



Neutral Citation Number: [2025] EWHC 924 (Comm)

Case No: CL-2024-000087

CL-2024-000088

CL-2023-000516

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
KING'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 11.04.2025

Before :

Mr Justice Foxton

Between :

Bayerische Landesbank
Landesbank Baden-Württemberg
Commerzbank AG
- and -
RusChemAlliance LLC

Claimants

Defendant

Mr Richard Millett KC and Mr Matthieu Gregoire (instructed by Allen Overy Shearman Sterling) for the Claimant, Commerzbank AG

Mr Siddharth Dhar KC, Mr Stuart Cribb and Mr Edward Batrouney (instructed by Freshfields LLP) for the Claimants, Bayerische Landesbank Landesbank and Baden-Württemberg

Mr Mikhail Sondor (instructed by ELWI), for the Defendant

Hearing dates: 11.04.2025

JUDGMENT

Rev 1

MR JUSTICE FOXTON
(10.30 am)

Friday, 11 April 2025

Ruling by MR JUSTICE FOXTON

1. These are applications by three claimants: in actions CL-2024-000088, CL-2024-000087 and CL-2023-000516. I am going to refer to all three claimants collectively as “the claimants” but there will be occasions when it will be necessary to distinguish between them.
2. Each of the claimants applied to this court for antisuit injunctions against the same defendant, RusChemAlliance LLC (“RusChem”), which is a Russian company. The anti-suit injunctions were sought to restrain what were alleged to be breaches of arbitration agreements between each claimant and RusChem requiring disputes relating to certain performance bonds to be resolved by arbitration in Paris. It was alleged that there were breaches of the arbitration agreements by reason of court proceedings commenced by RusChem against the claimants in Russia.
3. Taking, first, the claimant in the 2023 action who will refer to as “Commerzbank”, it obtained interim and then final antisuit relief from Mr Justice Jacobs on 14 May of last year. In addition to granting injunctive relief Mr Justice Jacobs made a declaration that the English court had jurisdiction to determine Commerzbank’s claim for final antisuit relief and he made an order requiring RusChem to pay Commerzbank’s costs.
4. Since that order was made, the Russian Arbitrazh Court has granted an order for antisuit relief which prohibits Commerzbank from pursuing proceedings in the United Kingdom in respect of disputes arising out of or in connection with the performance bond, and which requires Commerzbank to take all measures within its power, including filing an application for revocation, aimed at revoking Mr Justice Jacob’s order.
5. So far as the other two actions are concerned, they are brought by Bayerische Landesbank and Landesbank Württemberg, and I will refer to together as “the banks”. They obtained final antisuit injunctive relief from Mr Justice Butcher, again restraining what were alleged to be breaches of the arbitration agreements applicable to performance bonds issued to RusChem. Once again the breaches were alleged to arise by reason of proceedings commenced by RusChem in the Russian court.
6. In addition to granting that relief, Mr Justice Butcher made three declarations. He declared that the arbitration agreements were governed by English law. He declared that the English court had jurisdiction to determine the claim for injunctive relief. And he declared that the commencement and pursuit of the Russian proceedings constituted and/or constitutes a breach or breaches of the arbitration agreement as a matter of English law. He also ordered RusChem to pay the bank’s costs.
7. On 13 and 16 January this year the Russian Arbitrazh Court made antisuit injunctions against the banks. Amongst the measures ordered to be taken were that the banks take all measures within their control, including filing an application for revocation and other applications, aimed at cancelling the effect of Mr Justice Butcher’s order.

8. I accept that in the case both of Commerzbank and the banks, the Russian court orders provide for very significant financial penalties if the claimants do not comply with their terms. All three claimants are understandably anxious to do everything they can to comply with the terms of the orders made by the Russian courts, and they have filed comprehensive applications which are aimed at the complete revocation of the orders of Mr Justice Jacobs and Mr Justice Butcher respectively.
9. I should say at the outset that there is no difficulty with this court immediately revoking the final injunctive relief which the claimants obtained and revoking those orders properly consequential on the granting of the injunctions. That has been confirmed by a judgment of the Court of Appeal in this jurisdiction following an application made by UniCredit GmbH (“UniCredit”). UniCredit obtained anti-suit relief from the English courts in respect of proceedings commenced by RusChem in the Russian courts, which proceedings were said to breach an arbitration agreement between UniCredit and RusChem. Once again, an anti-suit injunction was granted by the Russian Arbitrazh Court requiring UniCredit to apply to the English court to revoke the orders it had made.
10. The Court of Appeal brought the application for revocation by UniCredit on for hearing on an urgent basis, aware that there were a number of other cases raising similar issues in the background. The Court’s judgment was clearly intended to provide guidance to those other cases. That makes it particularly important for me as a first instance judge to look at what was said by the Court of Appeal and to follow it unless there is a genuine and principled bases for concluding that the circumstances or facts of this case are different.
11. I am going to refer to the Court of Appeal’s judgment which is reported at [2025] EWCA Civ 99 as “*UniCredit 2*” to distinguish it from the previous judgment of the Court of Appeal which had granted the English injunctions in that case which I will refer to as “*UniCredit 1*”.
12. In *UniCredit 1* the claimant obtained injunctive relief on a final basis but also the same three declarations obtained by the banks in the case before me: that the arbitration agreements were governed by English law, that the English courts had jurisdiction to determine the claim for injunctive relief, and that the commencement and pursuit of the Russian proceedings constituted and/or constitutes breaches of the arbitration agreements as a matter of English law.
13. In *UniCredit 2* the Court of Appeal held it had power to revoke the final injunctive relief under CPR3.1 subparagraph (7). I accept for reasons that I will come to that the Court also held that there was power to revoke the declarations. However, the Court of Appeal decided that it was not appropriate to exercise that power. The Master of the Rolls said this at paragraph 44:

“I have decided that I would vary not discharge the Court of Appeal’s order. It seems to me that it would be unsatisfactory to discharge the parts of the order that reflect the decisions on jurisdiction made by the Court of Appeal and the United Kingdom Supreme Court. There is no need to do so. Under English law this court did, indeed, have jurisdiction to determine what it determined, and its final orders reflecting that decision must stand. The injunctive parts of the Court of Appeal’s order at paragraphs 8 to 11 are those that should be discharged. The parties can inform the

court if there are other paragraphs that support those paragraphs that should be removed as a consequence”.

14. As I indicated a moment ago, I accept that the decision in relation to the declarations involved the exercise of a discretion by the Court, and that the Court in *UniCredit 2* accepted that it had jurisdiction to revoke all aspects of the *UniCredit 1* order. In paragraph 11 of *UniCredit 2*, for example, the Master of the Rolls said this:

“I have decided that there is power to revoke or vary the Court of Appeal’s order in the circumstances of this case under CPR Part 3.17, and that the court should make an order varying the Court of Appeal’s order so as to revoke the injunctive parts of it, leaving in place the declaratory parts as to the jurisdiction of the English court which form the subject of the United Kingdom Supreme Court’s decision”.

15. I accept Mr Dhar KC’s submission that that clearly contemplates a broader power to revoke with the Court of Appeal then saying it was willing to exercise that power in relation to part of the Court of Appeal order in *UniCredit 1* but not all of it.
16. In this case the claimants, as I have indicated, seek to vary the orders not simply to revoke the injunctive relief, but also the declarations and the costs orders made. There does not appear to have been any final costs order made by the Court of Appeal in *UniCredit 1* with the result that that issue did not feature in the *UniCredit 2* decision.
17. I am going to take the declarations as to jurisdiction made in relation to both Commerzbank and the bank’s applications first, and the declaration as to the applicable law of the arbitration agreement made in the proceedings brought by the banks. I take those together because, as the Supreme Court decision in the *UniCredit* case at [2024] UKSC 30 makes clear, the finding that English law was the applicable law of the arbitration agreement was an essential element in the English court’s decision that it had jurisdiction, and, therefore, those declarations, it seems to me, stand or fall together.
18. Efforts were made in argument before me to distinguish the exercise of the discretion by the judgment of the Master of the Rolls in *UniCredit 2* from the case before me, but to my mind none of the suggested distinctions were principled or satisfactory. The fact that the judgment of the Court of Appeal in *UniCredit 1* granting the declarations had remained in force because the Supreme Court had refused the appeal against it, does not, to my mind, provide a valid point of distinction. It does not feature in the reasoning of the Master of the Rolls. All of these *RusChem* cases were stayed pending an outcome of the decision in the Supreme Court which was of equal relevance and validity to all of them.
19. I accept the very real risk if sufficient efforts are not made to revoke the declarations of very significant penalties to the claimants. However, I am satisfied that that was also a feature of the *UniCredit 2* decision as the judgment of the Court of Appeal makes clear. Whilst it is said that the evidence here is stronger that not revoking the declarations will involve a meaningful risk of those penalties being applied, it is clear that in *UniCredit 2* the bank were seeking to revoke all of the orders that had been made in *UniCredit 1*, and that the hearing before the Court of Appeal proceeded upon the basis that the Russian court order required efforts to revoke the entirety of the Court of Appeal order in *UniCredit 1*, not simply part of it.

20. So, while I am satisfied that the claimants have taken every measure in their power to try and revoke the court's declarations, I am not persuaded it would be appropriate for me to revoke the declarations. Those declarations are essentially concerned with the position in the past when the English court orders were made. They are matters that cannot, in reality, be revoked any more than a bell can be unrung. However, it will, of course, be open to the claimants, as they wish to do so, to give an undertaking to be recorded in an order of this court that they will not seek to rely on the declarations in any way. The reality here is that the English court *did* determine at a prior point in time that it had jurisdiction to make an order it made, and it determined that it had jurisdiction to make that order because it concluded that the arbitration agreements were governed by English law. Those decisions were matters of obvious and direct relevance to the court itself, not simply the parties. They are very different in this respect to the orders for injunctive relief or orders for financial relief which are primarily of concern to the parties.
21. Revoking the declarations would not change the fact that the English courts had determined those issues and concluded at the relevant point this time it was able to exercise jurisdiction.
22. I am also concerned that revoking the declarations might be apt to create a misleading impression that when the English courts did so act at the time they acted, they may have done so without jurisdiction. To repeat what the Masters of the Rolls said, under English law this court did, indeed, have jurisdiction to determine what it determined and its final order reflecting that decision must stand.
23. However, I should emphasise that those determinations and declarations simply reflect the position as a matter of English law. It is very commonly the case that different legal systems take different views on applicable law and jurisdiction, and I very much hope the Russian courts will understand in the spirit of comity that those declarations are simply the English court recording its view of its jurisdiction applying its law at a particular point in time in the past.
24. That leaves, however, the question of the declaration that there was and continues to be a breach of contract through the pursuit of the Russian proceedings. I am satisfied that in the events which have happened since the order was made, there may be some scope for argument as to whether any breach has been waived or to what extent, and what the contractual effect of that might be. Those are developments that have arisen since the order of Mr Justice Butcher was made. They have a "forward-looking" element in a way that declarations as to the court's jurisdiction to make an order in the past does not. I am satisfied the events since the order was made amount to a material change of circumstance, and that in those circumstances it is appropriate to revoke that declaration. I am also satisfied that in doing so I am not acting contrary to the letter or spirit of the Court of Appeal decision in *UniCredit 2*, because in paragraph 44 the Master of the Rolls made it clear he was specifically concerned with matters going to the court's jurisdiction when it acted.
25. That leaves the costs orders. Once again, I am satisfied those can and should be revoked. Like the injunctions, they have a forward-looking effect in that they create obligations capable of ongoing enforcement in the future. They are orders that operate exclusively in

the claimants' favour, and unlike the declarations about jurisdiction do not intimately concern the court and its power to act. The claimants, having applied to revoke those orders, and, indeed, having sought and obtained the discharge of the substantive relief which was the principled basis of the costs order, I am satisfied those amount to material changes of circumstance and that the cost orders in all three actions should be discharged.

26. Commerzbank and the other banks have sought permission from this court to appeal the order I have just made. They do that in keeping with their effort to make every attempt to set aside every part of the orders made by the English court in their case. There are two grounds for granting permission to appeal in this jurisdiction. There must be a serious issue to be tried or some other reason for permitting an appeal, such as an issue of general public importance. I am not persuaded that either of those grounds are satisfied. I have sought to follow a decision of a Court of Appeal intended to give guidance in applications of this very kind. It will, of course, be open to both sets of banks to renew their application for permission to appeal before the Court of Appeal, and if I have misunderstood the effect of the Court of Appeal's judgment, the Court of Appeal will be in a position to say so at that point.