

Haste makes English courts a forum non conveniens (Samsung Electronics v LG Display Co Ltd)

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Dispute Resolution analysis: This Commercial Court judgment on an application challenging permission to serve out provides helpful guidance on jurisdictional gateways available to claimants in contribution proceedings, as well as parties to cross-border litigation considering follow-on claims. Sir Michael Bolton GDE examines the tort, restitution and statutory gateways in the context of an agreement to settle proceedings arising from a cartel ruling of the European Commission (the Commission) and confirms Lord Hoffman's purposive view of tort gateway requirements. Written by Natalie Todd, partner, and Anastasia Tropsha, lawyer, at PCB Byrne LLP.

Samsung Electronics Co. Ltd and other companies v LG Display Co Ltd and another company [\[2021\] EWHC 1429 \(Comm\)](#)

What are the practical implications of this case?

Litigants in cross-border proceedings would be well-advised to join any potential defendants to contribution claims by way of Part 20 before settling or discontinuing original proceedings to ensure the English courts remain the most appropriate forum. In this case the balance of convenience following the conclusion of original proceedings weighed in favour of the defendants' home jurisdiction, whereas, on the judge's own indication, this would have changed had the original litigation been extant.

This judgment also provides useful new guidance on the types of tort acts and damages that will be caught by this gateway, in particular in the context of claims pursuant to the [Civil Liability \(Contribution\) Act 1978 \(CL\(C\)A 1978\)](#), bringing English procedure in line with Scottish, American and European equivalents.

What was the background?

A claim was brought against the defendants (LG) for contributions (under the [CL\(C\)A 1978](#)) as a result of damages owed following a cartel finding by the Commission as against the parties and follow-on English proceedings.

Following settlement of the English proceedings, the claimant (Samsung) sought contributions from LG and was given permission to serve out of the jurisdiction in Taiwan and Korea. LG argued that these proceedings should have been brought in the Far East and applied to set aside the order of Mr Justice Henshaw granting permission to serve out. The two-year limitation period under the [CL\(C\)A 1978](#) had already expired, but no evidence was provided as to impossibility of or time-bar on equivalent proceedings being brought in Korea or Taiwan.

Samsung based their case on the tort gateway pursuant to [CPR PD 6B, para 3.1\(9\)](#) and, additionally, on the restitution and statutory gateways under [CPR PD 6B, para](#)

[3.1\(16\)](#) and [\(20\)](#) respectively (having relied on *AES Ust-Kamenogorsk Hydroplant LLP v Ust-Kamenogorsk Hydropower Plant LLP* [\[2012\] 1 WLR 920](#) (CA) as authority for a post-challenge application to rely on additional gateways).

LG argued that only the statutory gateway was available, that Samsung did not qualify for it, and further that Taiwanese and Korean courts were the appropriate fora.

What did the court decide?

Tort gateway

Sir Michael Burton GBE construed the tort gateway wording purposively to include a contribution claim, in light of its juridical history, proper assimilation to the Brussels Regulation and 'in a broad internationalist spirit' (para [11]), following Lord Hoffman's analysis in *FFSB Ltd v Fortis Fund Services (Bahamas) Ltd* [\[2007\] UKPC 16](#) at para [12] and the position in Scotland (*Comex Houlder Diving Ltd v Colne Fishing Co Ltd* [\[1987\] SC \(HL\) 85](#) at para [104]).

The judge concluded that damage was sustained and relevant acts committed within the jurisdiction, being the importation and distribution in the UK at inflated prices. Reference was made to the discussion by Mr Justice Morgan in another follow-on claim resulting from the same cartel in *Iiyama v Samsung Electronics Co Ltd* [\[2016\] EWHC 1980 \(Ch\)](#). Alternatively, the loss was sustained by Samsung in the UK as a result of the liability arising under the settlement agreement, which LG companies were not parties to. (See Lord Bingham when he refers in *Royal Brompton Hospital NHS Trust v Hammond* [\[2002\] 1 WLR 1397](#) at para [3] to the 1934 Law Revision Committee Third Interim Report at para [7]: 'when two persons each contribute to the same damage suffered by a third, one who pays more than his share should be entitled to recover contribution from the other').

Other gateways

The restitution gateway was available, under subsections (a) or (b) ie acts committed or enrichment obtained within the jurisdiction respectively, because Samsung agreed to pay more than its fair share of the liability, resulting in LG's unjust enrichment.

The statutory gateway did not arise because one of the other gateways was available.

Forum non conveniens

Notwithstanding the above, Sir Michael Bolton held that the courts of Taiwan and Korea were more appropriate to resolve the issue of relative responsibilities of the parties; and set aside service of the proceedings.

Case details:

- Court: Commercial Court, Queen's Bench Division, High Court of Justice
- Judge: Sir Michael Burton GBE
- Date of judgment: 28 May 2021

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