Hong Kong Court Maintains Anti-Suit Injunction in Russia Sanctions Case

The case demonstrates Hong Kong's position as an independent and politically neutral pro-arbitration seat, including in cases involving foreign sanctions.

The Hong Kong Court of First Instance has dismissed an application to discharge an interim anti-suit injunction, which it previously granted to restrain proceedings commenced in the Russian courts. The decision was issued pending final determination of a dispute by the Hong Kong International Arbitration Centre (HKIAC) in accordance with the parties' agreement to arbitrate.

Background

The first plaintiff, headquartered in Germany, is a contractor of a gas processing complex construction project in Russia, and the second plaintiff is a global industrial gas and engineering company headquartered in Ireland as well as the parent company of the first plaintiff. The defendant is a special purpose vehicle incorporated in Russia, established to take ownership of the gas processing complex. The first plaintiff as contractor and the defendant as owner for the construction project entered into a contract, from which arose a dispute following the imposition of EU sanctions on Russia's oil and natural gas sectors. The contractor suspended performance of construction works under the contract as a result, and the owner of the project then purported to terminate the contract and obtain an injunction from a Russian court to freeze the contractor and its parent company's assets in Russia (the Freezing Order). The Freezing Order was originally granted in support of the prospective HKIAC arbitration proceedings under the contract, but was later amended to cover substantive claims made by the owner in the Russian court. The owner commenced court proceedings before the Russian court (the Russian Proceedings), despite the arbitration agreement and in reliance on relatively new Russian legislation — which vests the determination of certain sanctions-related disputes within the exclusive jurisdiction of Russian state courts — whilst the contractor commenced an HKIAC arbitration pursuant to the arbitration agreement in the contract shortly after.

The contractor then obtained an anti-suit injunction from the Hong Kong court, restraining both the Russian Proceedings and any other proceedings relating to the contract, pending the conclusion of the HKIAC arbitration. The injunction was later varied to permit the defendant to preserve the Freezing Order. The owner applied to the Hong Kong court to discharge the anti-suit injunction.
**Hong Kong Court Decision**

The court upheld the anti-suit injunction, finding that it will grant an injunction to restrain proceedings brought in breach of an agreement to arbitrate unless there is a strong reason to the contrary.

To constitute a strong reason for suing in a non-contractual forum, there must be an unforeseeable event at the time of the contract, or something so exceptional that it goes to the interests of justice. Neither element was established in this case.

In reaching its decision, the court clarified that it was not necessary to prove that the arbitral tribunal is the more convenient forum than the domestic court; the basis of the anti-suit injunction being simply to hold the parties to their contractually agreed method of resolving disputes.

**Access to Justice Through Arbitration in Hong Kong**

In reaching its decision, the court had to consider whether the owner would be denied access to justice and a fair trial if the dispute was to be resolved by arbitration in Hong Kong. In this regard, the owner contended that Hong Kong has been and still is subject to the continued “significant influence” of the United Kingdom due to their close connection, and would thus be hostile to Russia in light of the EU sanctions.

The court was robust in rejecting this argument, indicating that, as a starting point, the EU sanctions had no legal effect in many non-EU jurisdictions, including in Hong Kong. Moreover, the owner had access to lawyers in Hong Kong and had successfully appointed a former Chief Justice of Hong Kong as its arbitrator. There was no suggestion that the owner had encountered any difficulties during the HKIAC arbitration. Therefore, the court opined strongly that such assertion was “grossly exaggerated, if not totally based on false premises” and “highly fanciful”.

Notwithstanding the Russian court’s acceptance of the same “limited access to justice” argument in the Russian Proceedings and ruling that it shall have exclusive jurisdiction over the claims, the court held that this could not in itself be a strong reason to discharge the anti-suit injunction, since the arbitration agreement in the contract shall be upheld.

Further, on the facts of this case, the court found that the imposition of sanctions was foreseeable at the time of the making of the contract.

**How Did the Court Deal With the Freezing Order?**

The court similarly rejected the owner’s argument that staying the Russian Proceedings would lead to the loss of the security provided by the Freezing Order.

The court noted that even under the terms of the Freezing Order, the owner was allowed to resolve the disputes by arbitration. Equally, the anti-suit injunction in Hong Kong expressly permitted the owner to preserve the Freezing Order.

In any event, even if the anti-suit injunction would result in the loss of security under the Freezing Order, the court would still maintain the anti-suit injunction because of the arbitration agreement in the contract. To deprive the contractor of the contractually agreed benefit of not facing claims before Russian courts would be unjust.
What Was the Court’s Position on the Impact of EU Sanctions on Arbitration in Hong Kong?

The defendant further alleged that the Hong Kong arbitration would be rendered futile by EU sanctions, positing that any award made in Hong Kong could not be enforced against either party anywhere other than in Russia.

The court rejected this argument, again noting that the EU sanctions had no effect in Hong Kong and in many non-EU jurisdictions. Whether or not the Hong Kong award could be enforced would depend on the public policy of each enforcement state. Moreover, even on the defendant’s own case, the arbitral award could still be enforced in Russia where the contractor and its parent company had assets. Therefore, the defendant could not argue that the arbitration would not produce an enforceable award.

What Does the Case Tell Us About Hong Kong as an International Seat of Arbitration?

This case highlights Hong Kong’s position as an independent and politically neutral seat of arbitration, including in cases involving foreign sanctions. This position is reinforced by local legislation, which imposes express duties on its arbitrators to act independently, fairly, and impartially and to treat parties equally. It also reconfirms the pro-arbitration stance of the Hong Kong courts, specifically on an international level in light of the sanction-related context.

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