

RECENT RUSSIAN CASES IN THE ENGLISH COURTS



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The English Courts have made some recent important decisions for Russian parties who chose to litigate before them. I set out below a very brief update on two recent decisions:

i) PJSC Tatneft v Bogolyubov & Others [2021] EWHC 411 (Comm) and

ii) PJSC National Bank Trust and another v Mints and others [2021] EWHC 692 (Comm).

PJSC Tatneft v Bogolyubov & Others

The case involves a \$294.3 million claim by Tatneft, the fifth largest oil company in Russia, against four Ukrainian businessmen alleged to have fraudulently taken control of a Ukrainian oil refinery and diverted funds for their own benefit.

Mrs Justice Moulder considered whether the claim, brought 9 years after certain relevant events, was time-barred under the 3-year limitation period in Article 196 Russian Civil Code (RCC). As to this aspect of the claim, Moulder J found that:

1. Prior to law reforms in Russia in 2013, time ran on an Article 1064 claim from the date of actual or constructive knowledge of the “violation of right” under Article 200 RCC,

without any separate requirement for the claimant to have knowledge of the identity of the defendant(s);

2. For the purposes of Article 200 RCC, “knowledge” for this purpose is a belief that the violation of rights has occurred which goes beyond mere speculation but knowledge is distinct from evidence and a claimant can have knowledge even though it does not have evidence which would prove the case at trial”¹.

¹ Paragraph 55 of the judgment.

Moulder J concluded that Tatneft and its agent, S-K both had actual knowledge of the violation of their rights by March 2010, or by December 2011 and, in any event, S-K had knowledge of both the requisite elements of the tort and the identity of all the Defendants more than three years before the claim was brought.

In addition, Moulder J found that had it been necessary to decide the point, that “*harm*” for the purposes of Article 1064 of the RCC does not extend to a claim by S-K based only on financial loss caused by the non-receipt of economic benefits which it had “*a legitimate expectation*” of receiving. This was not sufficient to constitute property for the purposes of a claim under Article 1064.



PJSC National Bank Trust and another v Mints and others

The case involves an alleged conspiracy between the first four defendants (the “Mints Defendants”) and two major Russian banks. The Mints Defendants are domiciled in England, but all other elements of the claim point to Russia.

The claimants obtained permission from the Court to serve the claim outside the jurisdiction on the fifth, sixth and seventh defendants on the grounds that they are necessary and proper parties to the claim against the Mints Defendants. The fifth to seventh defendants argued that this is a Russian dispute and that they should



be sued in Russia. They challenged the English Court’s jurisdiction and applied to set aside the order allowing the claimants permission to serve the claim on them out of the jurisdiction. Where permission is required to serve out of the jurisdiction, the burden lies on the claimant to show that England is the proper place in which to bring the claim. If another forum appears to be the clearly or distinctly more appropriate forum then permission to serve out will be refused, unless the claimant has a legitimate juridical advantage in pursuing its claim in England so that “substantial justice” cannot be achieved in the alternative forum².

The claimants argued that there was a risk of a multiplicity of proceedings relating to the same issues leading to inconsistent decisions, therefore justifying that the fifth to seventh defendants should be parties to the proceedings in England rather than having to be sued in Russia.

The fifth to seventh defendants relied on *Lungowe and others v Vedanta Resources and another*: the claimants were only in a position to rely upon the undesirability of irreconcilable judgments because they had chosen to sue the Mints Defendants in England rather than in a jurisdiction which is an available and appropriate forum so the risk of inconsistent judgments loses its force.

The claimants argued that this case should be distinguished from *Vedanta* and that, whilst they could have issued proceedings against the

Mints Defendants in Russia, issuing proceedings in England was the “only rational choice”³ due to the relative ease of enforcing an English judgment (and the difficulty of enforcing a Russian judgment) over the relevant trust assets in the Cayman Islands and the fact that the Mints Defendants were likely to resist the enforcement of a Russian judgment. In particular, there was a risk the Mints Defendants would not appear in any Russian proceedings so that any Russian judgment granted would not be enforceable against the Cayman Islands assets.

The Court found in favour of the claimants and found that it was reasonable for the claim to have been issued against the Mints Defendants in England. The ease with which a judgment could be enforced was a legitimate juridical advantage to consider as was the fact that the defendants had not offered to submit to the jurisdiction of the Russian Court. The undesirability of a multiplicity of proceedings and the consequent risk of inconsistent judgments remained an important and legitimate factor to be considered when determining the appropriate forum for the claim, all the more so in cases where conspiracy is alleged.



² See *Lungowe and others v Vedanta Resources and another* [2020] AC 1045

³ Paragraph 64 of the judgment.