, he sought to ascertain in which other jurisdictions the judgment debtors intended to bring proceedings. When he was told by Counsel that they had no instructions on this point, he granted a worldwide anti-suit injunction. That decision was upheld upon appeal. The English Court of Appeal first accepted that the English court had jurisdiction to grant an anti-suit injunction. That stage of the enquiry over, the considerations then became a matter of the court's discretion. Factors included whether the applicant could show vexation or oppression, or unconscionable conduct, and whether he has shown a clear need to protect existing English proceedings. In **Masri** the English Court of Appeal was also satisfied that that was a case where the judgment debtors were seeking to relitigate abroad the merits of a case which, after a long trial, they had lost in England.¹³ It was a classic case of vexation and oppression, and of conduct which was designed to interfere with the process of the English Court.¹⁴ The English Court of Appeal was persuaded that the judgment debtors would do anything to frustrate enforcement of the English judgment.¹⁵ It upheld the injunction.

- [44] In **Masri**, the English High Court assumed it was open to it to order that the respondent had liberty to apply for permission to bring proceedings, although in the circumstances of that case the court declined to do so.¹⁶
- [45] The Applicants thus rely upon these decisions to support their application for a general, worldwide order going beyond specific existing or proposed proceedings and for an order requiring Mr. Vekselberg to seek permission if he wants to bring further proceedings elsewhere.
- [46] Mr. Vekselberg argues that such reliance is misplaced. In **Masri**, the applicant had sought a narrower form of order, to enjoin eventual proceedings relating to matters already determined in the English proceedings.¹⁷ Those matters were readily discernible. The relief sought here goes well beyond that. I accept this observation.
- [47] There is another significant difference between the circumstances in **Masri** and the present case. In **Masri**, the vexation and oppression were patent. Here they are not. As I have

¹³ [2008] EWCA Civ 625 at paragraph 95 (Lawrence Collins LJ).

¹⁴ [2008] EWCA Civ 625 at paragraph 95 (Lawrence Collins LJ).

¹⁵ [2008] EWCA Civ 625 at paragraph 98 (Lawrence Collins LJ).

¹⁶ [2007] EWHC 1510 at paragraph 19 (HHJ Mackie, QC).

¹⁷ [2008] EWCA Civ 625 at paragraph 5 (Lawrence Collins LJ).

observed previously, there is insufficient evidence before me of bad faith or unconscionable conduct on the part of Mr. Vekselberg. In **Masri**, the court was facing an application for a narrower and more tightly delimited form of order on stronger evidence. Here, the order sought is much wider and far more vague, supported by insufficient evidence.

[48] There is another difference. In **Masri**, the court clearly conducted a close consideration of how matters were pleaded in the overseas jurisdiction. It was this that enabled the court to see the lack of sincerity in the judgment debtors' assertions of good faith. In the present case, Learned Counsel at the hearing did not engage the Court upon such an exercise. The Applicants contented themselves with broad-brush, big picture, allegations of a vexatious intent on the part of Mr. Vekselberg, with the only detailed account for consideration being the Russian Court of Cassation judgment in the first set of Russian proceedings. As we have seen, that judgment stopped short of finding bad faith on Mr. Vekselberg's part, and his *bona fides* or otherwise was certainly not the primary ground upon which the Court of Cassation upheld the decision on appeal.

[49] In short, **Masri** does not help the Applicants. I have no difficulty accepting their proposition as a matter of principle that the Court has jurisdiction to make a global anti-suit injunction without particular proceedings requiring consideration, and also that the Court can in its discretion require a litigant to seek permission to bring further proceedings. But how that jurisdiction was engaged and applied in **Masri** is, upon closer inspection than a superficial first reading, far from the factual and evidential circumstances of this case.

Other considerations

[50] In the present case there is no question that Mr. Vekselberg is amenable to the *in personam* jurisdiction of the Court. It is thus a matter of discretion whether an anti-suit injunction is to be granted.

[51] I note that the authorities urge caution upon this Court before it exercises its power to grant the exceptional remedy of an anti-suit injunction.

[52] I do not accept the Applicants' argument that because Mr. Vekselberg ultimately gave an undertaking, this means he accepts that some form of relief should be granted upon this

application. There can be other reasons why a party might offer an undertaking. For instance, a party can give an undertaking without prejudice to his legal position. Equally, if he does not intend anyway to engage upon conduct that his opponent wishes to prevent then it would not trouble him at all to give an undertaking. This point takes the Applicants nowhere.

[53] In the present case where there is insufficient evidence of bad faith, or of a vexatious or oppressive intent on the part of Mr. Vekselberg, I do not think the ends of justice would be served by making an anti-suit injunction on an abstract and generalized basis without reference to specific existing or proposed proceedings.

[54] Future proceedings by Mr. Vekselberg may not be unconscionable, nor vexatious or oppressive. In my judgment the burden should be on the Applicants here to persuade this Court that such proceedings should be stopped. The burden should not, in this case, be on Mr. Vekselberg to persuade this Court that he should be permitted to bring proceedings in an overseas jurisdiction.

[55] Making the injunction sought would in my respectful judgment be a clear case of judicial overreach, both in terms of infringement of Mr. Vekselberg's fundamental rights under foreign laws to have access to justice and in terms of making a pre-emptive, speculative and overly general order.

[56] It is not just, nor convenient to grant the injunction, so the application fails.

[57] I see no reason why costs should not follow the event in the usual way, such that Mr. Vekselberg should have his costs of this application. Whether there should be some carve-out in respect of costs pertaining to the parts of the application that fell away pertaining to injunctive relief to stop the Russian proceedings can be a matter for further submissions if the parties so request.

[58] I take this opportunity to thank learned counsel for their assistance during this matter.

Gerhard Wallbank
High Court Judge

By the Court

Registrar