Press Summary

UniCredit Bank GmbH (Respondent) v RusChemAlliance LLC (Appellant)

18 September 2024

[2024] UKSC 30
On appeal from [2024] EWCA Civ 64

Justices: Lord Reed, Lord Sales, Lord Leggatt, Lord Burrows and Lady Rose

Background to the Appeal

In 2021 the appellant, RusChemAlliance LLC ("RusChem'), a Russian company, concluded contracts with two German companies to construct gas processing plants in Russia, under which RusChem made advance payments of around €2 billion. The obligations of the German construction companies were guaranteed by bonds payable on demand, some of which were issued by the respondent, UniCredit Bank GmbH ("UniCredit"). The bonds stated that they were governed by English law and that any dispute was to be referred to arbitration in Paris.

Following the Russian invasion of Ukraine in February 2022, the European Union imposed sanctions on Russia. The German companies announced that, because of these sanctions, they could not perform the construction contracts. As a result, RusChem terminated the contracts and requested the return of the advance payments. The companies asserted that they were prohibited by the EU sanctions from repaying these sums. RusChem then demanded payment from UniCredit under the bonds, which was refused for the same reason.

RusChem began proceedings against UniCredit in Russia claiming payment under bonds. UniCredit applied to the Russian court to dismiss RusChem's claim on the ground that the parties had agreed to arbitrate disputes in Paris, but the application was refused. UniCredit then applied to the English court for an injunction to restrain RusChem from continuing the Russian proceedings. RusChem disputed the jurisdiction of the English court to hear this claim.

To establish that the English court has jurisdiction to hear its claim for an "anti-suit" injunction, UniCredit had to show (a) that its claim falls within one of the categories of case where it is permissible to sue a defendant located abroad and (b) that England and Wales is the proper place in which to bring the claim. On the first point, UniCredit contended that its claim falls within a category which applies where a claim is made in respect of a contract governed by English law.

The High Court held that the English court did not have jurisdiction to hear the claim. On appeal, the Court of Appeal reversed this decision, holding that the English court has jurisdiction because (a) the claim is made in respect of the arbitration agreements in the bonds, which are contracts governed by English law and (b) England and Wales is the proper place in which to bring the claim. The Court of Appeal granted a final injunction ordering RusChem to discontinue the Russian proceedings.

RusChem appealed to the Supreme Court on the issue of jurisdiction.

Judgment

On 23 April 2024, after hearing oral argument, the Supreme Court announced its decision to dismiss the appeal, with reasons to follow.

The reasons for that decision are now given in a judgment by Lord Leggatt, with whom the other Justices agree.

Reasons for the Judgment

RusChem challenged the conclusions of the Court of Appeal on both jurisdiction issues.

Governing Law of the Arbitration Agreements

RusChem relied on the principle that an agreement to arbitrate disputes is treated for some purposes as separate from the contract in which it is incorporated. RusChem argued that, although the bond contracts are governed by English law, the arbitration agreements are the relevant contracts for the purposes of UniCredit's claim and these are governed by French law because the parties have chosen Paris as the seat of arbitration.

The relevant principles were recently outlined by the Supreme Court in *Enka Insaat Ve Sanayi AS* v *OOO Insurance Company Chubbb* [2020] UKSC 38 and applied in *Kabab-Ji SAL* v *Kout Food Group* [2021] UKSC 48. The general rule is that a choice of law to govern a contract will generally be construed as applying to an arbitration agreement which is incorporated in the contract; and the choice of a different country as the seat of arbitration is not, by itself, enough to displace this conclusion [**21**]-[**22**]. The judgment in *Enka*, however, contemplated that the position might be different if the law of the seat of arbitration provides that, where an arbitration is subject to that law, the arbitration agreement will also be treated as governed by that country's law.

RusChem relied on evidence showing that a French court would regard any agreement to arbitrate disputes in France as governed by the principles of French law applicable to international arbitration agreements. RusChem argued that the possible exception to the general rule contemplated in *Enka* applies here and that the parties can be taken to have intended that, as French law will be regarded as the governing law of the arbitration agreements when the matter is looked at in France, it should be regarded as the governing law of the arbitration agreements wherever the matter is looked at, including therefore when it is looked at in England [**32**]–[**34**].

The Court rejects that argument. The Supreme Court in *Enka* did not need to and did not decide the point argued on this appeal and the case that the arbitration agreements are governed by French law does not stand up on close analysis [**50**], [**59**]. It is desirable to have a clear and simple rule and an approach which treats the arbitration agreement as governed by whichever law the courts of the seat would regard as the law which governs it would be neither clear nor simple. It would have the consequence that, in every case where the parties have chosen a foreign seat for the arbitration, evidence of that country's law would have to be obtained in order to know what law governs the arbitration agreement. Particular complication would arise

where the relevant foreign law allows the parties to choose the law governing the arbitration agreement (as most legal systems are likely to do) and the contract containing the arbitration agreement also contains a governing law clause. It would then be necessary to determine how the relevant foreign law would answer the question whether the law of the contract or the law of the seat prevails in this situation. This is not an approach which it would be reasonable to suppose that the contracting parties intended [**55**]–[**57**]. As well as being a very unsatisfactory approach, it involves an elaborate process of reasoning which it is unrealistic to suppose that commercial parties would engage in when they agree on a place as the seat for the arbitration [**58**]. Instead, the correct interpretation of the bonds is the straightforward interpretation that, in accordance with the general rule, the choice of English law to govern the bonds is reasonably understood to apply to the arbitration agreements which form part of the bonds [**31**], [**62**]. The Court of Appeal was therefore right to hold that the arbitration agreements in the bonds are contracts governed by English law [**63**].

Proper Place to bring the Claim

RusChem also argued that UniCredit had not satisfied the further requirement of showing that England was the proper place to bring the claim for an injunction. RusChem contended that the proper place to bring the claim was either the French courts, because they are the courts with responsibility for supervising any arbitration, or in an arbitration commenced pursuant to the arbitration agreements in the bonds [**94**].

The Court rejects the underlying assumption that, to satisfy the proper place requirement, it must be shown that the English court is a more appropriate forum than any other to grant an anti-suit injunction. That is the requirement where no forum has been contractually agreed and, in addition to England and Wales, there is another available forum in which a trial of the claim could take place. Then the case should be allocated to whichever forum, among those available, is the place where it can most suitably be tried. But that approach does not apply where the parties have contractually agreed on a forum, as they have here by agreeing to refer any dispute to arbitration. It is desirable that parties should be held to their contractual bargain by any court before whom they have been or can properly be brought [**73**]–[**75**].

The role of the courts of the seat of arbitration is to supervise the arbitration itself. Preventing a party from breaking its contract to arbitrate is not a supervisory function [**96**]–[**100**]. In any case, on uncontradicted evidence, the French courts would not have jurisdiction over RusChem and, even if they did, have no power to grant anti-suit injunctions. The French courts are therefore not even an available forum, let alone an appropriate forum, in which to bring the claim [**101**]–[**104**].

It was common ground that an arbitrator could in theory make an order directing a party to refrain from bringing (or to discontinue) court proceedings brought in breach of the arbitration agreement. But such an order would have no coercive force because arbitrators lack the powers available to a court to enforce its orders, which include sanctions for contempt of court. An order made by an arbitrator creates only a contractual obligation. RusChem is already under a contractual obligation not to bring proceedings against UniCredit in the Russian courts which has not deterred it from doing so. It is clear that an order made by an arbitrator would be wholly ineffectual to prevent RusChem from breaking its agreement to arbitrate [**105**]–[**110**].

In circumstances where UniCredit could not obtain any effective remedy in the French courts or from an arbitral tribunal, the Court of Appeal was right to conclude that England and Wales is the proper place in which to bring this claim [**112**].

References in square brackets are to paragraphs in the judgment.

NOTE:
This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative

document. Judgments are public documents and are available at: Decided cases - The Supreme Court