

International fraud and asset tracing litigation - Spring: International Cooperation against fraud – freezing orders in support of foreign proceedings

08 MARCH 2009

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Mediterranean Shipping Company v. OMG International & Ors [2008] EWHC 2150 (Comm)

Facts of the case

MSC, the second largest shipping containers company in the world, applied to the Commercial Court for a worldwide freezing order against Ningbo Toptrade Inp & Exp Co Ltd ('Ningbo'), a Chinese company. The claim was in respect of an alleged fraud concerning 18 of MSC's containers.

Ningbo and MSC had been involved in proceedings arising out of the same subject matter in New York and MSC had been successful in obtaining an 'attachment' against Ningbo's assets.

The English action began as proceedings against OMG International Ltd (OMG) and summary judgment was entered against OMG in October 2007. Very shortly after judgment was entered, the court ordered that Mr Osborne Grant and Ningbo be added to the proceedings.

Initially, Ningbo instructed solicitors to respond to the English proceedings and they filed an acknowledgment of service. However, the solicitors came off the record shortly after, as a result of Ningbo's wish to terminate the retainer and their failure to settle the lawyer's fees. Thereafter, Ningbo acted without representation and chose not to appear at the subject application, even though it had received notice of the hearing.

In Ningbo's absence, counsel for MSC (Mr Chirag Karia) was obliged to draw the following points to the court's attention:

The second defendant (Mr Grant) had filed an application objecting to the English court's jurisdiction and objected to his being joined to the proceedings.

- His application to set aside his joinder had yet to be heard.
- Ningbo was joined to the proceedings after summary judgment had been obtained against OMG and Mr Grant had argued that there was no existing dispute between OMG and MSC to which he could be joined.

Mr Karia also referred Mr Justice Walker to his own judgment in *Mobile Cerro Negro v PDV SA* [2008] and reminded him of the issues he must consider when deciding whether to exercise his discretion and make a freezing order in support of foreign proceedings:

- Was there a real risk of the subject assets being dissipated and was this an urgent matter?
- Were the subject assets located in England? Alternatively, did the respondent or the dispute have a sufficiently strong link to England?

If the above considerations were not satisfied, then considerations of comity would point strongly against the granting of the freezing order and the foreign court (New York) should be left to deal with matter.

The Decision

Mr Justice Walker, decided that he would grant the worldwide freezing order, despite Ningbo being a company incorporated outside the UK and having no significant presence in the UK.

Mr Justice Walker held that said the court has jurisdiction over Ningbo because an acknowledgment of service had been served and no application to set aside service on the grounds of jurisdiction had been made in time. The judge also noted that Ningbo was 'a necessary and proper party' to the proceedings between MSC and the first defendant, OMG.

As to the exercise of his discretion, the judge said that he would make the order sought because there was 'cogent evidence' of an international

conspiracy (concerning many shipowners) and the links with England were sufficiently strong as there was strong evidence that the fraud was masterminded from London. Mr Justice Walker noted that if the New York court were to set aside the attachment order (pursuant to Ningbo's pending application), the English court would be the only court that could provide the necessary disclosure and freezing relief. On the facts, no breach of comity, so far as New York was concerned, arose.

Points of Interest

This is a clear illustration of the English courts' willingness to assist parties who are the victims of international frauds, even when the links with England are not obvious and proceedings are underway in other jurisdictions.