

**EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

TERRITORY OF THE VIRGIN ISLANDS

BVIHCMAP2020/0011

(Claim No: BVIHC (COM) 2013/0160)

(On appeal from the Commercial Division)

BETWEEN:

[1] EMMERSON INTERNATIONAL CORPORATION

[2] MIKHAIL ABYZOV

Appellants

and

VIKTOR VEKSELBERG

Respondent

Before:

The Hon. Madam Louise Esther Blenman

Justice of Appeal

The Hon. Mr. Mario Michel

Justice of Appeal

The Hon. Mr. Paul Webster

Justice of Appeal [Ag.]

Appearances:

Mr. Phillip Marshall QC with Mr. Robert Weeks, Mr. Ajay Ratan and Ms. Colleen Farrington for the Appellants

Mr. Simon Birt QC with Ms. Arabella di Iorio, Mr. Michael Bolding and Mr. Shane Quinn for the Respondent

2021: March 9 and 10
October 8.

Interlocutory appeal - Commercial appeal – Interim injunction – Worldwide anti-suit injunctions – Discretion of judge to grant anti-suit injunctions – Vexatious and oppressive proceedings - Appellate court’s review of trial judge’s exercise of discretion – Whether learned judge applied wrong test for worldwide anti-suit injunction – Whether learned judge erred in considering that principles for anti-suit injunctions militated against granting a worldwide anti-suit injunction – Whether learned judge erred in finding no sufficient evidence of bad faith – Assessment of evidence – Whether learned judge erred in assessment of

evidence and failed to give reasons for decision – Application to admit fresh evidence – Test for admitting fresh evidence

This is an appeal arising out of Claim No.BVIHC(COM)2013/0160 in the Commercial Court (“the BVI proceedings”), which involves lengthy and complex disputes between persons associated with Mr. Mikhail Abyzov, (“the Abyzov parties”) and persons associated with Mr. Viktor Vekselberg (“the Renova parties”). The Abyzov parties include the first appellant, Emmerson International Corporation (“Emmerson”). The origin of the disputes between the parties is a failed joint venture in Russia involving the Abyzov parties and the Renova parties.

In February 2019, Mr. Vekselberg issued proceedings against Mr. Abyzov in the Gagarinsky District Court in Moscow, Russia seeking among other things, a declaration that the alleged joint venture agreement was not concluded and is non-existent. The Russian courts dismissed the application and the appeals from that decision.

Mr. Vekselberg issued a second claim in the Russian courts on 28th August 2019 seeking a similar declaration that there is no joint venture between the parties. The claim and subsequent appeals were also dismissed.

On 10th March 2020, the appellants’ BVI lawyers, Walkers, wrote to Mr. Vekselberg’s BVI lawyers, Agon, requesting undertakings from Mr. Vekselberg that he would discontinue the Russian proceedings and not appeal against the decision in the second claim, and that he would not issue any further proceedings in any jurisdiction in respect of any dispute arising out of or in connection with the issues in the BVI proceedings. On 16th March 2020, Agon informed Walkers that Mr. Vekselberg declined to provide the requested undertakings because they were too wide. On 20th March 2020, the appellants issued an application for an anti-suit injunction to restrain Mr. Vekselberg and his nominees or agents from commencing or continuing satellite litigation against them in any court in Russia, or any other court other than the courts of the British Virgin Islands, in respect of any dispute arising out of or in connection with the issues in the BVI proceedings.

On 26th May 2020, at the hearing of the application by Wallbank J, Mr. Vekselberg contended that the request for an order concerning the Russian proceedings was no longer necessary because the proceedings had ended and he had given undertakings in respect of those proceedings. This was not accepted by the appellants who modified their application in respect of the anti-suit injunction by adding the qualifying words “without the permission of the court”. The judge dismissed the application and found that: 1.) there was insufficient evidence or a clear case of bad faith or unconscionability to warrant a worldwide anti-suit injunction against Mr. Vekselberg; 2.)The mechanism of ordering Mr. Vekselberg to seek permission if and when he sought to bring proceedings against Mr. Abyzov has the effect of casting the burden of proof on him to show that the step or steps that he proposed to take are not vexatious or oppressive when the burden of proof is always on the applicant seeking an anti-suit injunction; and 3.) in general a worldwide anti-suit injunction that is not directed at any particular proceeding is too wide and should not be granted.

The appellants appealed to this Court on the grounds that the learned judge: 1.) applied the wrong legal test for worldwide anti-suit injunctions; 2.) erred by considering that the principles relating to anti-suit injunctions militated against the order sought; 3.) erred in his

consideration of whether the Russian proceedings were vexatious or oppressive; 4.) misinterpreted the Russian judgment and; 5., 6. and 7.) erred in the assessment of the evidence and failed to give reasons for his decision.

On 4th December 2020, the appellants applied to this Court seeking to adduce fresh evidence in the form of affidavits used in opposing an application for an anti-suit injunction in a claim brought in Cyprus ("the Cyprus claim") and other evidence as may be filed by the appellants in the Cyprus claim.

Held: dismissing the appeal; refusing the application to adduce fresh evidence; and ordering that the appellants pay the respondents' costs of the appeal to be assessed at no more than two-thirds of the amount awarded in the court below unless such costs are agreed within 21 days of the date of this judgment, that:

1. The three limbs of **Ladd v Marshall** must be satisfied before an application to adduce fresh evidence can be granted. The second limb is that the court must be satisfied that the new evidence, if admitted, would probably have an important influence on the result of appeal, though it need not be decisive. In this case the new evidence was included in the bundle of documents for the hearing of the appeals and it raises substantially the same or similar issues as in the Cyprus appeal. The application to admit the new evidence is refused because it is unlikely that the evidence would have an important influence on the result of the appeal. The new evidence would involve reconsidering the same or similar issues as in the Cyprus appeal which runs the risk of the Court coming to different conclusions on the same issues.

Ladd v Marshall [1954] 3 All ER 745 applied.

2. The principles applying to anti-suit injunctions apply with greater force when the court is considering an application for a worldwide anti-suit injunction. The court will not inhibit a person's right to bring proceedings overseas unless one of the principles relating to anti-suit injunctions applies such as where foreign proceedings are vexatious or oppressive, or interferes with the court's process or is otherwise unconscionable. In this case, the judge acknowledged that an anti-suit injunction is an extreme remedy that is rarely granted and the discretion to grant such an order must be based on the facts of the case and be exercised with caution. He found that this was not a sufficient or clear case of bad faith or unconscionability by Mr. Vekselberg to warrant a general injunction. Inferentially, the judge must have been satisfied that there was not a real risk that Mr. Vekselberg would commence parallel proceedings elsewhere. The trial judge could not be said to have adopted a higher standard than is required when considering the order sought in this exceptional application.

Munib Masri v Consolidated Contractors International Company (UK) Ltd & Anor (No 3) [2009] QB 503 distinguished; **Kenneth Krys and Joanna Lau v Stichting Shell Pensioenfonds BVIHCVP 2011/036** (delivered 17th September 2012, unreported) considered; **Societe Nationale Industrielle Aerospatiale v Lee**

Kui Jack [1978] 1AC 871 considered; **Adamovsky v Malitskiy** BVIHCMAP2014/0031 (delivered 3rd February 2017, unreported) considered; **Deutsche Bank AG v Highland Crusader Offshore Partners LLP** [2010] 1 WLR 1023 considered; **Emmott v Michael Wilson & Partners Ltd.** [2018] EWCA Civ 51 considered.

3. The grant or refusal of an interim injunction is a discretionary remedy. An appellate court should not interfere with the decision of a trial judge unless the judge erred in principle and as a result, his or her decision exceeded the generous ambit of reasonable disagreement or was blatantly wrong. In this case, the judge took into consideration that the Russian proceedings had come to an end and the undertakings offered by Mr. Vekselberg not to commence any other claim in Russia against the Abyzov parties, and that there was no evidence from which it could have been reasonably inferred that Mr. Vekselberg intended to start new proceedings on substantially the same issues in any other court. In the circumstances, it could not be said that the judge acted outside the generous ambit of reasonable disagreement or was blatantly wrong in not granting the worldwide anti-suit injunction. There is no basis to interfere with the exercise of his discretion.

West Indies Associated States Supreme Court (Virgin Islands) Act Cap. 80 of the Revised Laws of The Virgin Islands applied; **Dufour and Others v Helen Air Corporation Ltd and Others** (1996) 52 WIR 188 applied; **Hadmor Productions and others v Hamilton** [1983] 1 A.C. 191 applied.

4. The proposed addition to the order sought requiring Mr. Vekselberg to apply to a judge in the BVI for permission to bring proceedings against any of the Abyzov parties is an unreasonable restriction on his undoubted right to commence proceedings overseas and has the effect of reversing the burden of proving that the intended proceedings are not frivolous or vexatious or otherwise an interference with the court's processes. The judge was correct in his finding that the addition of the requirement to get permission did not provide flexibility but instead imposed an unreasonable burden on Mr. Vekselberg.
5. A trial judge is not required to deal with every issue or piece of evidence in the trial. What he or she is required to do is to deal with the important issues and give sufficient reasons for his decision so that the parties can understand why they won or lost (as the case may be). The judge's reasons for dismissing the application are apparent from his judgment. He accepted the undertakings given by Mr. Vekselberg regarding the Russian proceedings, considered the legal principles relating to antisuit injunctions, applied them to the facts and found that on the totality of Mr. Vekselberg's conduct there was insufficient evidence of bad faith or unconscionability to warrant a worldwide injunction.

Emmerson International Corporation v Renova Industries Limited and others BVIHCMAP2016/0029 (delivered 23rd March 2017, unreported) applied.

JUDGMENT

Introduction

- [1] **WEBSTER JA [AG.]:** This is an appeal against the decision of Wallbank J dismissing the appellants' application for an anti-suit injunction restraining the respondent, Viktor Vekselberg ("Mr. Vekselberg"), from commencing or prosecuting or otherwise participating in proceedings against the appellants in any court or tribunal in Russia, or in any court or tribunal other than the BVI, whether by himself, his servants, agents or otherwise in respect of any dispute arising out of or in connection with the issues in the claim in the proceedings in the lower court in Commercial Claim No. BVIHC(COM) 2013/0160.
- [2] The general background to the appeal and the disputes between the parties is set out in the judgment of the Court delivered on 6th October 2021 in BVI Commercial Appeal BVIHCMAP2021/0004. The appeal is referred to in this judgment as "the Cyprus appeal" and the judgment as "the Cyprus appeal judgment". The Cyprus appeal is an appeal against the judge's refusal of an application by the appellants for an anti-suit injunction in respect of proceedings commenced in Cyprus ("the Cyprus claim"). The Cyprus claim was brought by shareholders of the Russian company PAO T Plus against the appellants and Mr. Andre Titarenko ("Mr. Titarenko"), a Russian national associated with Mr. Mikhail Abyzov ("Mr. Abyzov"). The parties to this appeal are referred to that judgment and other judgments of the Commercial Court, Court of Appeal and the Privy Council for further details of the many disputes between the parties in this appeal and other persons. The genesis of the disputes is a failed joint venture in Russia between parties associated with Mr. Abyzov on the one hand ("the Abyzov parties") and parties associated with Mr. Vekselberg on the other hand ("the Renova parties"). For the purposes of this decision, it is sufficient to say that the parties have been involved in complex and weighty litigation in the BVI since 2013 in Commercial Claim No. BVIHC(COM)2013/0160 that now involves 35 parties, claims, counterclaims, and ancillary claims, numerous interlocutory applications and appeals to this Court and the Privy Council ("the BVI proceedings"). The parties are

progressing towards a new trial date, the previous trial date in 2018 having been vacated.

- [3] The key players in the wider dispute are Mr. Abyzov, a Russian national and the putative leader of the Abyzov parties. The Abyzov parties include the first appellant, Emmerson International Corporation (“Emmerson”) and Mr. Titarenko. The respondent, Mr. Vekselberg, is also a Russian national. He is the lead person of the Renova parties. Reduced to its barest terms, the wider dispute is a battle between the Abyzov parties and the Renova parties.
- [4] The dispute in this appeal concerns attempts by the Abyzov parties to prevent Mr. Vekselberg and his nominees or agents from commencing or continuing satellite litigation against them in any court in Russia, or any other court other than the courts of the British Virgin Islands.
- [5] The background to this appeal started in February 2019 when Mr. Vekselberg issued proceedings against Mr. Abyzov in the Gagarinskiy District Court in Moscow, Russia, seeking, among other things, a declaration that the alleged joint venture agreement was “not concluded” and is “non-existent”. The District Court dismissed the application and appeals from that decision up to the Court of Cassation in Moscow were dismissed.
- [6] On 28th August 2019, Mr. Vekselberg issued a second claim in the District Court also seeking a declaration that there is no joint venture between the parties. The claim and subsequent appeals were dismissed by April 2020.
- [7] On 10th March 2020, the appellants’ BVI lawyers, Walkers, wrote to Mr. Vekselberg’s BVI lawyers, Agon, requesting undertakings from Mr. Vekselberg that he would discontinue the Russian proceedings and not appeal against the decision in the second claim, and that he would not issue further proceedings in any jurisdiction in respect of any dispute arising out of or in connection with the issues in the BVI

proceedings. Agon replied on 16th March 2020 disputing the factual allegations in the Walkers letter and declined to provide the requested undertakings because Mr. Vekselberg thought they were too wide. On 20th March 2020, the appellants issued the application for an anti-suit injunction substantially in the terms set out in the first paragraph above.

[8] On 12th May 2020, Mr. Vekselberg offered undertakings to the effect that he would not appeal against the decisions of the Russian courts and would not issue any further proceedings against Mr. Abyzov in Russia seeking the same or the equivalent of the relief sought in the dismissed Russian proceedings. This was not accepted by the appellants who insisted that the undertakings should cover not just proceedings in Russia, but in “any other court or tribunal other than the British Virgin Island”. In effect, the appellants wanted a worldwide anti-suit injunction.

[9] The application was heard on 26th May 2020. During the hearing of the application for the Russian injunction, Mr. Vekselberg contended that the request for an order concerning the Russian proceedings was no longer necessary because the proceedings had ended and he had given his undertakings as outlined in paragraph 8 above. Therefore, there was no need to order him to discontinue Russian proceedings. Wallbank J agreed and this left standing only the application for a worldwide anti-suit injunction. The appellants modified their application by adding the qualifying words “without the permission of the court”. This they said was to introduce flexibility so that the injunction would not be a complete ban on foreign proceedings. The result was that if Mr. Vekselberg wanted to bring proceedings against Mr. Abyzov overseas, he would have to apply to a judge in the BVI for permission. Wallbank J made an interesting observation of this change of approach by the appellants when he said:

“It is readily apparent to me that the [a]pplicants recognise that as originally sought the injunction could operate to deny Mr Vekselberg access to justice to which he is properly entitled. Thus, the [a]pplicants sought to save the remainder of the application through the addition of such a permission.”¹

¹ BVIHCM 2013/00160 (delivered 2nd June 2020, unreported) at para. 14.

[10] The judge dismissed the application and, in the process, made three major findings that are challenged by the appellants on the appeal. The judge found:

- (i) There was insufficient evidence or a clear case of bad faith or unconscionability to warrant a global general anti-suit injunction against Mr. Vekselberg.
- (ii) The mechanism of ordering Mr. Vekselberg to seek permission if and when he sought to bring proceedings against Mr. Abyzov has the effect of casting the burden of proof on Mr. Vekselberg to show that the step or steps that he proposes to take are not vexatious or oppressive. The judge decided that this was not correct and the burden of proving the vexation or oppression is always on the applicant for an anti-suit injunction.
- (iii) In general, a worldwide anti-suit injunction that is not directed at any particular proceedings is too wide and should not be granted in this case.

[11] The appellants appealed against the judge's order dismissing the application for a worldwide anti-suit injunction in the terms sought. The notice of appeal lists seven grounds of appeal which I will deal with below.

Appeals against the exercise of discretion

[12] By the time the appellants' application came up for hearing before Wallbank J on 26th May 2020, the first Russian claim had been disposed of by orders of the courts in Russia and the second claim was in a similar position except that the time for appealing had not yet expired. Wallbank J also had before him the additional fact that Mr. Vekselberg had given the undertakings not to pursue any of the two claims or any other claim in Russia against Mr. Abyzov. The judge heard the application and on 2nd June 2020 delivered a written "note of the oral judgment" dismissing the

application and ordering the appellants to pay the respondent's costs. In refusing the application the judge was exercising the power conferred on him by **section 24** of the **Eastern Caribbean Supreme Court (Virgin Islands) Act**² which empowers a judge to grant an injunction “[I]n all cases in which it appears to the court or judge to be just or convenient.”

[13] It is common ground that the grant or refusal of an injunction is discretionary. I dealt with the principles governing the approach of an appellate court when reviewing the exercise of discretion by the trial judge in the Cyprus appeal judgment. I referred to the leading authority in the Eastern Caribbean on the approach of an appellate court to reviewing decisions based on the exercise of discretion by a trial judge, **Dufour and Others v Helen Air Corporation Ltd and Others**,³ where Chief Justice Sir Vincent Floissac laid down the guiding principles in a dictum that has been cited on numerous occasions by this Court. He said:

“We are thus here concerned with an appeal against a judgment given by a trial judge in the exercise of a judicial discretion. Such an appeal will not be allowed unless the appellate court is satisfied (1) that in exercising his or her judicial discretion, the judge erred in principle either by failing to take into account or giving too little or too much weight to relevant factors and considerations or by taking into account or being influenced by irrelevant factors and consideration; and (2) that as a result of the error or degree of the error, in principle the trial judge’s decision exceeded the generous ambit within which reasonable disagreement is possible and may therefore be said to be clearly or blatantly wrong.”

In short, an appellate court should not interfere with the decision of the trial judge unless the judge erred in principle and as a result his or her decision exceeded the generous ambit of reasonable disagreement or was blatantly wrong. I also referred to the very helpful dictum of Lord Diplock in **Hadmor Productions and others v Hamilton**⁴ which sets out in greater detail the role of an appellate court when reviewing the exercise of discretion by a trial judge in granting or refusing an application for an interim injunction.

² Cap. 80 of the Revised Laws of the British Virgin Islands.

³ (1996) 52 WIR 188 at pp. 190-191.

⁴ [1983] 1 A.C. 191 at p. 220.

[14] In the absence of the kind of error contemplated by the dictum of former Chief Justice in **Dufour v Helenair**, the appellate court should not substitute its view for that of the judge because its members would have exercised discretion differently. There is no place for judicial activism when reviewing the exercise of discretion by the trial judge.

[15] I will bear these principles in mind when considering the grounds of appeal which are essentially challenges to the judge's assessment of the facts and how he exercised discretion to refuse the injunction.

The fresh evidence application

[16] On 4th December 2020, the appellants applied for permission to adduce and rely on fresh evidence in the form of:

- (a) The 42nd affidavit of Konstantin Dodonov in the underlying proceedings in support of an application by the appellants for an anti-suit injunction in respect of the Cyprus claim.
- (b) Evidence or expert evidence that might also be filed in due course on behalf of Emerson in respect of the Cyprus antisuit injunction application. The Court was not directed to any such evidence.
- (c) An affidavit on behalf of Emmerson and an affidavit on behalf of Mr. Abyzov in Cyprus proceedings.
- (d) Further evidence as may be filed by the appellants in the Cyprus proceedings.

The Court was not directed or taken to any of these affidavits by counsel. The Court was however able to locate and consider the affidavits which formed parts of an enormous bundle of documents running several thousand pages that was before the Court.

[17] The test for admitting fresh evidence on appeal is well-known and uncontroversial. The three limbs of the test as derived from the decision of **Ladd v Marshall**⁵ are: (i) it must be shown that the new evidence could not have been obtained with reasonable diligence for use at the trial in the lower court; (ii) the evidence is such that if admitted it would probably have an important influence on the result of the appeal, though it need not be decisive; and (iii) the evidence must be apparently credible though it need not be incontrovertible.

[18] An examination of the first limb raises an interesting observation in this case. Wallbank J heard the application in May 2020 and he delivered his decision in June 2020. The new evidence sought to be adduced consists of three affidavits and their exhibits, namely, the 42nd affidavit of Konstantin Dodonov filed in the in the court below in October 2020 and two affidavits filed in the Cyprus claim in November 2020. All three affidavits were filed long after the hearing before Wallbank J. While it can be said that the new evidence was not available to the appellants during the hearing before Wallbank J, the reality is that it was not available at all at the time of the hearing. The affidavits were sworn and filed by the appellants for their own purposes and it seems a little unusual that they are now saying that the new evidence should be available to this Court in reviewing the judge's decision. However, the Court was not addressed by counsel on this point and therefore I would not make an adverse finding against the appellants, especially having regard to my decision on the second limb of the test.

[19] I do not think that the appellants satisfied the second limb of the test. The Court of Appeal must be satisfied that the proposed fresh evidence is such that if admitted it would probably have an important influence on the result of the appeal, though it need not be decisive. The difficulty that the appellants face is that the issues raised in the new evidence consists largely of elaborations of the evidence that was before the Judge in the lower court in the application for the Cyprus antisuit injunction and

⁵ [1954] 3 All ER 745.

by this Court in the Cyprus appeal, and was dealt with in those proceedings. Findings were made on important issues such as the merits of the Cyprus claim, jurisdiction challenges to the Cyprus claim, the non-disclosures by the Cyprus claimants, Mr. Vekselberg's assurance to the BVI Court, the overlap of the issues between the BVI proceedings and the Cyprus claim, and more. These matters have already been considered and pronounced upon by this Court and a reconsideration based on the new evidence has the appearance of a second challenge to the Court's findings in the Cyprus claim. Dealing with the new evidence also runs the risk of inconsistent decisions on decided issues. I am satisfied that the new evidence would not have an important influence on the result of the appeal. As such, the second limb of the **Ladd v Marshall** test has not been satisfied and this finding is sufficient to dispose of the application. The Court will refer, if necessary, to Wallbank J's judgment in the application for the Cyprus antisuit injunction and the judgment of this Court in the Cyprus appeal.

[20] It follows from my reasons for not admitting the fresh evidence that even if the evidence was admitted my conclusions would not have been any different from the findings in the Cyprus appeal and the evidence would probably not have an important influence on the result of this appeal.

[21] I would dismiss the application to admit further evidence.

The approach to anti-suit injunctions

[22] In paragraphs 16-25 of the Cyprus appeal judgment, I set out some of the main principles relating to the Court's approach to applications for anti-suit injunctions. I rely on these principles in this judgment. The overarching considerations for the court are that the foreign proceedings must be vexatious or oppressive (as in **Munib Masri v Consolidated Contractors International Company (UK) Ltd & Anor (No 3)**),⁶ or interfere with the court's process (as in **Kenneth Krys and Joanna Lau v**

⁶ [2009] QB 503.

Stichting Shell Pensioenfonds)⁷, or is otherwise unconscionable. In assessing these considerations, the court will be guided by the following principles:

- (a) There is no presumption that a multiplicity of proceedings is vexatious (per Lord Goff of Chieveley in **Societe Nationale Industrielle Aerospatiale v Lee Kui Jack**⁸). This underscores the principle that persons are free to bring claims in any jurisdiction that they think is most appropriate, subject always to the laws and procedures of the foreign court.
- (b) The jurisdiction “must be exercised with caution” (Lord Goff of Chieveley in the **Aerospatiale case**).
- (c) “Considerations of comity and the need for caution are critical to this evaluative stage” and “the jurisdiction must be exercised with caution as it is inhibited by principles of comity and restraint in interfering with the conduct of foreigners abroad.” (Kentish-Egan JA in **Adamovsky v Malitskiy**⁹)
- (d) English (and BVI) law attach high importance to international comity and the principle of non-interference with the jurisdiction of a foreign court. (**Deutsche Bank AG v Highland Crusader Offshore Partners LLP**¹⁰)
- (e) The merits of the claim in the foreign proceedings should only be considered if the claim is completely lacking in merit or is bogus (**Masri No.3**).¹¹

[23] The principles apply with greater force when the court is considering an application for a worldwide anti-suit injunction. This is because a worldwide anti-suit injunction is an order of the court directing a litigant over whom it has jurisdiction not to

⁷ BVIHCVAP 2011/036 (delivered 17th September 2012, unreported).

⁸ [1978] 1AC 871.

⁹ BVIHCM2014/0031 (delivered 3rd February 2017, unreported) at paras 27 and 62 respectively.

¹⁰ [2010] 1 WLR 1023 at para 62.

¹¹ Supra n. 6.

commence or continue a claim dealing with a specified issue or issues in any court or tribunal in any part of the world except in this jurisdiction. When considering the application, the court does not have any information about the intended proceedings. This form of order is completely understandable where the court is being asked to restrain a party who has agreed by contract that the BVI Court has exclusive jurisdiction over any dispute arising under the contract, or that such disputes must be resolved by arbitration. In all other cases, the court will not inhibit a person's right to bring proceedings overseas unless one or more of the principles relating to anti-suit injunctions set out above applies. In any of these circumstances the court may also be inclined to take the further step of granting a worldwide injunction if the conduct of the wrongdoer is sufficiently serious (as in the Masri case). This appeal is not such a case.

[24] Wallbank J summarised his approach to the application as follows:

"I have considered whether, as the applicants have submitted, different principles apply to the different categories of anti-suit injunction. I am not persuaded that the principles are significantly different. Once [the] 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."¹²

[25] It is clear that the judge considered all the relevant principles relating to anti-suit injunctions and then took the further and necessary step of applying them in the context of an application for a worldwide injunction. He found that –

"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

¹² Judgment at para [27].

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 [r]espondent that [the] 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 a monstrous hubris.”¹³

[26] The judge’s reference to the need for caution militating against the grant of a worldwide anti-suit injunction was criticised by the appellants but I find such a reference was justified in the context of the judgment. It reinforces the judge’s concern that a worldwide order is an extreme order granted even before the respondent commences an action overseas.

[27] The judge also referred to **Emmott v Michael Wilson & Partners Ltd** where the English Court of Appeal stated that “[T]he particular facts of the case are critical to the exercise of the discretion.”¹⁴

[28] Applying the principles to the facts of the application before him the judge took note of the fact that Mr. Vekselberg had started proceedings in Russia which he lost and then took out a second set of proceedings covering substantially the same issues and lost again. He also considered that Mr. Vekselberg had given the court an undertaking not to pursue any further appeals or new proceedings in Russia and therefore an injunction, far less a worldwide injunction, was not necessary. He also reviewed the Russian courts’ assessment of the bona fides of Mr. Vekselberg and found that the court had not gone as far as to make a finding of bad faith as suggested by the appellants. He found that –

“Taking the totality of Mr Vekselberg’s conduct into account, there [was] no sufficient or clear case of bad faith or unconscionability to warrant a global and general anti-suit injunction against him to be made.”¹⁵

[29] The only case that the judge and this Court was referred to where a worldwide anti-suit injunction was granted is **Munib Masri v Consolidated Contractors**

¹³ Judgment at para [41].

¹⁴ [2018] EWCA Civ 51 at para 36.

¹⁵ Judgment at para [33].

International Company (UK) Ltd & Anor (No 3)¹⁶ on which the appellants placed heavy reliance. The relevant facts are that Mr. Masri succeeded in a claim for damages against foreign defendants who had submitted to the jurisdiction of the English Court. The defendants then commenced a fresh claim in Yemen disputing their liability to Mr. Masri. Mr. Masri applied in the English proceedings for an injunction restraining the defendants from pursuing proceedings against him abroad on the ground that the Yemeni proceedings were vexatious and oppressive and an attempt to re-litigate the issues that had been determined in the English proceedings, or was an attempt to evade the judgment of the English court. McKie J who heard the application granted the injunction on a worldwide basis. It is worth observing how McKie J came to his decision and compare it with the facts of the present appeal. Having lost after a full trial in England, the defendants sought to avoid the judgment by bringing the new claim in Yemen. Faced with these facts McKie J asked counsel for the defendants if the defendants intended to sue in any other countries to which counsel replied that he had no instructions. The judge then said “It therefore seems to me appropriate, and proportionate, to make it worldwide. If there is some reason for the defendant to sue Mr. Masri in say the Virgin Islands, there is no harm in requiring them, before taking that step, to come here and ask.”¹⁷

[30] McKie J, having made the adverse findings against the defendants set out in the preceding paragraph, was in the process of settling the terms of the injunction. He made an inquiry of counsel about the defendants’ intentions and was clearly unimpressed with the answer that he got. He therefore made a worldwide order subject to the defendants seeking permission from the English court if they wanted to sue the claimants overseas.

[31] The Court of Appeal dismissed the defendants’ appeal against McKie J’s decision confirming that this was a classic case of vexation and oppression and conduct designed to interfere with the process of the court in litigation to which the

¹⁶ Supra n. 6 at para 98.

¹⁷ [2007] EWHC 1510 Comm. 1510 at para 18.

defendants had submitted. The unanimous judgment of the Court of Appeal was delivered by Lawrence Collins LJ. At paragraph 98 he referred to a judgment of Gloster J in separate proceedings in the same case for the appointment of a receiver of the defendants and continued –

“...[T]hat since the time of the judgment on liability, the actions of the judgment debtors had demonstrated in a patently obvious fashion that they proposed to take advantage of any opportunity open to them to resist enforcement of the judgments of the English courts, to evade their responsibility to pay Mr. Masri what is due to him, as found by the English courts, and to put every obstacle in his way to prevent him from enforcing judgment against them. At the hearing before Judge Mackie QC, the judgment debtors declined to say whether they intended to sue Mr Masri elsewhere. I see no reason to interfere with the judge's exercise of discretion in those circumstances.”

[32] The **Munib Masri v Consolidated Contractors case** is clearly distinguishable on the facts. There is no judgment or order against Mr. Vekselberg finding him liable to the Abyzov parties, or that he was trying to avoid a judgment of the BVI court by every means possible. The two cases that he had launched in Russia had come to an end and he gave an undertaking to the Wallbank J not to commence any other claim in Russia against the Abyzov parties. Mr. Vekselberg in his written and oral undertakings to the court said that he did not intend to take further proceedings in Russia against Mr. Abyzov and his undertaking was accepted by the judge and formed a part of the court's order. There is no other evidence from which it can reasonably be inferred that Mr. Vekselberg intended to start a new claim on substantially the same issues in any other court. It would be incongruous for the judge to have accepted the undertakings and go on to grant an extreme order of a worldwide anti-suit injunction. The judge's decision not to grant the worldwide injunction was based on the material before him and was entirely within his discretion.

[33] I would add that the commencement and prosecution of the Cyprus claim does not affect the Court's consideration of this matter. The Cyprus claim was commenced by five of the shareholders of T Plus, a Russian company. Wallbank J and this Court

have found that the claim was not bogus, frivolous or vexatious, and there is no sufficient evidence that it was commenced or continued by Mr. Vekselberg or on his instructions.

[34] In the circumstances it cannot be said that the judge in this appeal acted outside the generous ambit of reasonable disagreement or was blatantly wrong in not granting a worldwide anti-suit injunction against Mr. Vekselberg and there is no basis for interfering with the exercise of his discretion.

[35] I will now deal with the grounds of appeal which turn on challenges to exercise of discretion by the Judge and his findings of fact. The only exception is ground one regarding the legal test to be applied in an application for a worldwide anti-suit injunction.

The grounds of appeal

[36] In assessing the grounds of appeal, I took into consideration that the application was for an order restraining the Russian proceedings and for a worldwide anti-suit injunction. By the time the application came up for hearing before the judge, the Russian proceedings had come to an end by orders of the Russian courts and by the judge's acceptance of undertakings offered by Mr. Vekselberg not to commence or pursue any other proceedings against Mr. Abyzov in Russia. There was nothing left to restrain in Russia and the judge found that that part of the application dealing with prohibiting proceedings against Mr. Abyzov in Russia had fallen away.

Ground number one – The legal test

[37] The appellants submitted that the correct test to be applied in determining whether a worldwide anti-suit injunction should be granted is whether there is a "real risk" that the respondent to the application would commence further parallel proceedings elsewhere. They relied on the dictum of Lawrence Collins LJ in paragraph 98 of his judgment in the **Munib Masri v Consolidated Contractors case** ¹⁸. I am not

¹⁸ Supra n. 6.

satisfied that the learned Lord Justice was laying down a test in paragraph 98 or elsewhere in his judgment to be applied in all applications for worldwide anti-suit injunctions. He was considering the conduct of the defendants in the case who had shown a clear intention to avoid satisfying the English judgment by whatever means.¹⁹ Wallbank J was not required to apply this “test”. His approach is summarised at paragraph 27 of his judgment which is set out at paragraph 24 above. He acknowledged that a worldwide injunction is an extreme remedy that is rarely granted and the discretion to grant such an order must be based on the facts in the case. He found at paragraph 53 that –

“In the present case where there is insufficient evidence of bad faith, or of 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.”²⁰

- [38] The judge by his findings was obviously satisfied that Mr. Vekselberg was not guilty of vexatious or oppressive conduct and that the appellants had failed to prove that there was a real risk of repeated parallel litigation by Mr. Vekselberg. He did not impose a higher standard than is required when granting this exceptional order and his use of the expression “monstrous hubris” was by way of legitimate comment and not an attempt to establish a test or standard for granting worldwide anti-suit injunctions.

Ground two – General order with permission to apply

- [39] In ground two the appellants submitted that the order sought was not an outright ban on Mr. Vekselberg bringing proceedings overseas because if he so desired, the order would have provision for him to apply to the BVI court for permission to commence the proceeding. The BVI judge would then decide if the proposed claim was vexatious or oppressive. The judge rejected this argument finding that the requirement to apply for permission would have the effect of reversing the burden of proof. The person seeking to proceed with his undoubted right to commence

¹⁹ See para 31 above.

²⁰ Judgment at para [53].

proceedings overseas would have to apply to the BVI Court and satisfy the judge that the proposed action is not frivolous or vexatious or otherwise an abuse of the process of the court. This is a complete reversal of the burden of proof and the judge was correct to find that the addition of the requirement to get permission did not provide flexibility as suggested by the appellants, but imposed an unreasonable burden on the person to be restrained (Mr. Vekselberg).

Ground three – Bad faith by Mr. Vekselberg

[40] In ground three, the appellants complained that the judge's approach to whether the Russian proceedings were vexatious and oppressive was incorrect because he focused on whether Mr. Vekselberg acted in bad faith. On my reading of the judge's decision, he approached the issue of the Russian proceedings by dealing with the general principles relating to anti-suit injunctions noting that it is an extreme remedy that must be approached with caution, comity plays an important role and there is no presumption that parallel proceedings necessarily lead to the grant of an injunction. The judge also noted that the Russian proceedings had ended and undertakings had been given by Mr. Vekselberg.²¹ He applied these principles to the facts of the case and found that the Russian proceedings were not vexatious and oppressive. He did not find, as the appellants submit that he should have, that the Russian court found that Mr. Vekselberg acted in bad faith in bringing the Russian cases (see ground four below).

[41] The judge applied a broad approach to the Russian judgments, even though they had ended. He did not limit himself to whether Mr. Vekselberg acted in bad faith and in any event, he did not find that the Russian Courts found that he did. His approach is set out in paragraph 27 of his judgment and reproduced in paragraph 24 above. Paragraphs 14 and 24 of his judgment also show how he approached the matter. There is no basis to interfere with his methodology and findings.

²¹ This Court found in the Cyprus appeal (confirming the finding of the trial judge) that the prosecution of the Cyprus claim did not breach the undertakings given by Mr. Vekselberg.

Ground four – Interpretation of the Russian judgments

- [42] The submission that the judge had misinterpreted the Russian judgment is not accepted. The Russian courts did not find that Mr. Vekselberg had conducted the Russian proceedings in bad faith. It is correct that the Russian court expressed doubt about the *bona fides* of a party who conducted litigation in the way that Mr. Vekselberg did, but that is not the same as saying that the Court found that he acted with bad faith.
- [43] The judge also found that the reasons given by the Court of Cassation for dismissing Mr. Vekselberg's related to his pleadings and a procedural issue. This may have been too narrow a view of the Cassation Court's decision – the court took into consideration other factors such as Mr. Vekselberg's attempts to advance two claims covering substantially the same issues in the Russian courts. However, I do not think this is fatal to his overall conclusion that there was insufficient evidence or a clear case of bad faith or unconscionability to warrant the grant of a general injunction.
- [44] The allegation that the judge was wrong to find that there was insufficient evidence of bad faith by Mr. Vekselberg is a finding of fact by the judge that is based on his assessment of the evidence and should not be upset by this Court unless it is found to be blatantly wrong. The judge made clear that he was approaching the matter on the legal bases relating to anti-suit injunctions and there is no presumption that parallel proceedings necessarily lead to the grant of an injunction.

Grounds five, six and seven – The judge's assessment of the evidence and failure to give reasons for his decision

- [45] The appellants' complaint in grounds five, six and seven is that the judge failed to take account of material evidence in finding that there was insufficient evidence of vexation or oppression and did not give proper reasons for his rejection of the evidence. The evidence not considered, or not sufficiently considered, included: that the claims in Russia were parallel to the BVI proceedings and that the two Russian claims were substantially the same as the BVI claim; Mr. Vekselberg did

not point to any juridical advantage to be gained from the Russian claims; Mr. Vekselberg's lawyers deliberately misled the BVI court on the nature of the Russian claims; and the judge misinterpreted the Russian judgments.

[46] In considering these grounds of appeal I remind myself that the Wallbank J is an experienced commercial judge with a long history of dealing with substantial commercial disputes in the Commercial Court including the numerous proceedings and disputes between the parties in this case; that it was no longer necessary to rule on the substantive part of the application dealing with restraining the proceedings in Russia; and that his judgment dealt with issues like parallel proceedings by reciting the point that there is no presumption that parallel proceedings are vexatious or oppressive. Further, the authorities establish that a trial judge is not required to deal with every issue or piece of evidence in the trial. What he is required to do is to deal with the important issues and give sufficient reasons for his decision on the points so that the parties can understand why they won or lost (as the case may be), and the appellate court can understand the process by which the decision was made. There are numerous decisions of this Court that make these points including an appeal between the parties to this appeal in 2016 in **Emmerson International Corporation v Renova Industries Limited and others**.²²

[47] I am satisfied that the judge's reasons for dismissing the application are apparent from his judgment. He accepted the undertakings given by Mr. Vekselberg regarding the Russian proceedings, considered the legal principles and applied them to the facts and found that on the totality of Mr. Vekselberg's conduct there was insufficient evidence of bad faith or unconscionability to warrant a worldwide injunction.

²² BVIHCMAP2016/0029 (delivered 23rd March 2017, unreported) at para 15.

Conclusion

- [48] I have considered the evidence in the case, the legal principles and the judge's decision and I am satisfied that the judge did not commit any errors of substance. But even if I am wrong and had to set aside the judge's exercise of discretion and exercise discretion afresh, I would also dismiss the application. A general injunction restraining a person from suing in any foreign court, without knowing the details of the foreign proceeding, is an extreme order and should only be granted in rare cases. This is not such a case. There is no clear evidence that Mr. Vekselberg intends to sue elsewhere and it would be an unreasonable burden to make an order requiring him to come back to the BVI court to prove that any action that he intends to take is not vexatious and oppressive or otherwise should not be pursued.
- [49] I would dismiss the appeal and order the appellants to pay the respondent's costs of the appeal to be assessed at no more than two-thirds of the amount awarded in the court below unless such costs are agreed within 21 days of the date of this judgment.
- [50] I acknowledge the very detailed and helpful submissions of leading counsel and those assisting them.

I concur.
Louise Esther Blenman
Justice of Appeal

I concur.
Mario Michel
Justice of Appeal

By the Court

Chief Registrar