

# English High Court Enforces Asymmetric Jurisdiction Clause in a Syndicated Loan Facility Agreement

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On 24 May 2024, the English High Court granted final injunctive relief to Barclays Bank Plc (**Barclays**), both in the form of an anti-suit injunction and an anti-enforcement injunction, arising out of a syndicated loan agreement (the **Facility**) entered into between Barclays and PJSC Sovcombank (**Sovcombank**).<sup>1</sup> In a judgment that will be of interest to financial institutions and investors involved in cross-border disputes and to the public loan market, the English Courts have demonstrated a willingness to enforce asymmetric jurisdiction clauses, which are commonly seen in the syndicated loans market.

## In Depth

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### BACKGROUND

The Facility is governed by English law, and includes a provision granting the English Courts exclusive jurisdiction in all relevant aspects so far as actions brought by Sovcombank are concerned (albeit, the Facility enables Barclays to commence proceedings elsewhere).

Following the imposition of sanctions on Sovcombank, Barclays was prevented from making payments to Sovcombank under the Facility (in his Judgment, Mr Justice Foxton noted that he was “satisfied” that the sanctions “*had the legal effect of preventing Barclays from making payments to Sovcombank under the Facility*”<sup>2</sup>). Despite, however, the inclusion of the (asymmetric) jurisdiction clause in the Facility, Sovcombank commenced proceedings in Russia against Barclays, seeking damages for the non-payment of amounts that it claimed were due under the Facility, relying on

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various provisions of the Russian Civil Code (the **Russian Proceedings**).

It was Barclays' position that the Russian Proceedings were issued in breach of the exclusive jurisdiction clause in the Facility. As such, Barclays obtained an interim anti-suit injunction from the English Court against Sovcombank and its assignee, LLC Sodeistvie Mezhdunarodnym Raschetam (referred to as  **AIS** in the Judgment), aimed at restraining the Russian Proceedings. Barclays then applied for final injunctive relief in the form of an anti-suit injunction and an anti-enforcement injunction, and for a declaration that Barclays was not liable on the claim advanced in the Russian Proceedings. Neither Sovcombank or AIS responded to, or participated in, the English proceedings.

## THE HIGH COURT'S DECISION

Barclays was granted the relief sought in its application (save for one amendment to the wording of the declaratory relief sought).

### *Anti-Suit Injunction*

The Court was satisfied that the claim brought in the Russian Proceedings "*is one that falls full square within the exclusive jurisdiction clause [in the Facility]*"<sup>3</sup>, and that the pursuit of the Russian Proceedings is a breach of the exclusive jurisdiction clause. The Court decided that it was just and equitable to grant the anti-suit injunction, and that there were no strong reasons not to grant the injunctive relief sought to enforce the parties' contractual bargain (adopting the same reasons given by HHJ Pelling KC when the interim injunctive relief was granted).

### *Anti-Enforcement Injunction*

As to the anti-enforcement injunction, the Court noted that, although there is no separate jurisdictional requirement of "exceptionality" for the granting of such relief (over and above the reasons for granting anti-suit injunctive relief)"<sup>4</sup>, in practice "*it is likely to be a rare case in which it will be possible to persuade a court to grant such an injunction*"<sup>5</sup>. Nevertheless, the Judge was satisfied that this was such a case.

The Court was presented with expert evidence to the effect that, even if the respondent to the anti-suit injunction had sought to discontinue the Russian Proceedings, the approval of the Court would be required, that the approval may not be granted, and that judgment might be entered regardless"<sup>6/sup>. The Court was satisfied that the anti-suit injunction may not be effective, either because it will not be complied with, or, even if it is complied with, a judgment may be entered in the Russian Proceedings in any event. As such, and noting that the anti-enforcement injunction was</sup>

sought at an early stage of the Russian Proceedings, and before the Russian Court had issued any judgment, the Court found that it was appropriate to

also grant the anti-enforcement injunction.

### *Declaration*

The declaration sought by Barclays was that it "*is not liable to [Sovcombank or AIS] on the claim advanced in the Russian proceedings...*"<sup>7</sup>. The Court found that such a declaration would serve a useful purpose in these proceedings, particularly when made by the Court that the parties have agreed has exclusive jurisdiction, and which is the jurisdiction which is the source of the law which the parties have agreed should govern their contract, and where what is in issue is the effect of

sanctions imposed in the English jurisdiction. The Court was persuaded that the sanctions extend to the payments Barclays would otherwise have been required to make under the Facility, and that there “*was no breach by Barclays of the Facility in not making the payment which might otherwise have been due to Sovcombank*”<sup>8</sup>. Consequently, the Court dismissed the basis of the claim in the Russian Proceedings that Barclays had committed a legal wrong by not paying Sovcombank under the Facility.

As such, the Court granted Barclays the declaration sought, subject only that the words “for damages” should be inserted immediately after the word “claim” in the declaration.

### *English Legal Representation*

Finally, the Court also dismissed AIS’ suggestion in correspondence that it may be in difficulty in obtaining English legal representation, noting that “*there has been a significant period in which it has been able to invoke the licence provisions by which it is possible to instruct English lawyers, notwithstanding the effect of sanctions*”. The Court surmised that the more likely reason for Sovcombank’s and AIS’ non-participation in the English proceedings is “*a considered decision not to participate because it has taken the view that it will focus its attentions on the Russian proceedings*”<sup>9</sup>.

## **EFFECT OF THE COURT’S DECISION**

As noted above, this Judgment demonstrates the willingness of the English Courts to enforce asymmetric jurisdiction clauses, which are common in the syndicated loans market. The English Courts have consistently held that asymmetric jurisdiction clauses are valid, in contrast to the approach taken in other jurisdictions.

This is a Judgment that is likely to be welcomed by underwriters and other financial institutions, and reaffirms the principle that, where foreign proceedings are issued in breach of an exclusive jurisdiction clause (including the exclusive element of an asymmetric jurisdiction clause), the English Court will typically grant injunctive relief to hold the parties to the bargain that they struck (unless there are good reasons not to do so).

## **Endnotes**

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<sup>1</sup> Barclays Bank Plc v (1) PJSC Sovcombank and (2) LLC Sodeistvie Mezhdunarodnym Raschetam [2024] EWHC 1338 (Comm).

<sup>2</sup> Judgment, paragraph 3.

<sup>3</sup> Judgment, paragraph 6.

<sup>4</sup> Per SAS Institute Inc v World Programming Ltd [2020] EWCA Civ 599.

<sup>5</sup> Judgment, paragraph 11.

<sup>6</sup> The Court noted that evidence to the same effect was presented to the Court of Appeal in *Deutsche Bank v RusChemAlliance LLC* [2023] EWCA Civ 114.

<sup>7</sup> Judgment, paragraph 15.

<sup>8</sup> Judgment, paragraph 18.

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National Law Review, Volume XIV, Number 241

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