



High Court grants injunctions in favour of bank in context of syndicated loan dispute over payments withheld due to sanctions

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The decision sheds light on the impact of UK-imposed sanctions on syndicated loan agreements and reinforces the English court's willingness to enforce asymmetric jurisdiction clauses in cross-border disputes.

The High Court has allowed a bank's application for a final anti-suit injunction (**ASI**) and anti-enforcement injunction (**AEI**), aimed at restraining the foreign respondents from continuing proceedings in a foreign court in breach of the exclusive element of an asymmetric jurisdiction clause in a syndicated loan facility agreement: [Barclays Bank PLC v PJSC Sovcombank & Anor \[2024\] EWHC 1338 \(Comm\)](#).

The decision will be of interest to financial institutions involved in cross-border disputes (in particular, involving the Russian courts) and in the syndicated loans market, as it illustrates the willingness of the English courts to enforce asymmetric jurisdiction clauses, which are common in the syndicated loans market. Asymmetric jurisdiction clauses typically provide for exclusive jurisdiction in relation to claims brought by an obligor, but permit finance parties to bring claims in any relevant jurisdiction. The English courts have consistently held that asymmetric clauses are valid – in contrast to the courts of some other jurisdictions (see [this blog post](#) on a pending reference to the European court on the validity of such clauses under EU law).

Asymmetric jurisdiction clauses are not generally considered to be exclusive jurisdiction clauses for the purposes of the Hague Choice of Court Convention 2005 (see [this post](#)), but that does not prevent them being treated as exclusive jurisdiction clauses for other purposes, including where the English court is considering whether to grant injunctive relief to enforce a jurisdiction clause. The decision reaffirms the principle that where foreign proceedings are pursued in breach of an exclusive jurisdiction clause (including the exclusive element of an asymmetric clause), the English court will typically grant injunctive relief to enforce the clause, unless the respondents can show strong reasons for not doing so. The judgment also confirms that an AEI may be appropriate where an ASI has been sought at an early stage of the foreign proceedings and there is a concern that the ASI will not be effective.

Another point of interest in this decision is the court's commentary on negative declarations. The court said that the English courts have moved away from their previous reluctance to grant negative declaratory relief, particularly where such declarations would serve a useful purpose.

In the present case, the bank was prohibited by UK sanctions regulation from making certain payments to the respondents which they claimed were due under the facility agreement. The respondents commenced proceedings in the foreign court seeking damages for the bank's failure to pay. The bank contested these proceedings, arguing they breached the exclusive jurisdiction clause in the facility agreement that applied to the respondents, and sought an interim ASI, followed by a final ASI and AEI and a negative declaration.

The court found no strong reasons not to grant the ASI, and agreed that the AEI was appropriate in this case. The court took into account the early stage of the foreign proceedings and the potential ineffectiveness of the ASI due to potential non-compliance or the possibility of a judgment being entered in the foreign proceedings regardless of the ASI. The court also found that a negative declaration would serve a useful purpose, particularly given that the parties had agreed to exclusive English jurisdiction in a contract governed by English law and the declaration concerned the effect of UK-imposed sanctions.

We consider the decision in more detail below.

Background

The dispute related to a syndicated loan agreement (the **Facility Agreement**) entered into by Barclays Bank plc (the **Bank**) and PJSC Sovcombank (**Sovcombank**), a Russian bank. The Facility Agreement is governed by English law and provides for the exclusive jurisdiction of the English courts in relation to claims brought by the respondents.

Following the imposition of sanctions on Sovcombank, the Bank was prevented from making payments to Sovcombank under the Facility Agreement. Despite the jurisdiction clause in the Facility Agreement, Sovcombank commenced proceedings in Russia [seeking damages for the Bank's failure to pay relying upon various provisions of the Russian Civil Code](#). The Bank contended that Sovcombank brought the Russian proceedings in breach of the exclusive jurisdiction clause that applied to claims brought by it, and obtained an interim ASI from the English court against Sovcombank and against its assignee, LLC Sodeistvie Mezhdunarodnym Raschetam (**AIS**), aimed at restraining the Russian proceedings.

The Bank then applied for final injunctive relief in the form of an ASI and an AEI, and for a declaration that the Bank is not liable on the claim advanced in the Russian proceedings. Neither Sovcombank, or AIS responded or participated in the English proceedings.

Decision

The court allowed the Bank's application for the final ASI and AEI and the negative declaration (subject to one amendment to the wording of the declaration).

ASI

The court found that it was just and equitable to grant the ASI. It underlined that the court will (in almost all cases) uphold the parties' agreement to exclusive English jurisdiction in relation to claims brought by parties who have contractually agreed to that.

The court was satisfied that the claim in Russia fell within the scope of the exclusive jurisdiction clause in the Facility Agreement, as it applied to the respondents, and that the proceedings in Russia are being

pursued in breach of this clause. There were also no strong reasons for the court not to grant injunctive relief to enforce the parties' contractual bargain.

The court highlighted that it took into account the following factors in its analysis:

- **Equitable principles.** There had been no significant delay in the case, the Russian proceedings were at an early stage and the application was made with "clean hands".
- **English legal representation.** Despite AIS's claims (in correspondence) of their difficulties in obtaining English legal representation due to sanctions, the respondents had sufficient time to utilise the license provisions under UK sanctions regulations to instruct English counsel.
- **Strategic non-participation.** The more likely reason for the respondents' non-participation in the English proceedings was not their inability to instruct lawyers, but their decision to focus on the Russian proceedings.

AEI

The court found that the AEI was appropriate in this case.

The court highlighted that an AEI is a relatively rare beast in English civil procedure but has become more widespread against the background of the Russian invasion of Ukraine. The court also clarified that, as per [SAS Institute Inc v World Programming Ltd \[2020\] EWCA Civ 599](#), there was no separate jurisdictional requirement of "exceptionality" beyond the reasons for granting anti-suit injunctive relief. However, the court underlined that it is typically only in rare circumstances that it would be persuaded to grant such an injunction.

The court then turned to the facts of the case and noted that the following factors were of particular significance:

- **The Russian court might disregard the respondents' application to discontinue the Russian proceedings and still issue the judgment.** The court considered expert evidence that the Russian court's approval would be required to discontinue the Russian proceedings and that if this approval is not granted, the judgment might be entered regardless. The court noted that evidence to the same effect persuaded the Court of Appeal to issue an AEI in [Deutsche Bank v RusChemAlliance LLC \[2023\] EWCA Civ 1144](#) (see our blog post [here](#)). The court said that the facts of the case before him were similar to those in the case of *RusChemAlliance*.
- **The AEI was sought at an early stage of the Russian proceedings and before the Russian court issued any judgment.** The court highlighted that the AEI would only take effect if a judgment was entered. However, there was a material distinction between injunction applications made at an early stage pre-judgment and those made post-judgment. In the court's view, an injunction granted before a judgment is issued was inherently less intrusive from the perspective of international comity. It will be less disruptive to the foreign court's process, avoids delays and costs for the respondent, and does not interfere with the judgment creditor's rights that come with a judgment.

Finally, the court highlighted that based on *SAS* and *RusChemAlliance*, the requirement for obtaining an AEI will "*readily*" be satisfied where: (a) an ASI has been sought at an early stage of the foreign

proceedings; and (b) there is a concern that the ASI will not be effective (either because it will not be complied with or because, even if it is complied with, a judgment may be entered in the foreign proceedings in any event).

Negative declaration

The court found it was appropriate to grant the declaratory relief sought.

The court noted it is clear from [Messier-Dowty v Sabena \[2000\] EWCA Civ 48](#) that the English courts' historic reluctance to grant negative declaratory relief has now passed and that it is now appropriate for the court to grant negative declaratory relief where it would serve a useful purpose.

The court was satisfied that the declaration would serve a useful purpose in this case, particularly where: (i) the English court has exclusive jurisdiction; (ii) the contract is governed by English law; and (iii) the issue in question is the effect of sanctions imposed in the UK.

The court examined the provisions of the relevant UK sanctions regulations, specifically the Sanctions and Anti-Money Laundering Act 2018 (**SAMLA**). It determined that the sanctions extended to the payments the Bank would otherwise have been required to make under the Facility Agreement, and any payment to Sovcombank would constitute a breach of the regulations.

The court also said that section 44(1) of SAMLA provided a defence to the Bank's payment obligations, and therefore, there was no breach by the Bank of the Facility Agreement. Consequently, the court dismissed the basis of the claim in Russia that the Bank had committed a legal wrong by not paying Sovcombank under the Facility Agreement. This conclusion was also relevant to AIS as the assignee under Sovcombank's claim in Russia.

Accordingly, for all the reasons above, the court allowed the Bank's application for the final ASI and AEI and the negative declaration, ordering the respondents to pay the Bank's costs on the indemnity basis.